

SB 552

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**WEST VIRGINIA LEGISLATURE**  
**SEVENTY-EIGHTH LEGISLATURE**  
**REGULAR SESSION, 2008**

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COMMITTEE SUBSTITUTE  
FOR

**ENROLLED**  
**Senate Bill No. 552**

(SENATORS HELMICK, PLYMALE AND  
EDGELL, *original sponsors*)

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[Passed March 5, 2008; in effect ninety days from passage.]

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WEST VIRGINIA  
LEGISLATIVE  
SERVICES DIVISION  
HARRISBURG, WV

ENROLLED  
COMMITTEE SUBSTITUTE  
FOR

## Senate Bill No. 552

(SENATORS HELMICK, PLYMALE AND  
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AN ACT to amend and reenact §11-15-2 and §11-15-30 of the Code of West Virginia, 1931, as amended; and to amend and reenact §24-6-2 and §24-6-6b of said code, all relating to taxation of prepaid wireless calling service and the wireless enhanced 911 fee; defining “prepaid wireless calling service”; providing that prepaid wireless calling service is subject to the consumers sales and service tax; requiring the collection and deposit by the Tax

Commissioner of the proceeds of the consumers sales and service tax imposed on the sale of prepaid wireless calling service into the wireless enhanced 911 fee accounts maintained and administered by the Public Service Commission; and providing that prepaid wireless calling service is no longer subject to the wireless enhanced 911 fee.

*Be it enacted by the Legislature of West Virginia:*

That §11-15-2 and §11-15-30 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §24-6-2 and §24-6-6b of said code be amended and reenacted, all to read as follows:

## **CHAPTER 11. TAXATION.**

### **ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.**

#### **§11-15-2. Definitions.**

1       (a) *General.* — When used in this article and article  
2 fifteen-a of this chapter, words defined in subsection (b)  
3 of this section have the meanings ascribed to them in  
4 this section, except in those instances where a different  
5 meaning is provided in this article or the context in  
6 which the word is used clearly indicates that a different  
7 meaning is intended by the Legislature.

8       (b) *Definitions.* —

9       (1) “Business” includes all activities engaged in or  
10 caused to be engaged in with the object of gain or  
11 economic benefit, direct or indirect, and all activities of  
12 the state and its political subdivisions which involve  
13 sales of tangible personal property or the rendering of

14 services when those service activities compete with or  
15 may compete with the activities of other persons.

16 (2) "Communication" means all telephone, radio, light,  
17 light wave, radio telephone, telegraph and other  
18 communication or means of communication, whether  
19 used for voice communication, computer data  
20 transmission or other encoded symbolic information  
21 transfers and includes commercial broadcast radio,  
22 commercial broadcast television and cable television.

23 (3) "Contracting":

24 (A) *In general.* — "Contracting" means and includes  
25 the furnishing of work, or both materials and work, for  
26 another (by a sole contractor, general contractor, prime  
27 contractor, subcontractor or construction manager) in  
28 fulfillment of a contract for the construction, alteration,  
29 repair, decoration or improvement of a new or existing  
30 building or structure, or any part thereof, or for removal  
31 or demolition of a building or structure, or any part  
32 thereof, or for the alteration, improvement or  
33 development of real property. Contracting also includes  
34 services provided by a construction manager so long as  
35 the project for which the construction manager provides  
36 the services results in a capital improvement to a  
37 building or structure or to real property.

38 (B) *Form of contract not controlling.* — An activity  
39 that falls within the scope of the definition of  
40 contracting constitutes contracting regardless of  
41 whether the contract governing the activity is written or  
42 verbal and regardless of whether it is in substance or  
43 form a lump sum contract, a cost-plus contract, a time  
44 and materials contract, whether or not open-ended, or

45 any other kind of construction contract.

46 (C) *Special rules.* — For purposes of this definition:

47 (i) The term “structure” includes, but is not limited to,  
48 everything built up or composed of parts joined together  
49 in some definite manner and attached or affixed to real  
50 property or which adds utility to real property or any  
51 part thereof or which adds utility to a particular parcel  
52 of property and is intended to remain there for an  
53 indefinite period of time;

54 (ii) The term “alteration” means, and is limited to,  
55 alterations which are capital improvements to a  
56 building or structure or to real property;

57 (iii) The term “repair” means, and is limited to, repairs  
58 which are capital improvements to a building or  
59 structure or to real property;

60 (iv) The term “decoration” means, and is limited to,  
61 decorations which are capital improvements to a  
62 building or structure or to real property;

63 (v) The term “improvement” means, and is limited to,  
64 improvements which are capital improvements to a  
65 building or structure or to real property;

66 (vi) The term “capital improvement” means  
67 improvements that are affixed to or attached to and  
68 become a part of a building or structure or the real  
69 property or which add utility to real property, or any  
70 part thereof, and that last or are intended to be  
71 relatively permanent. As used herein, “relatively  
72 permanent” means lasting at least a year in duration

