

# WEST VIRGINIA LEGISLATURE

## 2017 REGULAR SESSION

Introduced

### Senate Bill 669

FISCAL  
NOTE

BY SENATORS PALUMBO AND PREZIOSO

[Introduced March 18, 2017; Referred  
to the Committee on Finance]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,  
 2 designated §11-15-3d; and to amend and reenact §24-6-6b of said code, all relating to  
 3 replacing the wireless enhanced 911 fee with a consumers sales tax on  
 4 telecommunications service and ancillary services; imposing consumers sales and service  
 5 tax and use tax on sales of telecommunications service and ancillary services; requiring  
 6 a portion of the funds generated by the tax be transferred to the Public Service  
 7 Commission; requiring funds from the tax received by the Public Service Commission to  
 8 be distributed in a certain manner; repealing the wireless enhanced 911 fee; and setting  
 9 July 1, 2017, as the effective date for these changes.

*Be it enacted by the Legislature of West Virginia:*

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new  
 2 section, designated §11-15-3d; and that §24-6-6b of said code be amended and reenacted, all to  
 3 read as follows:

## **CHAPTER 11. TAXATION.**

### **ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.**

#### **§11-15-3d. Imposition of consumers sales tax on telecommunications service and ancillary services.**

1 (a) Notwithstanding the provisions of section eight of this article or any other provision of  
 2 this code, on and after July 1, 2017, telecommunications service and ancillary services, as defined  
 3 in article fifteen-b of this chapter, are subject to the consumers sales and service tax imposed by  
 4 this article, and the use tax imposed by article fifteen-a of this chapter: *Provided*, That payment  
 5 of the tax imposed under this article or under article fifteen-a of this chapter on prepaid wireless  
 6 services is sufficient to fulfill the mandate of this section, and prepaid wireless services are not  
 7 subjected to double taxation under this article: *Provided, however*, That this section does not  
 8 prevent imposition of any other lawfully imposed tax or fee under any state or federal law, or the

9 laws of any subdivision thereof on such prepaid wireless services.

10 (b) The tax imposed by this section is in addition to any municipal utilities tax, municipal  
11 consumers sales and service tax and use tax, or other tax lawfully imposed on telephone service,  
12 telecommunications service and ancillary services.

13 (c) The sale of telecommunications service and ancillary services on which tax is imposed  
14 by this section are subject to sourcing rules of the Streamlined Sales Tax Agreement as defined  
15 in article fifteen-b of this chapter.

16 (d) Notwithstanding the fact that a service provider did not meet the threshold amount for  
17 the previous calendar year that would cause accelerated payment to be made in the current year,  
18 the accelerated payment rule imposed under subsection (g), section sixteen of this article applies  
19 to the tax imposed by this section, if the service provider's total combined monthly remittance of  
20 the taxes levied by this article and article fifteen-a of this chapter for any calendar month beginning  
21 on and after July 1, 2017, exceeds, or can reasonably be expected to exceed, \$100,000.

22 (e) The tax commissioner shall transfer sixty-five percent of the revenue collected  
23 pursuant to the tax imposed by this section to the Public Service Commission on a monthly basis  
24 for distribution pursuant to section six-b, article six, chapter twenty-four of this code.

**CHAPTER 24. PUBLIC SERVICE COMMISSION.**

**ARTICLE 6. LOCAL EMERGENCY TELEPHONE SYSTEM.**

**§24-6-6b. Wireless enhanced 911 fee.**

1 (a) All commercial mobile radio service (CMRS) providers, as defined in section two of this  
2 article shall, on a monthly basis or otherwise for good cause and as directed by order of the Public  
3 Service Commission, collect from each of their in-state two-way service subscribers a wireless  
4 enhanced 911 fee. As used in this section "in-state two-way service subscriber" shall have the  
5 same meaning as that set forth in the rules of the Public Service Commission. No later than June  
6 1, 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 fee collection, including the determination  
9 of who is considered an in-state two-way service subscriber and which shall specify how the  
10 CMRS providers shall deal with fee collection shortfalls caused by uncollectible accounts. The  
11 Public Service Commission shall solicit the views of the wireless telecommunications utilities prior  
12 to issuing the order. Effective July 1, 2017, the wireless enhanced 911 fee is repealed and may  
13 no longer be collected. Subsections (b), (c) and (e) of this section are void, effective July 1, 2017.  
14 In lieu of the wireless enhanced 911 fee, all CMRS providers shall charge and collect the tax  
15 required by section three-d, article fifteen, chapter eleven of this code. Pursuant to said section  
16 three-d, the Public Service Commission will receive a portion of the funds generated by the tax,  
17 which funds shall be distributed as follows:

