

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

Senate Bill 289

BY SENATOR CARMICHAEL (MR. PRESIDENT) AND

PREZIOSO

(BY REQUEST OF EXECUTIVE)

[Introduced January 14, 2019; Referred

to the Committee on Finance]

1 A BILL to amend and reenact §24-6-6b of the Code of West Virginia, 1931, as amended, relating
 2 to the wireless enhanced 911 fee; eliminating portions of the wireless enhanced 911 fee
 3 that are disbursed to state agencies; establishing the public safety wireless fee; and
 4 providing for the collection and disbursement of the public safety wireless fee.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. LOCAL EMERGENCY TELEPHONE SYSTEM.

1 §24-6-6b. Wireless enhanced 911 fee; Public safety wireless fee.

2 (a) All CMRS providers as defined in §24-6-2 of this code shall, on a monthly basis or
 3 otherwise for good cause and as directed by order of the Public Service Commission, collect from
 4 each of their in-state two-way service subscribers a wireless enhanced 911 fee and a public safety
 5 wireless fee. As used in this section "in-state two-way service subscriber" ~~shall have~~ has the same
 6 meaning as that set forth in the rules of the Public Service Commission. No later than June 1,
 7 2006, the Public Service Commission shall, after the receipt of comments and the consideration
 8 of evidence presented at a hearing, issue an updated order which directs the CMRS providers
 9 regarding all relevant details of wireless enhanced 911 fee and public safety wireless fee
 10 collection, including the determination of who is considered an in-state two-way service subscriber
 11 and which shall specify how the CMRS providers shall deal with fee collection shortfalls caused
 12 by uncollectible accounts. The Public Service Commission shall solicit the views of the wireless
 13 telecommunications utilities prior to issuing the order.

14 (b) The wireless enhanced 911 fee is ~~\$3~~ \$2.67 per month for each valid retail commercial
 15 mobile radio service subscription, as that term is defined by the Public Service Commission in its
 16 order issued under §24-6-6b(a) of this code. ~~Provided, That beginning on July 1, 2005, the~~
 17 ~~wireless enhanced 911 fee shall include 10¢ to be distributed to the West Virginia State Police to~~
 18 ~~be used for equipment upgrades for improving and integrating their communication efforts with~~
 19 ~~those of the enhanced 911 systems: Provided, however, That for the fiscal year beginning on July~~
 20 ~~1, 2005, and for every fiscal year thereafter, \$1,000,000 of the wireless enhanced 911 fee shall~~

21 ~~be distributed by the Public Service Commission to subsidize the construction of towers. The~~
22 ~~moneys shall be deposited in a fund administered by the West Virginia Public Service~~
23 ~~Commission, entitled Enhanced 911 Wireless Tower Access Assistance Fund, and shall be~~
24 ~~expended in accordance with an enhanced 911 wireless tower access matching grant order~~
25 ~~adopted by the Public Service Commission. The commission order shall contain terms and~~
26 ~~conditions designed to provide financial assistance loans or grants to state agencies, political~~
27 ~~subdivisions of the state and wireless telephone carriers for the acquisition, equipping and~~
28 ~~construction of new wireless towers, which would provide enhanced 911 service coverage and~~
29 ~~which would not be available otherwise due to marginal financial viability of the applicable tower~~
30 ~~coverage area: *Provided further,* That the grants shall be allocated among potential sites based~~
31 ~~on application from county commissions demonstrating the need for enhanced 911 wireless~~
32 ~~coverage in specific areas of this state. Any tower constructed with assistance from the fund~~
33 ~~created by this subdivision shall be available for use by emergency services, fire departments~~
34 ~~and law enforcement agencies communication equipment, so long as that use does not interfere~~
35 ~~with the carrier's wireless signal: *And provided further,* That the Public Service Commission shall~~
36 ~~promulgate rules in accordance with article three, chapter twenty-nine-a of this code to effectuate~~
37 ~~the provisions of this subsection. The Public Service Commission is specifically authorized to~~
38 ~~promulgate emergency rules: *And provided further,* That for the fiscal year beginning on July 1,~~
39 ~~2006, and for every fiscal year thereafter, five percent of the wireless enhanced 911 fee money~~
40 ~~received by the Public Service Commission shall be deposited in a special fund established by~~
41 ~~the Division of Homeland Security and Emergency Management to be used solely for the~~
42 ~~construction, maintenance and upgrades of the West Virginia Interoperable Radio Project and~~
43 ~~any other costs associated with establishing and maintaining the infrastructure of the system. Any~~
44 ~~funds remaining in this fund at the end of the fiscal year shall automatically be reappropriated for~~
45 ~~the following year. (c) Beginning in the year 1997, and every two years thereafter, the Public~~
46 ~~Service Commission shall conduct an audit of the wireless enhanced 911 fee and shall recalculate~~