73 without the necessity for regularly scheduled recurring  
74 service to maintain the capital improvement. "Regular  
75 recurring service" means regularly scheduled service  
76 intervals of less than one year;

77 (vii) Contracting does not include the furnishing of  
78 work, or both materials and work, in the nature of  
79 hookup, connection, installation or other services if the  
80 service is incidental to the retail sale of tangible  
81 personal property from the service provider's inventory:  
82 *Provided*, That the hookup, connection or installation of  
83 the foregoing is incidental to the sale of the same and  
84 performed by the seller thereof or performed in  
85 accordance with arrangements made by the seller  
86 thereof. Examples of transactions that are excluded  
87 from the definition of contracting pursuant to this  
88 subdivision include, but are not limited to, the sale of  
89 wall-to-wall carpeting and the installation of  
90 wall-to-wall carpeting, the sale, hookup and connection  
91 of mobile homes, window air conditioning units,  
92 dishwashers, clothing washing machines or dryers,  
93 other household appliances, drapery rods, window  
94 shades, venetian blinds, canvas awnings, free-standing  
95 industrial or commercial equipment and other similar  
96 items of tangible personal property. Repairs made to  
97 the foregoing are within the definition of contracting if  
98 the repairs involve permanently affixing to or  
99 improving real property or something attached thereto  
100 which extends the life of the real property or something  
101 affixed thereto or allows or intends to allow the real  
102 property or thing permanently attached thereto to  
103 remain in service for a year or longer; and

104 (viii) The term "construction manager" means a  
105 person who enters into an agreement to employ, direct,

106 coordinate or manage design professionals and  
107 contractors who are hired and paid directly by the  
108 owner or the construction manager. The business  
109 activities of a "construction manager" as defined in this  
110 subdivision constitute contracting, so long as the project  
111 for which the construction manager provides the  
112 services results in a capital improvement to a building  
113 or structure or to real property.

114 (4) "Directly used or consumed" in the activities of  
115 manufacturing, transportation, transmission,  
116 communication or the production of natural resources  
117 means used or consumed in those activities or  
118 operations which constitute an integral and essential  
119 part of the activities, as contrasted with and  
120 distinguished from those activities or operations which  
121 are simply incidental, convenient or remote to the  
122 activities.

123 (A) Uses of property or consumption of services which  
124 constitute direct use or consumption in the activities of  
125 manufacturing, transportation, transmission,  
126 communication or the production of natural resources  
127 include only:

128 (i) In the case of tangible personal property, physical  
129 incorporation of property into a finished product  
130 resulting from manufacturing production or the  
131 production of natural resources;

132 (ii) Causing a direct physical, chemical or other  
133 change upon property undergoing manufacturing  
134 production or production of natural resources;

135 (iii) Transporting or storing property undergoing

136 transportation, communication, transmission,  
137 manufacturing production or production of natural  
138 resources;

139 (iv) Measuring or verifying a change in property  
140 directly used in transportation, communication,  
141 transmission, manufacturing production or production  
142 of natural resources;

143 (v) Physically controlling or directing the physical  
144 movement or operation of property directly used in  
145 transportation, communication, transmission,  
146 manufacturing production or production of natural  
147 resources;

148 (vi) Directly and physically recording the flow of  
149 property undergoing transportation, communication,  
150 transmission, manufacturing production or production  
151 of natural resources;

152 (vii) Producing energy for property directly used in  
153 transportation, communication, transmission,  
154 manufacturing production or production of natural  
155 resources;

156 (viii) Facilitating the transmission of gas, water, steam  
157 or electricity from the point of their diversion to  
158 property directly used in transportation,  
159 communication, transmission, manufacturing  
160 production or production of natural resources;

161 (ix) Controlling or otherwise regulating atmospheric  
162 conditions required for transportation, communication,  
163 transmission, manufacturing production or production  
164 of natural resources;



165 (x) Serving as an operating supply for property  
166 undergoing transmission, manufacturing production or  
167 production of natural resources, or for property directly  
168 used in transportation, communication, transmission,  
169 manufacturing production or production of natural  
170 resources;

171 (xi) Maintaining or repairing of property, including  
172 maintenance equipment, directly used in transportation,  
173 communication, transmission, manufacturing  
174 production or production of natural resources;

175 (xii) Storing, removal or transportation of economic  
176 waste resulting from the activities of manufacturing,  
177 transportation, communication, transmission or the  
178 production of natural resources;

179 (xiii) Engaging in pollution control or environmental  
180 quality or protection activity directly relating to the  
181 activities of manufacturing, transportation,  
182 communication, transmission or the production of  
183 natural resources and personnel, plant, product or  
184 community safety or security activity directly relating  
185 to the activities of manufacturing, transportation,  
186 communication, transmission or the production of  
187 natural resources; or

188 (xiv) Otherwise using as an integral and essential part  
189 of transportation, communication, transmission,  
190 manufacturing production or production of natural  
191 resources.

