

H. B. 4444

(By Delegates Cowles, Kump, Duke, J. Miller,
Householder and Overington)

[Introduced February 7, 2012; referred to the

Committee on Government Organization then

Finance.]

**FISCAL
NOTE**

A BILL to amend and reenact §24-6-6b of the Code of West Virginia, 1931, as amended, relating to commercial mobile radio service providers; eliminating the three percent billing fee retained by commercial mobile radio service providers of the wireless enhanced 911 moneys collected by them; requiring the Public Service Commission to distribute the collected 911 moneys to counties on a monthly basis.

Be it enacted by the Legislature of West Virginia:

That §24-6-6b of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 6. LOCAL EMERGENCY TELEPHONE SYSTEM.

§24-6-6b. Wireless enhanced 911 fee.

(a) All CMRS providers as defined in section two of this article shall, on a monthly basis or otherwise for good cause and as directed by order of the Public Service Commission, collect from each of their in-state two-way service subscribers a wireless

1 enhanced 911 fee. As used in this section "in-state two-way
2 service subscriber" shall have the same meaning as that set forth
3 in the rules of the Public Service Commission. No later than June
4 1, 2006, the Public Service Commission shall, after the receipt of
5 comments and the consideration of evidence presented at a hearing,
6 issue an updated order which directs the CMRS providers regarding
7 all relevant details of wireless enhanced 911 fee collection,
8 including the determination of who is considered an in-state two-
9 way service subscriber and which shall specify how the CMRS
10 providers shall deal with fee collection shortfalls caused by
11 uncollectible accounts. The Public Service Commission shall
12 solicit the views of the wireless telecommunications utilities
13 prior to issuing the order.

14 (b) The wireless enhanced 911 fee is \$3 per month for each
15 valid retail commercial mobile radio service subscription, as that
16 term is defined by the Public Service Commission in its order
17 issued under subsection (a) of this section: *Provided*, That
18 beginning on July 1, 2005, the wireless enhanced 911 fee shall
19 include \$0.10 to be distributed to the West Virginia State Police
20 to be used for equipment upgrades for improving and integrating
21 their communication efforts with those of the enhanced 911 systems:
22 *Provided, however*, That for the fiscal year beginning on July 1,
23 2005, and for every fiscal year thereafter, \$1 million of the
24 wireless enhanced 911 fee shall be distributed by the Public

1 Service Commission to subsidize the construction of towers. The
2 moneys shall be deposited in a fund administered by the West
3 Virginia Public Service Commission, entitled Enhanced 911 Wireless
4 Tower Access Assistance Fund, and shall be expended in accordance
5 with an enhanced 911 wireless tower access matching grant order
6 adopted by the Public Service Commission. The commission order
7 shall contain terms and conditions designed to provide financial
8 assistance loans or grants to state agencies, political
9 subdivisions of the state and wireless telephone carriers for the
10 acquisition, equipping and construction of new wireless towers,
11 which would provide enhanced 911 service coverage and which would
12 not be available otherwise due to marginal financial viability of
13 the applicable tower coverage area: *Provided further,* That the
14 grants shall be allocated among potential sites based on
15 application from county commissions demonstrating the need for
16 enhanced 911 wireless coverage in specific areas of this state.
17 Any tower constructed with assistance from the fund created by this
18 subdivision shall be available for use by emergency services, fire
19 departments and law-enforcement agencies communication equipment,
20 so long as that use does not interfere with the carrier's wireless
21 signal: *And provided further,* That the Public Service Commission
22 shall promulgate rules in accordance with article three, chapter
23 twenty-nine-a of this code to effectuate the provisions of this
24 subsection. The Public Service Commission is specifically

1 authorized to promulgate emergency rules: *And provided further,*
2 That for the fiscal year beginning on July 1, 2006, and for every
3 fiscal year thereafter, five percent of the wireless enhanced 911
4 fee money received by the Public Service Commission shall be
5 deposited in a special fund established by the Division of Homeland
6 Security and Emergency Management to be used solely for the
7 construction, maintenance and upgrades of the West Virginia
8 Interoperable Radio Project and any other costs associated with
9 establishing and maintaining the infrastructure of the system. Any
10 funds remaining in this fund at the end of the fiscal year shall
11 automatically be reappropriated for the following year.

12 (c) Beginning in the year 1997, and every two years
13 thereafter, the Public Service Commission shall conduct an audit of
14 the wireless enhanced 911 fee and shall recalculate the fee so that
15 it is the weighted average rounded to the nearest penny, as of
16 March 1 of the respecification year, of all of the enhanced 911
17 fees imposed by the counties which have adopted an enhanced 911
18 ordinance: *Provided,* That the wireless enhanced 911 fee may never
19 be increased by more than twenty-five percent of its value at the
20 beginning of the respecification year: *Provided, however,* That the
21 fee may never be less than the amount set in subsection (b) of this
22 section: *Provided further,* That beginning on July 1, 2005, the
23 wireless enhanced 911 fee shall include \$0.10 to be distributed to
24 the West Virginia State Police to be used for equipment upgrades

1 for improving and integrating their communication efforts with
2 those of the enhanced 911 systems: *And provided further,* That
3 beginning on July 1, 2005, \$1 million of the wireless enhanced 911
4 fee shall be distributed by the Public Service Commission to
5 subsidize the construction of wireless towers as specified in said
6 subsection.

