

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Committee Substitute

for

House Bill 2759

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[Originating in the Committee on Finance;

March 24, 2017]

1 A BILL to amend and reenact §5A-3-3 of the Code of West Virginia, 1931, as amended; to amend
2 and reenact §5A-6-8 of said code; to amend and reenact §5A-10-6 of said code; and to
3 amend said code by adding thereto a new article, designed §15-14-1, §15-14-2, §15-14-
4 3, §15-14-4, §15-14-5, §15-14-6, §15-14-7, §15-14-8, §15-14-9 and §15-14-10, all relating
5 to creating Statewide Interoperable Radio Network; establishing short title; defining terms;
6 establishing objectives and purpose; creating position of Statewide Interoperable
7 Coordinator; prescribing duties for Statewide Interoperability Coordinator; creating
8 Statewide Interoperability Executive Committee; prescribing duties for Statewide
9 Interoperability Executive committee; creating the Regional Interoperability Committee;
10 providing for disposition of assets and staffing of Statewide Interoperable Radio Network;
11 establishing special revenue account for Statewide Interoperable Radio Network;
12 exempting Statewide Interoperable Radio Network from certain Purchasing Division and
13 Office of Technology requirements; directing any revenue from certain leases to new
14 special revenue account; and authorizing emergency and legislative rulemaking.

Be it enacted by the Legislature of West Virginia:

1 That §5A-3-3 of the Code of West Virginia, 1931, as amended, be amended and
2 reenacted; that §5A-6-8 of said code be amended and reenacted; that §5A-10-6 of said code be
3 amended and reenacted; and that said code be amended by adding thereto a new article,
4 designated §15-14-1, §15-14-2, §15-14-3, §15-14-4, §15-14-5, §15-14-6, §15-14-7, §15-14-8,
5 §15-14-9 and §15-14-10, all to read as follows:

CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.

ARTICLE 3. PURCHASING DIVISION.

§5A-3-3. Powers and duties of Director of Purchasing.

1 The director, under the direction and supervision of the secretary, is the executive officer
2 of the Purchasing Division and has the power and duty to:

- 3 (1) Direct the activities and employees of the Purchasing Division;
- 4 (2) Ensure that the purchase of or contract for commodities and services are based,
5 whenever possible, on competitive bid;
- 6 (3) Purchase or contract for, in the name of the state, the commodities, services and
7 printing required by the spending units of the state government;
- 8 (4) Apply and enforce standard specifications established in accordance with section five
9 of this article as hereinafter provided;
- 10 (5) Transfer to or between spending units or sell commodities that are surplus, obsolete
11 or unused as hereinafter provided;
- 12 (6) Have charge of central storerooms for the supply of spending units as the director
13 considers advisable;
- 14 (7) Establish and maintain a laboratory for the testing of commodities and make use of
15 existing facilities in state institutions for that purpose as hereinafter provided as the director
16 considers advisable;
- 17 (8) Suspend the right and privilege of a vendor to bid on state purchases when the director
18 has evidence that the vendor has violated any of the provisions of the purchasing law or the rules
19 and regulations of the director;
- 20 (9) Examine the provisions and terms of every contract entered into for and on behalf of
21 the State of West Virginia that impose any obligation upon the state to pay any sums of money
22 for commodities or services and approve the contract as to such provisions and terms; and the
23 duty of examination and approval herein set forth does not supersede the responsibility and duty
24 of the Attorney General to approve the contracts as to form: *Provided*, That the provisions of this
25 subdivision do not apply in any respect whatever to construction or repair contracts entered into
26 by the Division of Highways of the Department of Transportation or to construction or reclamation
27 contracts entered into by the Department of Environmental Protection: *Provided, however*, That
28 the provisions of this subdivision do not apply in any respect whatsoever to contracts entered into

29 by the University of West Virginia Board of Trustees or by the Board of Directors of the State
30 College System, except to the extent that such boards request the facilities and services of the
31 director under the provisions of this subdivision: *Provided further*, That the provisions of this
32 subdivision do not apply to the West Virginia State Police Forensic Laboratory and the West
33 Virginia Office of Laboratory Services; *And provided further*, That the provisions of this subdivision
34 do not apply to construction or repair contracts entered into by the state for the emergency
35 construction or repair of the Statewide Interoperable Radio Network created by article fourteen,
36 chapter fifteen of this code:

