

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Originating

House Bill 3128

BY DELEGATES CAPITO, KEATON, L. PACK, AND BRUCE

[Introduced March 11, 2021; Originating in the Committee on the Judiciary]

1 A BILL to amend §24-6-6b of the Code of West Virginia, 1931, as amended, relating to basing
2 the carrier fee on 911 fee revenue only; clarifying that payments to counties are based on
3 net 911 fee revenues received by the Commission; and requiring the public safety fee to
4 be shown as two separate line items on a customer's bill.

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; wireless tower 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, a public safety
4 fee, and a wireless tower fee. As used in this section "in-state two-way service subscriber" has
5 the same meaning as that set forth in the rules of the Public Service Commission. The CMRS
6 providers shall, on a monthly basis, after retaining a billing fee of three percent of the sum of the
7 wireless enhanced 911 fee, ~~the public safety fee, and the wireless tower fee,~~ send moneys
8 collected from the wireless enhanced 911 fee, the public safety fee, and the wireless tower fee to
9 the Public Service Commission.

10 (b) The wireless enhanced 911 fee is \$3.47 per month for each valid in-state two-way
11 service subscriber, as that term is defined by Public Service Commission rules. Beginning in the
12 year 2021, and every two years thereafter, the Public Service Commission shall conduct a survey
13 of the enhanced 911 fees imposed by counties and shall recalculate the wireless enhanced 911
14 fee so that it increases or decreases by the same percentage as the change in the weighted
15 average rounded to the nearest penny, as of March 1 of the respecification year, of all of the
16 enhanced 911 fees imposed by the counties which have adopted an enhanced 911 ordinance:
17 *Provided*, That the wireless enhanced 911 fee may never be increased by more than 25 percent
18 of its value at the beginning of the respecification year: *Provided, however*, That the fee may
19 never be less than the amount set in subsection (b) of this section.

20 (c) The Public Service Commission shall, on a quarterly and approximately evenly
21 staggered basis, disburse net wireless enhanced 911 fee revenue in the following manner:

22 (1) Each county that does not have a 911 ordinance in effect as of the original effective
23 date of this section in the year 1997, or has enacted a 911 ordinance within the five years prior to
24 the original effective date of this section in the year 1997, shall receive eight and one-half tenths
25 of one percent of the net fee revenues received by the Public Service Commission: *Provided*,
26 That after the effective date of this section, in the year 2005, when two or more counties
27 consolidate into one county to provide government services, the consolidated county shall receive
28 one percent of the net fee revenues received by the Public Service Commission for itself and for
29 each county merged into the consolidated county. Each county shall receive eight and one-half
30 tenths of one percent of the remainder of the net wireless enhanced 911 fee revenues received
31 by the Public Service Commission: *Provided, however*, That after the effective date of this section,
32 in the year 2005, when two or more counties consolidate into one county to provide government
33 services, the consolidated county shall receive one percent of the net fee revenues received by
34 the Public Service Commission for itself and for each county merged into the consolidated county.
35 Then, from any moneys remaining, each county shall receive a pro rata portion of that remainder
36 based on that county's population as determined in the most recent decennial census as a
37 percentage of the state total population. The Public Service Commission shall recalculate the
38 county disbursement percentages on a yearly basis, with the changes effective on July 1, and
39 using data as of the preceding March 1. The public utilities which normally provide local exchange
40 telecommunications service by means of lines, wires, cables, optical fibers, or by other means
41 extended to subscriber premises shall supply the data to the Public Service Commission on a
42 county specific basis no later than June 1 of each year;