192 (B) Uses of property or services which do not  
193 constitute direct use or consumption in the activities of  
194 manufacturing, transportation, transmission,

195 communication or the production of natural resources  
196 include, but are not limited to:

197 (i) Heating and illumination of office buildings;

198 (ii) Janitorial or general cleaning activities;

199 (iii) Personal comfort of personnel;

200 (iv) Production planning, scheduling of work or  
201 inventory control;

202 (v) Marketing, general management, supervision,  
203 finance, training, accounting and administration; or

204 (vi) An activity or function incidental or convenient to  
205 transportation, communication, transmission,  
206 manufacturing production or production of natural  
207 resources, rather than an integral and essential part of  
208 these activities.

209 (5) "Directly used or consumed" in the activities of gas  
210 storage, the generation or production or sale of electric  
211 power, the provision of a public utility service or the  
212 operation of a utility business means used or consumed  
213 in those activities or operations which constitute an  
214 integral and essential part of those activities or  
215 operation, as contrasted with and distinguished from  
216 activities or operations which are simply incidental,  
217 convenient or remote to those activities.

218 (A) Uses of property or consumption of services which  
219 constitute direct use or consumption in the activities of  
220 gas storage, the generation or production or sale of  
221 electric power, the provision of a public utility service

222 or the operation of a utility business include only:

223 (i) Tangible personal property, custom software or  
224 services, including equipment, machinery, apparatus,  
225 supplies, fuel and power and appliances, which are used  
226 immediately in production or generation activities and  
227 equipment, machinery, supplies, tools and repair parts  
228 used to keep in operation exempt production or  
229 generation devices. For purposes of this subsection,  
230 production or generation activities shall commence from  
231 the intake, receipt or storage of raw materials at the  
232 production plant site;

233 (ii) Tangible personal property, custom software or  
234 services, including equipment, machinery, apparatus,  
235 supplies, fuel and power, appliances, pipes, wires and  
236 mains, which are used immediately in the transmission  
237 or distribution of gas, water and electricity to the  
238 public, and equipment, machinery, tools, repair parts  
239 and supplies used to keep in operation exempt  
240 transmission or distribution devices, and these vehicles  
241 and their equipment as are specifically designed and  
242 equipped for those purposes are exempt from the tax  
243 when used to keep a transmission or distribution system  
244 in operation or repair. For purposes of this subsection,  
245 transmission or distribution activities shall commence  
246 from the close of production at a production plant or  
247 wellhead when a product is ready for transmission or  
248 distribution to the public and shall conclude at the  
249 point where the product is received by the public;

250 (iii) Tangible personal property, custom software or  
251 services, including equipment, machinery, apparatus,  
252 supplies, fuel and power, appliances, pipes, wires and  
253 mains, which are used immediately in the storage of gas

254 or water, and equipment, machinery, tools, supplies and  
255 repair parts used to keep in operation exempt storage  
256 devices;

257 (iv) Tangible personal property, custom software or  
258 services used immediately in the storage, removal or  
259 transportation of economic waste resulting from the  
260 activities of gas storage, the generation or production or  
261 sale of electric power, the provision of a public utility  
262 service or the operation of a utility business;

263 (v) Tangible personal property, custom software or  
264 services used immediately in pollution control or  
265 environmental quality or protection activity or  
266 community safety or security directly relating to the  
267 activities of gas storage, generation or production or  
268 sale of electric power, the provision of a public utility  
269 service or the operation of a utility business.

270 (B) Uses of property or services which would not  
271 constitute direct use or consumption in the activities of  
272 gas storage, generation or production or sale of electric  
273 power, the provision of a public utility service or the  
274 operation of a utility business include, but are not  
275 limited to:

276 (i) Heating and illumination of office buildings;

277 (ii) Janitorial or general cleaning activities;

278 (iii) Personal comfort of personnel;

279 (iv) Production planning, scheduling of work or  
280 inventory control;

281 (v) Marketing, general management, supervision,  
282 finance, training, accounting and administration; or

283 (vi) An activity or function incidental or convenient to  
284 the activities of gas storage, generation or production or  
285 sale of electric power, the provision of public utility  
286 service or the operation of a utility business.

287 (6) "Gas storage" means the injection of gas into a  
288 storage reservoir or the storage of gas for any period of  
289 time in a storage reservoir or the withdrawal of gas  
290 from a storage reservoir engaged in by businesses  
291 subject to the business and occupation tax imposed by  
292 sections two and two-e, article thirteen of this chapter.

293 (7) "Generating or producing or selling of electric  
294 power" means the generation, production or sale of  
295 electric power engaged in by businesses subject to the  
296 business and occupation tax imposed by section two,  
297 two-d, two-m or two-n, article thirteen of this chapter.

298 (8) "Gross proceeds" means the amount received in  
299 money, credits, property or other consideration from  
300 sales and services within this state, without deduction  
301 on account of the cost of property sold, amounts paid  
302 for interest or discounts or other expenses whatsoever.  
303 Losses may not be deducted, but any credit or refund  
304 made for goods returned may be deducted.

