

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Committee Substitute

for

Senate Bill 579

SENATORS SYPOLT, CLINE, AND ROBERTS, *original*

sponsors

[Originating in the Committee on Government

Organization; reported on February 13, 2020]

1 A BILL to amend and reenact §24-6-6b of the Code of West Virginia, 1931, as amended, relating
2 to changing the wireless enhanced 911 fee; and establishing a separate public safety fee
3 and wireless tower fee.

Be it enacted by the Legislature of West Virginia:

CHAPTER 24. PUBLIC SERVICE COMMISSION.

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" shall
5 have has the same meaning as that set forth in the rules of the Public Service Commission. ~~No~~
6 ~~later than June 1, 2006, the Public Service Commission shall, after the receipt of comments and~~
7 ~~the consideration of evidence presented at a hearing, issue an updated order which directs the~~
8 ~~CMRS providers regarding all relevant details of wireless enhanced 911 and public safety wireless~~
9 ~~fee collection, including the determination of who is considered an in-state two-way service~~
10 ~~subscriber and which shall specify how the CMRS providers shall deal with fee collection shortfalls~~
11 ~~caused by uncollectible accounts. The Public Service Commission shall solicit the views of the~~
12 ~~wireless telecommunications utilities prior to issuing the order.~~ The CMRS providers shall, on a
13 monthly basis, after retaining a billing fee of three percent of the sum of the wireless enhanced
14 911 fee, the public safety fee, and the wireless tower fee, send monies collected from the wireless
15 enhanced 911 fee, the public safety fee, and the wireless tower fee to the Public Service
16 Commission.

17 (b) The wireless enhanced 911 fee is ~~\$3~~ \$3.47 per month for each valid ~~retail commercial~~
18 ~~mobile radio service subscription~~ in-state two-way service subscriber, as that term is defined by

19 the Public Service Commission ~~rules in its order issued under subsection (a) of this section.~~
20 ~~Provided, That beginning on July 1, 2005, the wireless enhanced 911 fee shall include 10¢ to be~~
21 ~~distributed to the West Virginia State Police to be used for equipment upgrades for improving and~~
22 ~~integrating their communication efforts with those of the enhanced 911 systems: *Provided,*~~
23 ~~however, That for the fiscal year beginning on July 1, 2005, and for every fiscal year thereafter,~~
24 ~~\$1,000,000 of the wireless enhanced 911 fee shall be distributed by the Public Service~~
25 ~~Commission to subsidize the construction of towers. The moneys shall be deposited in a fund~~
26 ~~administered by the West Virginia Public Service Commission, entitled Enhanced 911 Wireless~~
27 ~~Tower Access Assistance Fund, and shall be expended in accordance with an enhanced 911~~
28 ~~wireless tower access matching grant order adopted by the Public Service Commission. The~~
29 ~~commission order shall contain terms and conditions designed to provide financial assistance~~
30 ~~loans or grants to state agencies, political subdivisions of the state and wireless telephone carriers~~
31 ~~for the acquisition, equipping and construction of new wireless towers, which would provide~~
32 ~~enhanced 911 service coverage and which would not be available otherwise due to marginal~~
33 ~~financial viability of the applicable tower coverage area: *Provided further,* That the grants shall be~~
34 ~~allocated among potential sites based on application from county commissions demonstrating the~~
35 ~~need for enhanced 911 wireless coverage in specific areas of this state. Any tower constructed~~
36 ~~with assistance from the fund created by this subdivision shall be available for use by emergency~~
37 ~~services, fire departments and law enforcement agencies communication equipment, so long as~~
38 ~~that use does not interfere with the carrier's wireless signal: *And provided further,* That the Public~~
39 ~~Service Commission shall promulgate rules in accordance with article three, chapter twenty-nine-~~
40 ~~a of this code to effectuate the provisions of this subsection. The Public Service Commission is~~
41 ~~specifically authorized to promulgate emergency rules: *And provided further,* That for the fiscal~~
42 ~~year beginning on July 1, 2006, and for every fiscal year thereafter, five percent of the wireless~~
43 ~~enhanced 911 fee money received by the Public Service Commission shall be deposited in a~~
44 ~~special fund established by the Division of Homeland Security and Emergency Management to~~