37 (10) Assure that the specifications and descriptions in all solicitations are prepared so as
38 to provide all potential suppliers-vendors who can meet the requirements of the state an
39 opportunity to bid and to assure that the specifications and descriptions do not favor a particular
40 brand or vendor. If the director determines that any such specifications or descriptions as written
41 favor a particular brand or vendor or if it is decided, either before or after the bids are opened,
42 that a commodity or service having different specifications or quality or in different quantity can
43 be bought, the director may rewrite the solicitation and the matter shall be rebid; and

44 (11) Issue a notice to cease and desist to a spending unit when the director has credible
45 evidence that a spending unit has violated competitive bidding or other requirements established
46 by this article and the rules promulgated hereunder. Failure to abide by the notice may result in
47 penalties set forth in section seventeen of this article.

ARTICLE 6. OFFICE OF TECHNOLOGY.

§5A-6-8. Exemptions.

1 (a) The provisions of this article do not apply to the Legislature, the judiciary or any state
2 Constitutional officer designated in section two, article seven, chapter six of this code.

3 (b) Notwithstanding any other provision of this article to the contrary, except for
4 participation in the compilation and maintenance of an inventory of information technology and
5 technical infrastructure of the state authorized by section four of this article, the provisions of this

6 article do not apply to the West Virginia Board of Education, the West Virginia Department of
7 Education ~~or the county boards of education~~ or the West Virginia Division of Homeland Security
8 and Emergency Management relating to the technology used with the Statewide Interoperable
9 Radio Network, created by article fourteen, chapter fifteen of this code. However, the West
10 Virginia Board of Education, the West Virginia Department of Education and the county boards of
11 education will attempt to cooperate and collaborate with the Chief Technology Officer to the extent
12 feasible.

13 (c) The Governor may by executive order exempt from the provisions of this article any
14 entity created and organized to facilitate the public and private use of health care information and
15 the use of electronic medical records throughout the state.

ARTICLE 10. REAL ESTATE DIVISION.

§5A-10-6. Long-term leases of public lands for wireless communication towers

1 (a) Notwithstanding any provision of law to the contrary, the executive director has sole
2 authority to negotiate and enter into long-term lease agreements for lease of public lands to be
3 used for placement of wireless communication towers: *Provided*, That such long-term lease
4 agreements may not be for periods in excess of thirty years: *Provided, however*, That for the
5 governmental units named in subsection (d) of this section, any lease proposed by the executive
6 director may only be entered into upon approval in writing of the ranking administrator of the
7 respective governmental unit described in said subsection.

8 (b) All revenues derived from leases established upon the enactment of this section shall
9 be deposited into the General Revenue Fund except as provided in subsections (c) and (d) of this
10 section.

11 (c) Revenues from leases initiated prior to the enactment of this section or subsequently
12 renewed shall continue to be treated as they were prior to the enactment of this section.

13 (d) Revenues derived from the lease of property under the control of the Department of
14 Transportation shall be deposited into the State Road Fund. Revenues derived from the lease of

15 property under the control of the Division of Natural Resources shall be retained by the Division
16 of Natural Resources and deposited into the appropriate fund. Revenues derived from the lease
17 of property under the control of the Department of Agriculture shall be deposited into the
18 Agriculture Fees Fund. Revenues derived from the lease of property under the control of the
19 Division of Forestry shall be deposited into the Division of Forestry Fund. Revenues derived from
20 the lease of property under the control of institutions of higher education shall be deposited into
21 the institution's education and general capital fees fund. Revenues derived from the lease of
22 property under the control of the Higher Education Policy Commission shall be deposited into the
23 commission's State Gifts Grants and Contracts Fund. Revenues derived from the lease of
24 property under the control of the West Virginia Council for Community and Technical College
25 Education shall be deposited into the council's Tuition and Required Educational and General
26 Fees Fund. Revenues derived from the lease of property, towers or tower space owned, operated
27 or controlled by the West Virginia Division of Homeland Security and Emergency Management or
28 any other state agency managed as part of the West Virginia Statewide Interoperable Radio
29 Network shall be deposited in the Statewide Interoperable Radio Network Account created in
30 section nine, article fourteen, chapter fifteen of this code.

31 (e) Any long-term lease agreement entered into pursuant to this section shall contain
32 provisions allowing for the nonexclusive use of the public lands and allowance for use of the same
33 public space for additional towers by competing persons or corporations.