305 (9) "Includes" and "including", when used in a  
306 definition contained in this article, does not exclude  
307 other things otherwise within the meaning of the term  
308 being defined.

309 (10) "Manufacturing" means a systematic operation or

310 integrated series of systematic operations engaged in as  
311 a business or segment of a business which transforms or  
312 converts tangible personal property by physical,  
313 chemical or other means into a different form,  
314 composition or character from that in which it  
315 originally existed.

316 (11) "Person" means any individual, partnership,  
317 association, corporation, limited liability company,  
318 limited liability partnership or any other legal entity,  
319 including this state or its political subdivisions or an  
320 agency of either, or the guardian, trustee, committee,  
321 executor or administrator of any person.

322 (12) "Personal service" includes those: (A)  
323 Compensated by the payment of wages in the ordinary  
324 course of employment; and (B) rendered to the person of  
325 an individual without, at the same time, selling tangible  
326 personal property, such as nursing, barbering, shoe  
327 shining, manicuring and similar services.

328 (13) "Prepaid wireless calling service" means a  
329 telecommunications service that provides the right to  
330 utilize mobile wireless service as well as other  
331 nontelecommunications services, including the  
332 download of digital products delivered electronically,  
333 content and ancillary services, which must be paid for  
334 in advance that is sold in predetermined units or dollars  
335 of which the number decline with use in a known  
336 amount.

337 (14) Production of natural resources.

338 (A) "Production of natural resources" means, except  
339 for oil and gas, the performance, by either the owner of

340 the natural resources or another, of the act or process of  
341 exploring, developing, severing, extracting, reducing to  
342 possession and loading for shipment and shipment for  
343 sale, profit or commercial use of any natural resource  
344 products and any reclamation, waste disposal or  
345 environmental activities associated therewith and the  
346 construction, installation or fabrication of ventilation  
347 structures, mine shafts, slopes, boreholes, dewatering  
348 structures, including associated facilities and apparatus,  
349 by the producer or others, including contractors and  
350 subcontractors, at a coal mine or coal production  
351 facility.

352 (B) For the natural resources oil and gas, "production  
353 of natural resources" means the performance, by either  
354 the owner of the natural resources, a contractor or a  
355 subcontractor, of the act or process of exploring,  
356 developing, drilling, well-stimulation activities such as  
357 logging, perforating or fracturing, well-completion  
358 activities such as the installation of the casing, tubing  
359 and other machinery and equipment and any  
360 reclamation, waste disposal or environmental activities  
361 associated therewith, including the installation of the  
362 gathering system or other pipeline to transport the oil  
363 and gas produced or environmental activities associated  
364 therewith and any service work performed on the well  
365 or well site after production of the well has initially  
366 commenced.

367 (C) All work performed to install or maintain facilities  
368 up to the point of sale for severance tax purposes is  
369 included in the "production of natural resources" and  
370 subject to the direct use concept.

371 (D) "Production of natural resources" does not include

372 the performance or furnishing of work, or materials or  
373 work, in fulfillment of a contract for the construction,  
374 alteration, repair, decoration or improvement of a new  
375 or existing building or structure, or any part thereof, or  
376 for the alteration, improvement or development of real  
377 property, by persons other than those otherwise directly  
378 engaged in the activities specifically set forth in this  
379 subdivision as "production of natural resources".

380 (15) "Providing a public service or the operating of a  
381 utility business" means the providing of a public service  
382 or the operating of a utility by businesses subject to the  
383 business and occupation tax imposed by sections two  
384 and two-d, article thirteen of this chapter.

385 (16) "Purchaser" means a person who purchases  
386 tangible personal property, custom software or a service  
387 taxed by this article.

388 (17) "Sale", "sales" or "selling" includes any transfer  
389 of the possession or ownership of tangible personal  
390 property or custom software for a consideration,  
391 including a lease or rental, when the transfer or delivery  
392 is made in the ordinary course of the transferor's  
393 business and is made to the transferee or his or her  
394 agent for consumption or use or any other purpose.  
395 "Sale" also includes the furnishing of a service for  
396 consideration. Notwithstanding anything to the  
397 contrary in this code, effective after the thirtieth day of  
398 June, two thousand eight, "sale" also includes the  
399 furnishing of prepaid wireless calling service for  
400 consideration.

401 (18) "Service" or "selected service" includes all  
402 nonprofessional activities engaged in for other persons



403 for a consideration, which involve the rendering of a  
404 service as distinguished from the sale of tangible  
405 personal property or custom software, but does not  
406 include contracting, personal services or the services  
407 rendered by an employee to his or her employer or any  
408 service rendered for resale: *Provided*, That the term  
409 "service" or "selected service" does not include  
410 payments received by a vendor of tangible personal  
411 property as an incentive to sell a greater volume of such  
412 tangible personal property under a manufacturer's,  
413 distributor's or other third party's marketing support  
414 program, sales incentive program, cooperative  
415 advertising agreement or similar type of program or  
416 agreement, and these payments are not considered to be  
417 payments for a "service" or "selected service" rendered,  
418 even though the vendor may engage in attendant or  
419 ancillary activities associated with the sales of tangible  
420 personal property as required under the programs or  
421 agreements.