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

46 (3) The Public Service Commission shall deposit the net wireless enhanced 911 fee
47 revenue for each county which does not have an enhanced 911 ordinance in effect into an escrow
48 account which it has established for that county. Any county with an escrow account may,
49 immediately upon adopting an enhanced 911 ordinance, receive the moneys which have
50 accumulated in the escrow account for use as specified in subdivision (2) of this subsection:
51 *Provided*, That a county that adopts a 911 ordinance after the original effective date of this section
52 in the year 1997, or has adopted a 911 ordinance within five years of the original effective date of
53 this section in the year 1997, shall continue to receive one percent of the total net 911 fee revenue
54 for a period of five years following the adoption of the ordinance. Thereafter, each county shall
55 receive that county's eight and one-half tenths of one percent of the remaining net fee revenue,
56 plus that county's additional pro rata portion of the net fee revenues then remaining, based on
57 that county's population as determined in the most recent decennial census as a percentage of
58 the state total population: *Provided, however*, That every five years from the year 1997, all fee
59 revenue residing in escrow accounts shall be disbursed on the pro rata basis specified in
60 subdivision (1) of this subsection, except that data for counties without enhanced 911 ordinances
61 in effect shall be omitted from the calculation and all escrow accounts shall begin again with a
62 zero balance. From any funds distributed to a county pursuant to this section, a total of three
63 percent shall be set aside in a special fund to be used exclusively for the purchase of equipment
64 that will provide information regarding the x and y coordinates of persons who call an emergency
65 telephone system through a commercial mobile radio service: *Provided further*, That upon
66 purchase of the necessary equipment, the special fund shall be dissolved and any surplus shall
67 be used for general operation of the emergency telephone system as may otherwise be provided
68 by law.

69 (d) Beginning July 1, 2020, CMRS providers shall collect the public safety fee from each
70 in-state two-way service subscriber. The public safety fee shall be 29 cents per month and will be
71 shown as ~~a separate fee on the subscriber's bill~~ two separate fees on the subscriber's bill, \$0.10

72 for the West Virginia State Police and \$0.19 for the Division of Homeland Security and Emergency
73 Management. On a monthly basis, the Public Service Commission will distribute 10 cents of the
74 public safety fee to the West Virginia State Police to be used for equipment upgrades for improving
75 and integrating their communication efforts with those of the enhanced 911 systems, and the
76 Public Service Commission will deposit 19 cents of the public safety fee in a special fund
77 established by the Division of Homeland Security and Emergency Management to be used solely
78 for the construction, maintenance, and upgrades of the West Virginia Interoperable Radio Project
79 and any other costs associated with establishing and maintaining the infrastructure of the system.
80 Any funds remaining in this fund at the end of the fiscal year shall automatically be reappropriated
81 for the following year.

82 (e) Beginning July 1, 2020, CMRS providers shall collect the wireless tower fee from each
83 in-state two-way service subscriber. The wireless tower fee shall be 8 cents per month and will
84 be shown as a separate fee on the subscriber's bill. On a monthly basis, the commission shall
85 distribute the wireless tower fee to a fund administered by the Public Service Commission, entitled
86 the Wireless Tower Access Assistance Fund, to subsidize the construction of wireless towers.
87 The moneys shall be expended in accordance with an enhanced 911 wireless tower access
88 matching grant order adopted by the Public Service Commission. The commission order shall
89 contain terms and conditions designed to provide financial assistance loans or grants to state
90 agencies, political subdivisions of the state, and wireless telephone carriers for the acquisition,
91 equipping, and construction of new wireless towers, which would not be available otherwise due
92 to marginal financial viability of the applicable tower coverage area: *Provided*, That the grants
93 shall be allocated among potential sites based on application from county commissions
94 demonstrating the need for enhanced 911 wireless coverage in specific areas of this state. Any
95 tower constructed with assistance from the fund created by this subsection shall be available for
96 use by emergency services, fire departments, and law-enforcement agencies' communications
97 equipment, so long as that use does not interfere with the carriers' wireless signal.

98 (f) CMRS providers have the same rights and responsibilities as other telephone service
99 suppliers in dealing with the failure by an in-state two-way service subscriber to timely pay the
100 wireless enhanced 911 fee, the public safety fee, and the wireless tower fee.

101 (g) Notwithstanding the provisions of §24-6-1a of this code, for the purposes of this
102 section, the term “county” means one of the counties provided in §1-1-1 of this code.

103 (h) Notwithstanding anything to the contrary in this code, prepaid wireless calling service
104 is not subject to the wireless enhanced 911 fee, the public safety fee, and the wireless tower fee.

105 (i) The Public Service Commission shall promulgate rules in accordance with §29A-3-1 *et*
106 *seq.* of this code to effectuate the provisions of this section. The Public Service Commission may
107 promulgate emergency rules pursuant to the provisions of §29A-3-15 of this code.

NOTE: The purpose of this bill is to clarify calculation of the three percent fee retained by commercial mobile radio service providers; clarify that payments to counties are based on net 911 fee revenues received by the Commission; and to require the public safety fee to be shown as two separate line items on a customer's bill.

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