

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

House Bill 4844

FISCAL
NOTE

BY DELEGATE HOWELL

[Introduced February 11, 2020; 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 reforming the fees charged to wireless telephone subscribers for public safety systems
 3 to comply with federal law; eliminating portions of the wireless enhanced 911 fee that are
 4 disbursed to state agencies; establishing a corresponding public safety wireless fee;
 5 providing for the collection and disbursement of the public safety wireless fee; and
 6 authorizing the promulgation of legislative and emergency rules.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. LOCAL EMERGENCY TELEPHONE SYSTEM.

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

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

13 (b) The wireless enhanced 911 fee is ~~\$3~~ \$3.47 per month and the public safety wireless
 14 fee is 39 cents per month, for each valid retail commercial mobile radio service subscription, as
 15 that term is defined by the Public Service Commission in its order issued under subsection (a) of
 16 this section. ~~Provided, That beginning on July 1, 2005, the wireless enhanced 911 fee shall~~
 17 ~~include 10¢ to be distributed to the West Virginia State Police to be used for equipment upgrades~~

18 for improving and integrating their communication efforts with those of the enhanced 911 systems:
19 *Provided, however,* That for the fiscal year beginning on July 1, 2005, and for every fiscal year
20 thereafter, \$1,000,000 of the wireless enhanced 911 fee shall be distributed by the Public Service
21 Commission to subsidize the construction of towers. The moneys shall be deposited in a fund
22 administered by the West Virginia Public Service Commission, entitled Enhanced 911 Wireless
23 Tower Access Assistance Fund, and shall be expended in accordance with an enhanced 911
24 wireless tower access matching grant order adopted by the Public Service Commission. The
25 commission order shall contain terms and conditions designed to provide financial assistance
26 loans or grants to state agencies, political subdivisions of the state and wireless telephone carriers
27 for the acquisition, equipping and construction of new wireless towers, which would provide
28 enhanced 911 service coverage and which would not be available otherwise due to marginal
29 financial viability of the applicable tower coverage area: *Provided further,* That the grants shall be
30 allocated among potential sites based on application from county commissions demonstrating the
31 need for enhanced 911 wireless coverage in specific areas of this state. Any tower constructed
32 with assistance from the fund created by this subdivision shall be available for use by emergency
33 services, fire departments and law enforcement agencies communication equipment, so long as
34 that use does not interfere with the carrier's wireless signal: *And provided further,* That the Public
35 Service Commission shall promulgate rules in accordance with article three, chapter twenty-nine-
36 a of this code to effectuate the provisions of this subsection. The Public Service Commission is
37 specifically authorized to promulgate emergency rules: *And provided further,* That for the fiscal
38 year beginning on July 1, 2006, and for every fiscal year thereafter, five percent of the wireless
39 enhanced 911 fee money received by the Public Service Commission shall be deposited in a
40 special fund established by the Division of Homeland Security and Emergency Management to
41 be used solely for the construction, maintenance and upgrades of the West Virginia Interoperable
42 Radio Project and any other costs associated with establishing and maintaining the infrastructure
43 of the system. Any funds remaining in this fund at the end of the fiscal year shall automatically be

44 ~~reappropriated for the following year.~~

45 (c) Beginning in the year ~~1997~~ 2022, and every two years thereafter, the Public Service
46 Commission shall conduct an audit of the wireless enhanced 911 fee and shall recalculate the
47 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 subsection (b) of this
52 section. ~~*Provided further*, That beginning on July 1, 2005, the wireless enhanced 911 fee shall~~
53 ~~include 10¢ to be distributed to the West Virginia State Police to be used for equipment upgrades~~
54 ~~for improving and integrating their communication efforts with those of the enhanced 911 systems:~~
55 ~~*And provided further*, That beginning on July 1, 2005, \$1,000,000 of the wireless enhanced 911~~
56 ~~fee shall be distributed by the Public Service Commission to subsidize the construction of wireless~~
57 ~~towers as specified in said subsection~~

58 (d) The CMRS providers shall, after retaining a three-percent billing fee, send the wireless
59 enhanced 911 fee and public safety wireless moneys collected, on a monthly basis, to the Public
60 Service Commission. The Public Service Commission shall, on a quarterly and approximately
61 evenly staggered basis, disburse the fee revenue from these fees in the following manner:

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

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

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

86 (3) The Public Service Commission shall deposit the wireless enhanced 911 fee revenue
87 for each county which does not have an enhanced 911 ordinance in effect into an escrow account
88 which it has established for that county. Any county with an escrow account may, immediately
89 upon adopting an enhanced 911 ordinance, receive the moneys which have accumulated in the
90 escrow account for use as specified in subdivision (2) of this subsection: *Provided,* That a county
91 that adopts a 911 ordinance after the original effective date of this section in the year 1997 or has
92 adopted a 911 ordinance within five years of the original effective date of this section in the year
93 1997 shall continue to receive one percent of the total 911 fee revenue for a period of five years
94 following the adoption of the ordinance. Thereafter, each county shall receive that county's eight
95 and one-half tenths of one percent of the remaining fee revenue, plus that county's additional pro

96 – rata portion of the fee revenues then remaining, based on that county's population as determined
97 in the most recent decennial census as a percentage of the state total population: *Provided,*
98 *however,* That every five years from the year 1997, all fee revenue residing in escrow accounts
99 shall be disbursed on the pro rata basis specified in subdivision (1) of this subsection, except that
100 data for counties without enhanced 911 ordinances in effect shall be omitted from the calculation
101 and all escrow accounts shall begin again with a zero balance.

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

104 (1) Ten cents of each month's fee collected shall be distributed to the West Virginia State
105 Police to be used for equipment upgrades for improving and integrating their communication
106 efforts with those of the enhanced 911 systems;

107 (2) Nineteen cents of each month's fee collected shall be deposited in a special revenue
108 account established by the Division of Homeland Security and Emergency Management to be
109 used solely for the construction, maintenance, and upgrades of the West Virginia Interoperable
110 Radio Project and any other costs associated with establishing and maintaining the infrastructure
111 of the system. Any funds remaining in this fund at the end of the fiscal year shall automatically be
112 reappropriated for the following year; and

113 (3) Ten cents of each monthly fee collected shall be deposited in a fund administered by
114 the Public Service Commission, named the Enhanced 911 Wireless Tower Access Assistance
115 Fund. The moneys shall be expended in accordance with an enhanced 911 wireless tower access
116 matching grant order adopted by the Public Service Commission to subsidize the construction of
117 wireless towers in underserved areas. The commission order shall contain terms and conditions
118 designed to provide financial assistance loans or grants to state agencies, political subdivisions
119 of the state and wireless telephone carriers for the acquisition, equipping and construction of new
120 wireless towers, which would provide enhanced 911 service coverage and which would not be
121 available otherwise due to marginal financial viability of the applicable tower coverage area:

122 Provided, That the grants shall be allocated among potential sites based on application from
123 county commissions demonstrating the need for enhanced 911 wireless coverage in specific
124 areas of this state. Any tower constructed with assistance from the fund created by this subdivision
125 shall be available for use by emergency services, fire departments, and law-enforcement
126 agencies communication equipment, so long as that use does not interfere with the carrier's
127 wireless signal.

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

131 (f) (g) Notwithstanding the provisions of section one-a of this article, for the purposes of
132 this section, the term "county" means one of the counties provided in section one, article one,
133 chapter one of this code.

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

140 (h) Notwithstanding anything to the contrary in this code, ~~beginning July 1, 2008~~ prepaid
141 wireless calling service is ~~no longer~~ not subject to the wireless enhanced 911 fee and the public
142 safety wireless fee.

143 (i) The Public Service Commission shall propose rules for legislative approval in
144 accordance with §29A-3-1 et seq. of this code to effectuate the provisions of this section. In
145 addition, the Public Service Commission is authorized to promulgate corresponding emergency
146 rules pursuant to the provisions of §29A-3-15 of this code.

NOTE: The purpose of this bill is to divide the existing Wireless 911 fee into two separate fees, allocating the proceeds to different projects and purposes in order to comply with federal law. This bill does not increase the fees currently billed to wireless customer, but simply splits the current fee to serve different functions.

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