422 (19) "Streamlined Sales and Use Tax Agreement" or  
423 "agreement", when used in this article, has the same  
424 meaning as when used in article fifteen-b of this  
425 chapter, except when the context in which the word  
426 "agreement" is used clearly indicates that a different  
427 meaning is intended by the Legislature.

428 (20) "Tax" includes all taxes, additions to tax, interest  
429 and penalties levied under this article or article ten of  
430 this chapter.

431 (21) "Tax Commissioner" means the State Tax  
432 Commissioner or his or her delegate. The term  
433 "delegate" in the phrase "or his or her delegate", when  
434 used in reference to the Tax Commissioner, means any

435 officer or employee of the State Tax Division duly  
436 authorized by the Tax Commissioner directly, or  
437 indirectly by one or more redelegations of authority, to  
438 perform the functions mentioned or described in this  
439 article or rules promulgated for this article.

440 (22) "Taxpayer" means any person liable for the tax  
441 imposed by this article or additions to tax, penalties and  
442 interest imposed by article ten of this chapter.

443 (23) "Transmission" means the act or process of  
444 causing liquid, natural gas or electricity to pass or be  
445 conveyed from one place or geographical location to  
446 another place or geographical location through a  
447 pipeline or other medium for commercial purposes.

448 (24) "Transportation" means the act or process of  
449 conveying, as a commercial enterprise, passengers or  
450 goods from one place or geographical location to  
451 another place or geographical location.

452 (25) "Ultimate consumer" or "consumer" means a  
453 person who uses or consumes services or personal  
454 property.

455 (26) "Vendor" means any person engaged in this state  
456 in furnishing services taxed by this article or making  
457 sales of tangible personal property or custom software.  
458 "Vendor" and "seller" are used interchangeably in this  
459 article.

460 (c) *Additional definitions.* — Other terms used in this  
461 article are defined in article fifteen-b of this chapter,  
462 which definitions are incorporated by reference into  
463 article fifteen of this chapter. Additionally, other

464 sections of this article may define terms primarily used  
465 in the section in which the term is defined.

**§11-15-30. Proceeds of tax; appropriation of certain revenues.**

1 (a) The proceeds of the tax imposed by this article  
2 shall be deposited in the General Revenue Fund of the  
3 state except as otherwise expressly provided in this  
4 article.

5 (b) *School Major Improvement Fund.* —

6 After the payment or commitment of the proceeds or  
7 collections of this tax for the purposes set forth in  
8 sections sixteen and eighteen of this article, on the first  
9 day of each month, there shall be dedicated monthly  
10 from the collections of this tax, the amount of four  
11 hundred sixteen thousand six hundred sixty-seven  
12 dollars and the amount dedicated shall be deposited on  
13 a monthly basis into the School Major Improvement  
14 Fund created pursuant to section six, article nine-d,  
15 chapter eighteen of this code.

16 (c) *School Construction Fund.* —

17 After the payment or commitment of the proceeds or  
18 collections of this tax for the purposes set forth in  
19 sections sixteen and eighteen of this article:

20 (1) On the first day of each month, there shall be  
21 dedicated monthly from the collections of this tax the  
22 amount of one million four hundred sixteen thousand  
23 six hundred sixty-seven dollars and the amount  
24 dedicated shall be deposited into the School  
25 Construction Fund created pursuant to section six,

26 article nine-d, chapter eighteen of this code.

27 (2) Effective the first day of July, one thousand nine  
28 hundred ninety-eight, there shall be dedicated from the  
29 collections of this tax an amount equal to any annual  
30 difference that may occur between the debt service  
31 payment for the one thousand nine hundred  
32 ninety-seven fiscal year for school improvement bonds  
33 issued under the Better School Building Amendment  
34 under the provisions of article nine-c, chapter eighteen  
35 of this code and the amount of funds required for debt  
36 service on these school improvement bonds in any  
37 current fiscal year thereafter. This annual difference  
38 shall be prorated monthly, added to the monthly deposit  
39 in subdivision (1) of this subsection and deposited into  
40 the School Construction Fund created pursuant to  
41 section six, article nine-d, chapter eighteen of this code.

42 (d) *Prepaid wireless calling service.* — The proceeds  
43 or collections of this tax from the sale of prepaid  
44 wireless service are dedicated as follows:

45 (1) The tax imposed by this article upon the sale of  
46 prepaid wireless calling service is in lieu of the wireless  
47 enhanced 911 fee imposed by section six-b, article six,  
48 chapter twenty-four of this code.