34 (f) The executive director is further authorized to enter into long-term lease agreements
35 for additional wireless communication towers by other persons or corporations upon the same
36 public lands in which there already exists a lease and tower provided for under this section.

37 (g) Any long-term lease agreement entered into pursuant to this section shall be recorded
38 in the office of the county clerk where public land which is the subject of the lease agreement is
39 located.

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 14. THE STATEWIDE INTEROPERABLE RADIO NETWORK.

§15-14-1. Short title.

1 This article is known as and may be cited as the “Statewide Interoperable Radio Network
2 Act”.

§15-14-2. Definitions.

1 (a) “Director” means the Director of West Virginia Division of Homeland Security and
2 Emergency Management.

3 (b) “Statewide Interoperable Radio Network” or “SIRN” means the interoperable
4 communications network established for the purpose of implementing and maintaining an
5 interoperable communications network for first responders to help assure the safety of all citizens
6 in the event of disaster or emergency.

7 (c) “Statewide Interoperability Coordinator” or “SWIC” means the individual appointed by
8 the Director to oversee the state’s interoperable communications efforts in planning and
9 coordinating the SIRN.

10 (d) “Statewide Interoperability Executive Committee” or “Executive Committee” means the
11 governing body of the SIRN.

12 (e) “WVDHSEM” means the West Virginia Division of Homeland Security and Emergency
13 Management.

14 (f) “Regional Interoperability Committee” means the committee or committees that assist
15 the SWIC and the Executive Committee with governing and monitoring the implementation and
16 operation of the SIRN and establishing goals for the betterment of the SIRN.

§15-14-3. Purpose and objectives.

1 (a) One of the most important and profound duties of the State of West Virginia is to
2 provide for the safety and security of her citizens. The state must constantly be prepared to

3 immediately respond to any homeland security threat or event and all disasters, natural or man-
4 made. With any Homeland Security threat or event, and all disasters, natural or man-made, the
5 state must be able to instantly and effectively communicate in order to collaborate with various
6 entities which are geographically dispersed.

7 (b) The purpose of this article is to ensure the most effective communication in the
8 provision of emergency services, to assure an immediate and coordinated response to disasters
9 and emergencies, and to ensure the maintenance and operation of the equipment comprising the
10 SIRN.

§15-14-4. Appointment of the Statewide Interoperability Coordinator.

1 (a) On or before July 1, 2017, the Director shall appoint the Statewide Interoperability
2 Coordinator from a recommendation of the Statewide Interoperability Executive Committee
3 (SIEC), who shall be employed by and report to the director. The coordinator shall have at a
4 minimum five years' experience in overseeing and managing major communications systems and
5 supervising employees.

6 (b) The coordinator shall oversee the state's interoperable communications efforts in
7 planning and coordinating a statewide interoperable radio network that serves the state's first
8 responders and other users of the network.

9 (c) The coordinator shall provide recommendations to the director to determine statewide
10 priorities related to interoperable communications and shall work with all agencies to ensure the
11 greatest input to the plans.

12 (d) The coordinator shall ensure all interoperable communications funds and functions of
13 this state are coordinated to the maximum extent with the comparable functions of the federal
14 government including its various departments and agencies, of other states and localities and of
15 private agencies of every type, so that the most effective preparation and use may be made of
16 the nation's and this state's communications resources and facilities for dealing with any disaster
17 or emergency that may occur.

18 (e) The coordinator will provide the Statewide Interoperable Radio Network approved
19 compatibility equipment list to any state spending unit or state agency, including purchases on
20 behalf of state agencies, county and local first responder agencies for purchases of two-way radio,
21 microwave or satellite equipment and related services, or purchases that utilize state or federal
22 funds distributed to local entities by the State of West Virginia. The purchase of any equipment
23 not on the approved compatibility list must receive prior approval from the coordinator.

24 (f) The coordinator is the point of contact for any public or private entity or individual
25 seeking information about the Radio Network;

26 (g) Prior to any state agency proceeding with a major communications project, an agency
27 shall submit to the coordinator a project proposal, outlining the need for the project, the proposed
28 technology solution, if known, and an explanation of how the project will support the agency's
29 objective and the state's strategic interoperable communications plan.

30 (h) The coordinator shall perform any other duties as may be prescribed by the Director.

31 (i) If a vacancy exists in this position, the director shall appoint someone to act in this
32 capacity until the Executive Committee makes its recommendations and the Director appoints a
33 replacement.

§15-14-5. The Statewide Interoperability Executive Committee.