18 (1) The first \$1 million annually into the currently existing Enhanced 911 Wireless Tower  
19 Access Assistance Fund, to subsidize the construction of wireless towers to be expended in  
20 accordance with an enhanced 911 wireless tower access matching grant order adopted by the  
21 Public Service Commission. The order shall contain terms and conditions designed to provide  
22 financial assistance loans or grants to state agencies, political subdivisions of the state and  
23 wireless telephone carriers for the acquisition equipping and construction of new wireless towers,  
24 which would provide enhanced 911 service coverage and which would not be available otherwise  
25 due to marginal financial viability of the applicable tower coverage area: *Provided*, That the grants  
26 shall be allocated among potential sites based on application from county commissions  
27 demonstrating the need for enhanced 911 wireless coverage in specific areas of this state. Any  
28 tower constructed with assistance from the fund created by this subdivision shall be available for  
29 use by emergency services, fire departments and law-enforcement agencies communication  
30 equipment, so long as that use does not interfere with the carrier's wireless signal: *Provided*  
31 *however*, That the Public Service Commission shall promulgate rules in accordance with article  
32 three, chapter twenty-nine-a of this code to effectuate the provisions of this subsection;

33 (2) Five percent of the funds received by the Public Service Commission shall be  
34 deposited in a special fund established by the Division of Homeland Security and Emergency  
35 Management currently in existence to be used solely for the construction, maintenance and  
36 upgrades of the West Virginia Interoperable Radio Project and any other costs associated with  
37 establishing and maintaining the infrastructure of the system. Any funds remaining in this fund at  
38 the end of the fiscal year shall automatically be reappropriated for the following year;

39 (3) Four percent of the funds received by the Public Service Commission shall be  
40 distributed to the West Virginia State Police to be used for equipment upgrades for improving and  
41 integrating their communications efforts with those of the enhanced 911 systems; and

42 (4) All remaining funds received by the Public Service Commission shall be distributed to  
43 the counties pursuant to subsection (d) of this section.

44 (b) The wireless enhanced 911 fee is \$3 per month for each valid retail commercial mobile  
45 radio service subscription, as that term is defined by the Public Service Commission in its order  
46 issued under subsection (a) of this section: *Provided*, That beginning on July 1, 2005, the wireless  
47 enhanced 911 fee shall include 10¢ to be distributed to the West Virginia State Police to be used  
48 for equipment upgrades for improving and integrating their communication efforts with those of  
49 the enhanced 911 systems: *Provided, however*, That for the fiscal year beginning on July 1, 2005,  
50 and for every fiscal year thereafter, \$1 million of the wireless enhanced 911 fee shall be distributed  
51 by the Public Service Commission to subsidize the construction of towers. The moneys shall be  
52 deposited in a fund administered by the West Virginia Public Service Commission, entitled  
53 Enhanced 911 Wireless Tower Access Assistance Fund, and shall be expended in accordance  
54 with an enhanced 911 wireless tower access matching grant order adopted by the Public Service  
55 Commission. The commission order shall contain terms and conditions designed to provide  
56 financial assistance loans or grants to state agencies, political subdivisions of the state and  
57 wireless telephone carriers for the acquisition, equipping and construction of new wireless towers,  
58 which would provide enhanced 911 service coverage and which would not be available otherwise

59 due to marginal financial viability of the applicable tower coverage area: *Provided further*, That  
60 the grants shall be allocated among potential sites based on application from county commissions  
61 demonstrating the need for enhanced 911 wireless coverage in specific areas of this state. Any  
62 tower constructed with assistance from the fund created by this subdivision shall be available for  
63 use by emergency services, fire departments and law-enforcement agencies communication  
64 equipment, so long as that use does not interfere with the carrier's wireless signal: *And provided*  
65 *further*, That the Public Service Commission shall promulgate rules in accordance with article  
66 three, chapter twenty-nine-a of this code to effectuate the provisions of this subsection. The Public  
67 Service Commission is specifically authorized to promulgate emergency rules: *And provided*  
68 *further*, That for the fiscal year beginning on July 1, 2006, and for every fiscal year thereafter, five  
69 percent of the wireless enhanced 911 fee money received by the Public Service Commission shall  
70 be deposited in a special fund established by the Division of Homeland Security and Emergency  
71 Management to be used solely for the construction, maintenance and upgrades of the West  
72 Virginia Interoperable Radio Project and any other costs associated with establishing and  
73 maintaining the infrastructure of the system. Any funds remaining in this fund at the end of the  
74 fiscal year shall automatically be reappropriated for the following year.