49 (2) Within thirty days following the end of each  
50 calendar month, the Tax Commissioner shall remit to  
51 the Public Service Commission the proceeds of the tax  
52 imposed by this article upon the sale of prepaid wireless  
53 calling service in the preceding month, determined as  
54 follows: For purposes of determining the amount of  
55 those monthly proceeds, the Tax Commissioner shall use  
56 an amount equal to one twelfth of the wireless enhanced

57 911 fees collected from prepaid wireless calling service  
58 under section six-b, article six, chapter twenty-four of  
59 this code during the period beginning on the first day of  
60 July, two thousand seven, and ending on the last day of  
61 June, two thousand eight. Beginning on the first day of  
62 July, two thousand nine, the Tax Commissioner shall  
63 adjust this amount annually by an amount  
64 proportionate to the increase or decrease in the  
65 enhanced wireless 911 fees paid to the Public Service  
66 Commission under said section during the previous  
67 twelve months. The Public Service Commission shall  
68 receive, deposit and disburse the proceeds in the manner  
69 prescribed in said section.

## **CHAPTER 24. PUBLIC SERVICE COMMISSION.**

### **ARTICLE 6. LOCAL EMERGENCY TELEPHONE SYSTEM.**

#### **§24-6-2. Definitions.**

1 As used in this article, unless the context clearly  
2 requires a different meaning:

3 (1) "Commercial mobile radio service provider" or  
4 "CMRS provider" means cellular licensees, broadband  
5 personal communications services (PCS) licensees and  
6 specialized mobile radio (SMR) providers, as those  
7 terms are defined by the Federal Communications  
8 Commission, which offer on a post-paid or prepaid basis  
9 or via a combination of those two methods, real-time,  
10 two-way switched voice service that is interconnected  
11 with the public switched network and includes resellers  
12 of any commercial mobile radio service.

13 (2) "County answering point" means a facility to  
14 which enhanced emergency telephone system calls for a

15 county are initially routed for response and where  
16 county personnel respond to specific requests for  
17 emergency service by directly dispatching the  
18 appropriate emergency service provider, relaying a  
19 message to the appropriate provider or transferring the  
20 call to the appropriate provider.

21 (3) "Emergency services organization" means the  
22 organization established under article five, chapter  
23 fifteen of this code.

24 (4) "Emergency service provider" means any  
25 emergency services organization or public safety unit.

26 (5) "Emergency telephone system" means a telephone  
27 system which through normal telephone service  
28 facilities automatically connects a person dialing the  
29 primary emergency telephone number to an established  
30 public agency answering point, but does not include an  
31 enhanced emergency telephone system.

32 (6) "Enhanced emergency telephone system" means a  
33 telephone system which automatically connects the  
34 person dialing the primary emergency number to the  
35 county answering point and in which the telephone  
36 network system automatically provides to personnel  
37 receiving the call, immediately on answering the call,  
38 information on the location and the telephone number  
39 from which the call is being made and, upon direction  
40 from the personnel receiving the call, routes or  
41 dispatches the call by telephone, radio or any other  
42 appropriate means of communication to emergency  
43 service providers that serve the location from which the  
44 call is made.

45 (7) "Prepaid wireless calling service" means prepaid  
46 wireless calling service as defined in section two, article  
47 fifteen, chapter eleven of this code.

48 (8) "Public agency" means the state and any  
49 municipality, county, public district or public authority  
50 which provides or has authority to provide fire fighting,  
51 police, ambulance, medical, rescue or other emergency  
52 services.

53 (9) "Public safety unit" means a functional division of  
54 a public agency which provides fire fighting, police,  
55 medical, rescue or other emergency services.

56 (10) "Telephone company" means any public utility  
57 and any CMRS provider which is engaged in the  
58 provision of telephone service whether primarily by  
59 means of wire or wireless facilities.

60 (11) "Comprehensive plan" means a plan pertaining to  
61 the installing, modifying or replacing of telephone  
62 switching equipment; a telephone utility's response in a  
63 timely manner to requests for emergency telephone  
64 service by a public agency; a telephone utility's  
65 responsibility to report to the Public Service  
66 Commission; charges and tariffs for the services and  
67 facilities provided by a telephone utility; and access to  
68 an emergency telephone system by emergency service  
69 organizations.

70 (12) "Technical and operational standards" means  
71 those standards of telephone equipment and processes  
72 necessary for the implementation of the comprehensive  
73 plan as defined in subdivision (11) of this subsection.

**§24-6-6b. Wireless enhanced 911 fee.**

1 (a) All CMRS providers as defined in section two of  
2 this article shall, on a monthly basis or otherwise for  
3 good cause and as directed by order of the Public  
4 Service Commission, collect from each of their in-state  
5 two-way service subscribers a wireless enhanced 911  
6 fee. As used in this section "in-state two-way service  
7 subscriber" shall have the same meaning as that set  
8 forth in the rules of the Public Service Commission. No  
9 later than the first day of June, two thousand six, the  
10 Public Service Commission shall, after the receipt of  
11 comments and the consideration of evidence presented  
12 at a hearing, issue an updated order which directs the  
13 CMRS providers regarding all relevant details of  
14 wireless enhanced 911 fee collection, including the  
15 determination of who is considered an in-state two-way  
16 service subscriber and which shall specify how the  
17 CMRS providers shall deal with fee collection shortfalls  
18 caused by uncollectible accounts. The Public Service  
19 Commission shall solicit the views of the wireless  
20 telecommunications utilities prior to issuing the order.