1 (a) The Statewide Interoperability Executive Committee shall consist of the following
2 members or their designee:

- 3 (1) The Director of the WVDHSEM;
- 4 (2) The Superintendent of the West Virginia State Police;
- 5 (3) The President of the West Virginia Emergency Management Council;
- 6 (4) The Adjutant General of the West Virginia National Guard;
- 7 (5) The West Virginia Chief Technology Officer;
- 8 (6) The President of the West Virginia Enhanced 911 Council;
- 9 (7) The President of the West Virginia Sheriffs' Association;

- 10 (8) The West Virginia State Fire Marshal;
- 11 (9) The President of the West Virginia County Commissioners' Association;
- 12 (10) The President of the West Virginia Municipal League;
- 13 (11) The Secretary of the Department of Transportation;
- 14 (12) The Director of the West Virginia Department of Health and Human Resources, Office
15 of Emergency Medical Services;
- 16 (13) One representative from each of the agencies which own one of the SIRN's zoned
17 master site switches not otherwise represented;
- 18 (14) The chairman of each of the Regional Interoperability Committees;
- 19 (15) A representative of the West Virginia Chapter of the Association of Public Safety
20 Communications Officials;
- 21 (16) The Director of the West Virginia Parkways Authority; and
- 22 (17) The Statewide Interoperability Coordinator who shall serve in a nonvoting Ex officio
23 capacity.
- 24 (b) The director shall serve as the chairman of the Executive Committee.
- 25 (c) Members of the Executive Committee shall serve without compensation. However,
26 each member of the Executive Committee may receive reimbursement from the SIRN account,
27 for actual expenses, including travel expenses, in accordance with state travel guidelines.
- 28 (d) The Executive Committee may appoint, as nonvoting members, individuals with
29 technical expertise that may assist with its mission.

§15-14-6. Duties of the Statewide Interoperability Executive Committee.

- 1 The Executive Committee shall:
- 2 (1) Monitor the implementation and operation of the SIRN;
- 3 (2) Establish goals and guidance for the betterment of the SIRN;
- 4 (3) Review and approve all requests for use of the SIRN and its equipment, by a public
5 or private entity;

6 (4) Serve as the mechanism for developing, updating and implementing policies,
7 procedures and guidelines related to the SIRN;

8 (5) Identify new technologies and develop technologies and standards for the SIRN;

9 (6) Enhance the coordination of all available resources for public safety communications
10 interoperability;

11 (7) Investigate all matters relating to integrity, foresight in funding and operations and
12 planning for the SIRN.

§15-14-7. Maintenance and Operations of the Statewide Interoperable Network; personnel;
assets; agreements.

1 (a) The director may employ such technical, clerical, legal counsel, stenographic and other
2 personnel, fix their compensation and make expenditures within the appropriation to the agency
3 or from other funds made available for the purpose of providing interoperable communications
4 services to carry out the purpose of this article.

5 (b) All equipment, structures, property, and personnel along with their equipment and
6 vehicles, owned, managed, directed, controlled, and governed by the Department of Health and
7 Human Resources associated with the statewide interoperable radio and/or microwave network
8 and medical command radio system, are transferred to, incorporated in and administered as a
9 part of the WVDHSEM: *Provided*, that medical command radio system communication equipment,
10 not including the microwave and SIRN equipment, and personnel located in the medical
11 coordination center at Flatwoods, West Virginia shall continue to be managed, directed,
12 controlled, and governed by the Department of Health and Human Resources and are not
13 included in the transfer authorized by this subsection.

14 (c) The director may acquire in the name of the state by purchase, lease or gift, real
15 property and rights or easements necessary or convenient to construct thereon the necessary
16 building or buildings for housing Radio Network employees, equipment or infrastructure.

17 (d) The director or his or her designee may enter into cooperative agreements, land and
18 tower leases, memorandums of understanding/agreement, training contracts or service contracts
19 with political subdivisions of the state, other states, federal agencies, and with public or private
20 agencies for use by the radio network.

21 (e) The WVDHSEM is exempt from the requirements and associated fees of any local
22 ordinances of any political subdivision of the state relating to the construction of towers or other
23 infrastructure for use by the Radio Network to enhance interoperable communications.

24 (f) The WVDHSEM shall support a unified approach to interoperable communications
25 across state, county, and municipal government, to include:

26 (1) Providing ongoing assistance and support to the state's Medical Command System;
27 and

28 (2) Providing ongoing assistance and support to state agencies in the development of
29 interoperable and emergency communications plans or projects.