47 the fee so that it is the weighted average rounded to the nearest penny, as of March 1 of the
48 respecification year, of all of the enhanced 911 fees imposed by the counties which have adopted
49 an enhanced 911 ordinance: *Provided*, That the wireless enhanced 911 fee may never be
50 increased by more than 25 percent of its value at the beginning of the respecification year:
51 *Provided, however*, That the fee may never be less than the amount set in this subsection. ~~(b) of~~
52 ~~this section: *Provided further*, That beginning on July 1, 2005, the wireless enhanced 911 fee~~
53 ~~shall include 10¢ to be distributed to the West Virginia State Police to be used for equipment~~
54 ~~upgrades for improving and integrating their communication efforts with those of the enhanced~~
55 ~~911 systems: *And provided further*, That beginning on July 1, 2005, \$1,000,000 of the wireless~~
56 ~~enhanced 911 fee shall be distributed by the Public Service Commission to subsidize the~~
57 ~~construction of wireless towers as specified in said subsection~~

58 (c) The public safety wireless fee is 34 cents per month for each valid retail commercial
59 mobile radio service subscription, as that term is defined by the Public Service Commission in its
60 order issued under §24-6-6b(a) of this code.

61 (d) The CMRS providers shall, after retaining a three-percent billing fee, send the wireless
62 enhanced 911 fee and public safety wireless fee moneys collected, on a monthly basis, to the
63 Public Service Commission.

64 (e) The Public Service Commission shall, on a quarterly and approximately evenly
65 staggered basis, disburse the wireless enhanced 911 fee revenue in the following manner:

66 (1) Each county that does not have a 911 ordinance in effect as of the original effective
67 date of this section in the year 1997 or has enacted a 911 ordinance within the five years prior to
68 the original effective date of this section in the year 1997 shall receive eight and one-half tenths
69 of one percent of the fee revenues received by the Public Service Commission: *Provided*, That
70 after the effective date of this section, in the year 2005, when two or more counties consolidate
71 into one county to provide government services, the consolidated county shall receive one percent
72 of the fee revenues received by the Public Service Commission for itself and for each county

73 merged into the consolidated county. Each county shall receive eight and one-half tenths of one
74 percent of the remainder of the fee revenues received by the Public Service Commission:
75 *Provided, however,* That after the effective date of this section, in the year 2005, when two or
76 more counties consolidate into one county to provide government services, the consolidated
77 county shall receive one percent of the fee revenues received by the Public Service Commission
78 for itself and for each county merged into the consolidated county. Then, from any moneys
79 remaining, each county shall receive a pro rata portion of that remainder based on that county's
80 population as determined in the most recent decennial census as a percentage of the state total
81 population. The Public Service Commission shall recalculate the county disbursement
82 percentages on a yearly basis, with the changes effective on July 1, and using data as of the
83 preceding March 1. The public utilities which normally provide local exchange telecommunications
84 service by means of lines, wires, cables, optical fibers, or by other means extended to subscriber
85 premises shall supply the data to the Public Service Commission on a county specific basis no
86 later than June 1 of each year;

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

90 (3) The Public Service Commission shall deposit the wireless enhanced 911 fee revenue
91 for each county which does not have an enhanced 911 ordinance in effect into an escrow account
92 which it has established for that county. Any county with an escrow account may, immediately
93 upon adopting an enhanced 911 ordinance, receive the moneys which have accumulated in the
94 escrow account for use as specified in §24-6-6b(e)(2) of this code: *Provided,* That a county that
95 adopts a 911 ordinance after the original effective date of this section in the year 1997 or has
96 adopted a 911 ordinance within five years of the original effective date of this section in the year
97 1997 shall continue to receive one percent of the total 911 fee revenue for a period of five years
98 following the adoption of the ordinance. Thereafter, each county shall receive that county's eight