21 (b) The wireless enhanced 911 fee is three dollars per  
22 month for each valid retail commercial mobile radio  
23 service subscription, as that term is defined by the  
24 Public Service Commission in its order issued under  
25 subsection (a) of this section: *Provided*, That beginning  
26 on the first day of July, two thousand five, the wireless  
27 enhanced 911 fee shall include ten cents to be  
28 distributed to the West Virginia State Police to be used  
29 for equipment upgrades for improving and integrating  
30 their communication efforts with those of the enhanced  
31 911 systems: *Provided, however*, That for the fiscal year  
32 beginning on the first day of July, two thousand five,



33 and for every fiscal year thereafter, one million dollars  
34 of the wireless enhanced 911 fee shall be distributed by  
35 the Public Service Commission to subsidize the  
36 construction of towers. The moneys shall be deposited  
37 in a fund administered by the West Virginia Public  
38 Service Commission, entitled Enhanced 911 Wireless  
39 Tower Access Assistance Fund, and shall be expended  
40 in accordance with an enhanced 911 wireless tower  
41 access matching grant order adopted by the Public  
42 Service Commission. The commission order shall  
43 contain terms and conditions designed to provide  
44 financial assistance loans or grants to state agencies,  
45 political subdivisions of the state and wireless telephone  
46 carriers for the acquisition, equipping and construction  
47 of new wireless towers, which would provide enhanced  
48 911 service coverage and which would not be available  
49 otherwise due to marginal financial viability of the  
50 applicable tower coverage area: *Provided further*, That  
51 the grants shall be allocated among potential sites based  
52 on application from county commissions demonstrating  
53 the need for enhanced 911 wireless coverage in specific  
54 areas of this state. Any tower constructed with  
55 assistance from the fund created by this subdivision  
56 shall be available for use by emergency services, fire  
57 departments and law-enforcement agencies  
58 communication equipment, so long as that use does not  
59 interfere with the carrier's wireless signal: *And*  
60 *provided further*, That the Public Service Commission  
61 shall promulgate rules in accordance with article three,  
62 chapter twenty-nine-a of this code to effectuate the  
63 provisions of this subsection. The Public Service  
64 Commission is specifically authorized to promulgate  
65 emergency rules: *And provided further*, That for the  
66 fiscal year beginning on the first day of July, two  
67 thousand six, and for every fiscal year thereafter, five

68 percent of the wireless enhanced 911 fee money received  
69 by the Public Service Commission shall be deposited in  
70 a special fund established by the Division of Homeland  
71 Security and Emergency Management to be used solely  
72 for the construction, maintenance and upgrades of the  
73 West Virginia Interoperable Radio Project and any  
74 other costs associated with establishing and  
75 maintaining the infrastructure of the system. Any funds  
76 remaining in this fund at the end of the fiscal year shall  
77 automatically be reappropriated for the following year.

78 (c) Beginning in the year one thousand nine hundred  
79 ninety-seven, and every two years thereafter, the Public  
80 Service Commission shall conduct an audit of the  
81 wireless enhanced 911 fee and shall recalculate the fee  
82 so that it is the weighted average rounded to the nearest  
83 penny, as of the first day of March of the respecification  
84 year, of all of the enhanced 911 fees imposed by the  
85 counties which have adopted an enhanced 911  
86 ordinance: *Provided*, That the wireless enhanced 911 fee  
87 may never be increased by more than twenty-five  
88 percent of its value at the beginning of the  
89 respecification year: *Provided, however*, That the fee  
90 may never be less than the amount set in subsection (b)  
91 of this section: *Provided further*, That beginning on the  
92 first day of July, two thousand five, the wireless  
93 enhanced 911 fee shall include ten cents to be  
94 distributed to the West Virginia State Police to be used  
95 for equipment upgrades for improving and integrating  
96 their communication efforts with those of the enhanced  
97 911 systems: *And provided further*, That beginning on  
98 the first day of July, two thousand five, one million  
99 dollars of the wireless enhanced 911 fee shall be  
100 distributed by the Public Service Commission to  
101 subsidize the construction of wireless towers as

102 specified in said subsection.