§15-14-8. The Regional Interoperability Committees; composition; duties.

1 (a) The Regional Interoperability Committees shall operate in each of the defined state
2 homeland security regions.

3 (b) Each Regional Interoperability Committee consists of no more than one representative
4 from each identified discipline within each region, and includes, is not limited to, the following
5 agencies, as well as those deemed necessary by the SWIC, Regional Interoperability Committee,
6 or Executive Committee to ensure public safety:

7 (1) Municipal, county or regional hospitals;

8 (2) Municipal, county or state law enforcement;

9 (3) Municipal, county or private transit;

10 (4) Civil Air Patrol;

11 (5) County Enhanced 911;

12 (6) Emergency medical services;

- 13 (7) Federal law enforcement;
14 (8) Federal government (non-law enforcement);
15 (9) Municipal or county fire service;
16 (10) Municipal or county health department;
17 (11) Higher education public safety;
18 (12) Municipal or county Homeland Security/Emergency Management;
19 (13) Private industry-critical infrastructure and key resources;
20 (14) Regional response team;
21 (15) Radio Amateur Civil Emergency Services (RACES) or Amateur Radio Emergency
22 Service (ARES);
23 (16) American Red Cross;
24 (17) Non-first responder state agencies;
25 (18) Volunteer search and rescue organizations;
26 (19) County Commissioners' Association of West Virginia; and
27 (20) West Virginia Municipal League.
28 (c) The Regional Interoperability Committees shall:
29 (1) Assist the SWIC and the Executive Committee with governing and monitoring the
30 implementation and operation of the SIRN and establishing goals for the betterment of the SIRN;
31 and
32 (2) Serve as the mechanism for providing local level input to the Executive Committee for
33 governance, identifying and developing technologies and standards, and coordination of
34 resources.
35 (d) Regional Interoperability Committee members shall serve without compensation.

§15-14-9. Creation of the Statewide Interoperable Radio Network account; purpose; funding; disbursements.

1 (a) There is hereby created in the State Treasury a special revenue account to be known
2 as the "Statewide Interoperable Radio Network Account" to be administered by the director. The
3 special revenue account shall consist of appropriations made by the Legislature; income derived
4 from the lease of property, towers or tower space owned, operated or controlled by the
5 WVDHSEM or any other state agency managed as part of the SIRN; moneys received by the
6 Department of Health and Human Resources or WVDHSEM as proceeds of any claims for
7 damages to structures, equipment or property of any kind, including moneys in the Insurance
8 Property Loss Claims Fund administered by the Division of Health; income from the investment
9 of moneys held in the special revenue account; grant money and all other sums available for
10 deposit to the special revenue account from any source, public or private.

11 (b) Expenditures from the account shall be for the purposes set forth in this article and
12 used exclusively, to pay costs, fees and expenses incurred, or to be incurred for the following
13 purposes: (1) The maintenance, upkeep and repair of the SIRN; (2) operations of the Executive
14 Committee; (3) payment of salaries for the SWIC and any personnel required to operate and
15 maintain the SIRN; (4) the design, implementation and management of the SIRN; (5) all other
16 related SIRN activities approved by the Executive Committee; and (6) all costs incurred in the
17 administration of the SIRN account. Expenditures from the fund are not authorized from
18 collections but are to be made only in accordance with appropriation by the Legislature and in
19 accordance with the provisions of article three, chapter twelve of this code and upon fulfillment of
20 the provisions of article two, chapter eleven-b of this code: *Provided*, That for the fiscal year
21 ending the thirtieth day of June 2018, expenditures are authorized from collections rather than
22 pursuant to appropriation by the Legislature.

23 (c) Disbursements from the special revenue account shall be authorized by the director or
24 his or her designee. Moneys in the special revenue account are not available for the payment of
25 any personal injury claims, workers' compensation claims or other types of disability claims.

26 (d) Quarterly, the director shall prepare an accounting of all moneys disbursed from and
27 any deposits made to the SIRN account. This accounting shall include the reason for the withdraw,
28 the recipients of any withdraw, and the source of any deposit.

§15-14-10. Rule-making.

1 To implement the provisions of this article, the director may promulgate emergency rules
2 pursuant to section fifteen, article three, chapter twenty-nine-a of this code and may propose rules
3 for legislative approval in accordance with article three, chapter twenty-nine-a of this code.