75 (c) Beginning in the year 1997, and every two years thereafter, the Public Service  
76 Commission shall conduct an audit of the wireless enhanced 911 fee and shall recalculate the  
77 fee so that it is the weighted average rounded to the nearest penny, as of March 1 of the  
78 respecification year, of all of the enhanced 911 fees imposed by the counties which have adopted  
79 an enhanced 911 ordinance: *Provided*, That the wireless enhanced 911 fee may never be  
80 increased by more than twenty-five percent of its value at the beginning of the respecification  
81 year: *Provided, however*, That the fee may never be less than the amount set in subsection (b) of  
82 this section: *Provided further*, That beginning on July 1, 2005, the wireless enhanced 911 fee  
83 shall include 10¢ to be distributed to the West Virginia State Police to be used for equipment  
84 upgrades for improving and integrating their communication efforts with those of the enhanced

85 911 systems: *And provided further*, That beginning on July 1, 2005, \$1 million of the wireless  
86 enhanced 911 fee shall be distributed by the Public Service Commission to subsidize the  
87 construction of wireless towers as specified in said subsection.

88 (d) The CMRS providers shall, after retaining a three-percent billing fee, send the wireless  
89 enhanced 911 fee moneys collected, on a monthly basis, to the Public Service Commission. The  
90 Public Service Commission shall, on a quarterly and approximately evenly staggered basis,  
91 disburse the fee revenue in the following manner:

92 (1) Each county that does not have a 911 ordinance in effect as of the original effective  
93 date of this section in the year 1997 or has enacted a 911 ordinance within the five years prior to  
94 the original effective date of this section in the year 1997 shall receive eight and one-half tenths  
95 of one percent of the fee revenues received by the Public Service Commission: *Provided*, That  
96 after the effective date of this section, in the year 2005, when two or more counties consolidate  
97 into one county to provide government services, the consolidated county shall receive one percent  
98 of the fee revenues received by the Public Service Commission for itself and for each county  
99 merged into the consolidated county. Each county shall receive eight and one-half tenths of one  
100 percent of the remainder of the fee revenues received by the Public Service Commission:  
101 *Provided, however*, That after the effective date of this section, in the year 2005, when two or  
102 more counties consolidate into one county to provide government services, the consolidated  
103 county shall receive one percent of the fee revenues received by the Public Service Commission  
104 for itself and for each county merged into the consolidated county. Then, from any moneys  
105 remaining, each county shall receive a pro rata portion of that remainder based on that county's  
106 population as determined in the most recent decennial census as a percentage of the state total  
107 population. The Public Service Commission shall recalculate the county disbursement  
108 percentages on a yearly basis, with the changes effective on July 1, and using data as of  
109 preceding March 1. The public utilities which normally provide local exchange telecommunications  
110 service by means of lines, wires, cables, optical fibers or by other means extended to subscriber

111 premises shall supply the data to the Public Service Commission on a county specific basis no  
112 later than June 1 of each year;

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

116 (3) The Public Service Commission shall deposit the wireless enhanced 911 fee revenue  
117 for each county which does not have an enhanced 911 ordinance in effect into an escrow account  
118 which it has established for that county. Any county with an escrow account may, immediately  
119 upon adopting an enhanced 911 ordinance, receive the moneys which have accumulated in the  
120 escrow account for use as specified in subdivision (2) of this subsection: *Provided*, That a county  
121 that adopts a 911 ordinance after the original effective date of this section in the year 1997 or has  
122 adopted a 911 ordinance within five years of the original effective date of this section in the year  
123 1997 shall continue to receive one percent of the total 911 fee revenue for a period of five years  
124 following the adoption of the ordinance. Thereafter, each county shall receive that county's eight  
125 and one-half tenths of one percent of the remaining fee revenue, plus that county's additional pro  
126 rata portion of the fee revenues then remaining, based on that county's population as determined  
127 in the most recent decennial census as a percentage of the state total population: *Provided*,  
128 *however*, That every five years from the year 1997, all fee revenue residing in escrow accounts  
129 shall be disbursed on the pro rata basis specified in subdivision (1) of this subsection, except that  
130 data for counties without enhanced 911 ordinances in effect shall be omitted from the calculation  
131 and all escrow accounts shall begin again with a zero balance.

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

135 (f) Notwithstanding the provisions of section one-a of this article, for the purposes of this  
136 section, the term "county" means one of the counties provided in section one, article one, chapter

137 one of this code.

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

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

NOTE: The purpose of this bill is to replace the wireless enhanced 911 fee with a telecommunications tax that results in slightly enhanced revenues for the tower fund, state police, office of emergency services, WV counties, and approximately \$21 million to the state General Revenue Fund.

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