99 and one-half tenths of one percent of the remaining fee revenue, plus that county's additional pro
100 rata portion of the fee revenues then remaining, based on that county's population as determined
101 in the most recent decennial census as a percentage of the state total population: *Provided,*
102 *however,* That every five years from the year 1997, all fee revenue residing in escrow accounts
103 shall be disbursed on the pro rata basis specified in §24-6-6b(e)(1) of this code, except that data
104 for counties without enhanced 911 ordinances in effect shall be omitted from the calculation and
105 all escrow accounts shall begin again with a zero balance; and

106 (4) From any funds distributed to a county pursuant to this section, a total of three percent
107 shall be set aside in a special fund to be used exclusively for the purchase of equipment that will
108 provide information regarding the x and y coordinates of persons who call an emergency
109 telephone system through a commercial mobile radio service: *Provided,* That upon purchase of
110 the necessary equipment, the special fund shall be dissolved and any surplus shall be used for
111 general operation of the emergency telephone system as may otherwise be provided by law.

112 (f) The Public Service Commission shall, on a quarterly and approximately evenly
113 staggered basis, disburse the public safety wireless fee revenue in the following manner:

114 (1) Ten cents of each monthly fee collected shall be distributed to the West Virginia State
115 Police to be used for equipment upgrades for improving and integrating their communication
116 efforts with those of the enhanced 911 systems;

117 (2) Fifteen cents of each monthly fee collected shall be deposited in a special fund
118 established by the Division of Homeland Security and Emergency Management to be used solely
119 for the construction, maintenance and upgrades of the West Virginia Interoperable Radio Project
120 and any other costs associated with establishing and maintaining the infrastructure of the system.
121 Any funds remaining in this fund at the end of the fiscal year shall automatically be reappropriated
122 for the following year; and

123 (3) Nine cents of each monthly fee collected shall be deposited in a fund administered by
124 the Public Service Commission, entitled the Enhanced 911 Wireless Tower Access Assistance

125 Fund, and distributed to subsidize the construction of wireless towers. The moneys shall be
126 expended in accordance with an enhanced 911 wireless tower access matching grant order
127 adopted by the Public Service Commission. The commission order shall contain terms and
128 conditions designed to provide financial assistance loans or grants to state agencies, political
129 subdivisions of the state and wireless telephone carriers for the acquisition, equipping and
130 construction of new wireless towers, which would provide enhanced 911 service coverage and
131 which would not be available otherwise due to marginal financial viability of the applicable tower
132 coverage area: *Provided*, That the grants shall be allocated among potential sites based on
133 application from county commissions demonstrating the need for enhanced 911 wireless
134 coverage in specific areas of this state. Any tower constructed with assistance from the fund
135 created by this subdivision shall be available for use by emergency services, fire departments
136 and law-enforcement agencies communication equipment, so long as that use does not interfere
137 with the carrier's wireless signal.

138 (e) (g) CMRS providers have the same rights and responsibilities as other telephone
139 service suppliers in dealing with the failure by a subscriber of a CMRS provider to timely pay the
140 wireless enhanced 911 fee or public safety wireless fee.

141 (f) (h) Notwithstanding the provisions of §24-6-1a of this code, for the purposes of this
142 section, the term "county" means one of the counties provided in §1-1-1 of this code.

143 ~~(g) From any funds distributed to a county pursuant to this section, a total of three percent~~
144 ~~shall be set aside in a special fund to be used exclusively for the purchase of equipment that will~~
145 ~~provide information regarding the x and y coordinates of persons who call an emergency~~
146 ~~telephone system through a commercial mobile radio service: *Provided*, That upon purchase of~~
147 ~~the necessary equipment, the special fund shall be dissolved and any surplus shall be used for~~
148 ~~general operation of the emergency telephone system as may otherwise be provided by law~~

149 (h) (i) Notwithstanding anything to the contrary in this code, beginning July 1, 2008 prepaid
150 wireless calling service is ~~no longer~~ not subject to the wireless enhanced 911 fee or the public

- 151 safety wireless fee.
- 152 (j) The Public Service Commission shall promulgate rules in accordance with §29A-3-1 et
- 153 seq. of this code to effectuate the provisions of this section. The Public Service Commission is
- 154 specifically authorized to promulgate emergency rules.

NOTE: The purpose of this bill is to redirect portions of the Wireless Enhanced 911 Fee that are distributed to state agencies to a newly created Public Safety Wireless Fee so that the state and counties may become eligible for certain federal grants.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.