7 (d) The CMRS providers shall ~~after retaining a three percent~~
8 ~~billing fee,~~ send the wireless enhanced 911 fee moneys collected,
9 on a monthly basis, to the Public Service Commission by the last
10 day of each calendar month collected. The Public Service
11 Commission shall, on a ~~quarterly and approximately evenly staggered~~
12 monthly basis for all wireless enhanced 911 fee moneys received
13 from all CMRS providers during the previous calendar month,
14 disburse the fee revenue, by the last calendar day of the
15 disbursement month for each preceding calendar month's collection,
16 in the following manner:

17 (1) Each county that does not have a 911 ordinance in effect
18 as of the original effective date of this section in the year 1997
19 or has enacted a 911 ordinance within the five years prior to the
20 original effective date of this section in the year 1997 shall
21 receive eight and one-half tenths of one percent of the fee
22 revenues received by the Public Service Commission: *Provided,* That
23 after the effective date of this section, in the year 2005, when
24 two or more counties consolidate into one county to provide

1 government services, the consolidated county shall receive one
2 percent of the fee revenues received by the Public Service
3 Commission for itself and for each county merged into the
4 consolidated county. Each county shall receive eight and one-half
5 tenths of one percent of the remainder of the fee revenues received
6 by the Public Service Commission: *Provided, however,* That after
7 the effective date of this section, in the year 2005, when two or
8 more counties consolidate into one county to provide government
9 services, the consolidated county shall receive one percent of the
10 fee revenues received by the Public Service Commission for itself
11 and for each county merged into the consolidated county. Then,
12 from any moneys remaining, each county shall receive a pro rata
13 portion of that remainder based on that county's population as
14 determined in the most recent decennial census as a percentage of
15 the state total population. The Public Service Commission shall
16 recalculate the county disbursement percentages on a yearly basis,
17 with the changes effective on July 1, and using data as of the
18 preceding first day of March. The public utilities which normally
19 provide local exchange telecommunications service by means of
20 lines, wires, cables, optical fibers or by other means extended to
21 subscriber premises shall supply the data to the Public Service
22 Commission on a county specific basis no later than June 1 of each
23 year;

24 (2) Counties which have an enhanced 911 ordinance in effect

1 shall receive their share of the wireless enhanced 911 fee revenue
2 for use in the same manner as the enhanced 911 fee revenues
3 received by those counties pursuant to their enhanced 911
4 ordinances;

5 (3) The Public Service Commission shall deposit the wireless
6 enhanced 911 fee revenue for each county which does not have an
7 enhanced 911 ordinance in effect into an escrow account which it
8 has established for that county. Any county with an escrow account
9 may, immediately upon adopting an enhanced 911 ordinance, receive
10 the moneys which have accumulated in the escrow account for use as
11 specified in subdivision (2) of this subsection: *Provided*, That a
12 county that adopts a 911 ordinance after the original effective
13 date of this section in the year 1997 or has adopted a 911
14 ordinance within five years of the original effective date of this
15 section in the year 1997 shall continue to receive one percent of
16 the total 911 fee revenue for a period of five years following the
17 adoption of the ordinance. Thereafter, each county shall receive
18 that county's eight and one-half tenths of one percent of the
19 remaining fee revenue, plus that county's additional pro rata
20 portion of the fee revenues then remaining, based on that county's
21 population as determined in the most recent decennial census as a
22 percentage of the state total population: *Provided, however*, That
23 every five years from the year 1997, all fee revenue residing in
24 escrow accounts shall be disbursed on the pro rata basis specified

1 in subdivision (1) of this subsection, except that data for
2 counties without enhanced 911 ordinances in effect shall be omitted
3 from the calculation and all escrow accounts shall begin again with
4 a zero balance.

5 (e) CMRS providers have the same rights and responsibilities
6 as other telephone service suppliers in dealing with the failure by
7 a subscriber of a CMRS provider to timely pay the wireless enhanced
8 911 fee.

9 (f) Notwithstanding the provisions of section one-a of this
10 article, for the purposes of this section, the term "county" means
11 one of the counties provided in section one, article one, chapter
12 one of this code.

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

22 (h) Notwithstanding anything to the contrary in this code,
23 beginning July 1, 2008, prepaid wireless calling service is no
24 longer subject to the wireless enhanced 911 fee.

NOTE: The purpose of this bill is to eliminate the three percent billing fee retained by commercial mobile radio service providers of the wireless enhanced 911 moneys collected by them. The bill requires the Public Service Commission to distribute the collected 911 moneys monthly to counties instead of quarterly.

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