103 (d) The CMRS providers shall, after retaining a  
104 three-percent billing fee, send the wireless enhanced  
105 911 fee moneys collected, on a monthly basis, to the  
106 Public Service Commission. The Public Service  
107 Commission shall, on a quarterly and approximately  
108 evenly staggered basis, disburse the fee revenue in the  
109 following manner:

110 (1) Each county that does not have a 911 ordinance in  
111 effect as of the original effective date of this section in  
112 the year one thousand nine hundred ninety-seven or has  
113 enacted a 911 ordinance within the five years prior to  
114 the original effective date of this section in the year one  
115 thousand nine hundred ninety-seven shall receive eight  
116 and one-half tenths of one percent of the fee revenues  
117 received by the Public Service Commission: *Provided,*  
118 That after the effective date of this section, in the year  
119 two thousand five, when two or more counties  
120 consolidate into one county to provide government  
121 services, the consolidated county shall receive one  
122 percent of the fee revenues received by the Public  
123 Service Commission for itself and for each county  
124 merged into the consolidated county. Each county shall  
125 receive eight and one-half tenths of one percent of the  
126 remainder of the fee revenues received by the Public  
127 Service Commission: *Provided, however,* That after the  
128 effective date of this section, in the year two thousand  
129 five, when two or more counties consolidate into one  
130 county to provide government services, the consolidated  
131 county shall receive one percent of the fee revenues  
132 received by the Public Service Commission for itself and  
133 for each county merged into the consolidated county.  
134 Then, from any moneys remaining, each county shall

135 receive a pro rata portion of that remainder based on  
136 that county's population as determined in the most  
137 recent decennial census as a percentage of the state total  
138 population. The Public Service Commission shall  
139 recalculate the county disbursement percentages on a  
140 yearly basis, with the changes effective on the first day  
141 of July, and using data as of the preceding first day of  
142 March. The public utilities which normally provide  
143 local exchange telecommunications service by means of  
144 lines, wires, cables, optical fibers or by other means  
145 extended to subscriber premises shall supply the data to  
146 the Public Service Commission on a county specific  
147 basis no later than the first day of June of each year;

148 (2) Counties which have an enhanced 911 ordinance in  
149 effect shall receive their share of the wireless enhanced  
150 911 fee revenue for use in the same manner as the  
151 enhanced 911 fee revenues received by those counties  
152 pursuant to their enhanced 911 ordinances;

153 (3) The Public Service Commission shall deposit the  
154 wireless enhanced 911 fee revenue for each county  
155 which does not have an enhanced 911 ordinance in  
156 effect into an escrow account which it has established  
157 for that county. Any county with an escrow account  
158 may, immediately upon adopting an enhanced 911  
159 ordinance, receive the moneys which have accumulated  
160 in the escrow account for use as specified in subdivision  
161 (2) of this subsection: *Provided*, That a county that  
162 adopts a 911 ordinance after the original effective date  
163 of this section in the year one thousand nine hundred  
164 ninety-seven or has adopted a 911 ordinance within five  
165 years of the original effective date of this section in the  
166 year one thousand nine hundred ninety-seven shall  
167 continue to receive one percent of the total 911 fee

168 revenue for a period of five years following the adoption  
169 of the ordinance. Thereafter, each county shall receive  
170 that county's eight and one-half tenths of one percent of  
171 the remaining fee revenue, plus that county's additional  
172 pro rata portion of the fee revenues then remaining,  
173 based on that county's population as determined in the  
174 most recent decennial census as a percentage of the  
175 state total population: *Provided, however,* That every  
176 five years from the year one thousand nine hundred  
177 ninety-seven, all fee revenue residing in escrow  
178 accounts shall be disbursed on the pro rata basis  
179 specified in subdivision (1) of this subsection, except  
180 that data for counties without enhanced 911 ordinances  
181 in effect shall be omitted from the calculation and all  
182 escrow accounts shall begin again with a zero balance.

183 (e) CMRS providers have the same rights and  
184 responsibilities as other telephone service suppliers in  
185 dealing with the failure by a subscriber of a CMRS  
186 provider to timely pay the wireless enhanced 911 fee.

187 (f) Notwithstanding the provisions of section one-a of  
188 this article, for the purposes of this section, the term  
189 "county" means one of the counties provided in section  
190 one, article one, chapter one of this code.

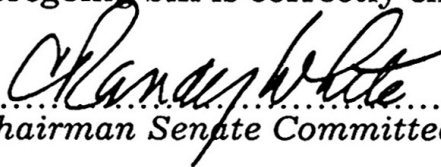
191 (g) From any funds distributed to a county pursuant  
192 to this section, a total of three percent shall be set aside  
193 in a special fund to be used exclusively for the purchase  
194 of equipment that will provide information regarding  
195 the x and y coordinates of persons who call an  
196 emergency telephone system through a commercial  
197 mobile radio service: *Provided,* That upon purchase of  
198 the necessary equipment, the special fund shall be  
199 dissolved and any surplus shall be used for general

200 operation of the emergency telephone system as may  
201 otherwise be provided by law.

202 (h) Notwithstanding anything to the contrary in this  
203 code, beginning the first day of July, two thousand  
204 eight, prepaid wireless calling service is no longer  
205 subject to the wireless enhanced 911 fee.

Enr. Com. Sub for S. B. No. 552] 30

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

  
.....  
Chairman Senate Committee

  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

  
.....  
Clerk of the Senate

  
.....  
Clerk of the House of Delegates

  
.....  
President of the Senate

  
.....  
Speaker House of Delegates

The within is approved ..... this  
the 2nd Day of March ....., 2008.

  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

MAR 17 2008

Time 11:12am