45 ~~be used solely for the construction, maintenance and upgrades of the West Virginia Interoperable~~
46 ~~Radio Project and any other costs associated with establishing and maintaining the infrastructure~~
47 ~~of the system. Any funds remaining in this fund at the end of the fiscal year shall automatically be~~
48 ~~reappropriated for the following year.~~

49 ~~(e)~~ Beginning in the year ~~1997~~ 2021, and every two years thereafter, the Public Service
50 Commission shall conduct ~~an audit~~ a survey of the ~~wireless~~ enhanced 911 fees imposed by
51 counties and shall recalculate the wireless enhanced 911 fee ~~so that it is the weighted average~~
52 ~~rounded to the nearest penny~~ so that increases or decreases by the same percentage as the
53 change in the weighted average rounded to the nearest penny, as of March 1 of the respecification
54 year, of all of the enhanced 911 fees imposed by the counties which have adopted an enhanced
55 911 ordinance: *Provided*, That the wireless enhanced 911 fee may never be increased by more
56 than 25 percent of its value at the beginning of the respecification year: *Provided, however*, That
57 the fee may never be less than the amount set in subsection (b) of this section. *Provided further*,
58 ~~That beginning on July 1, 2005, the wireless enhanced 911 fee shall include 10¢ to be distributed~~
59 ~~to the West Virginia State Police to be used for equipment upgrades for improving and integrating~~
60 ~~their communication efforts with those of the enhanced 911 systems: And provided further, That~~
61 ~~beginning on July 1, 2005, \$1,000,000 of the wireless enhanced 911 fee shall be distributed by~~
62 ~~the Public Service Commission to subsidize the construction of wireless towers as specified in~~
63 ~~said subsection~~

64 ~~(d)~~(c) The ~~CMRS providers shall, after retaining a three-percent billing fee, send the~~
65 ~~wireless enhanced 911 fee and public safety wireless moneys collected, on a monthly basis, to~~
66 ~~the Public Service Commission.~~The Public Service Commission shall, on a quarterly and
67 approximately evenly staggered basis, disburse ~~the fee~~ wireless enhanced 911 fee revenue in
68 the following manner:

69 (1) Each county that does not have a 911 ordinance in effect as of the original effective
70 date of this section in the year 1997 or has enacted a 911 ordinance within the five years prior to

71 the original effective date of this section in the year 1997 shall receive eight and one-half tenths
72 of one percent of the fee revenues received by the Public Service Commission: *Provided*, That
73 after the effective date of this section, in the year 2005, when two or more counties consolidate
74 into one county to provide government services, the consolidated county shall receive one percent
75 of the fee revenues received by the Public Service Commission for itself and for each county
76 merged into the consolidated county. Each county shall receive eight and one-half tenths of one
77 percent of the remainder of the fee revenues received by the Public Service Commission:
78 *Provided, however*, That after the effective date of this section, in the year 2005, when two or
79 more counties consolidate into one county to provide government services, the consolidated
80 county shall receive one percent of the fee revenues received by the Public Service Commission
81 for itself and for each county merged into the consolidated county. Then, from any moneys
82 remaining, each county shall receive a pro rata portion of that remainder based on that county's
83 population as determined in the most recent decennial census as a percentage of the state total
84 population. The Public Service Commission shall recalculate the county disbursement
85 percentages on a yearly basis, with the changes effective on July 1, and using data as of the
86 preceding first day of March. The public utilities which normally provide local exchange
87 telecommunications service by means of lines, wires, cables, optical fibers or by other means
88 extended to subscriber premises shall supply the data to the Public Service Commission on a
89 county specific basis no later than June 1 of each year;

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

93 (3) The Public Service Commission shall deposit the wireless enhanced 911 fee revenue
94 for each county which does not have an enhanced 911 ordinance in effect into an escrow account
95 which it has established for that county. Any county with an escrow account may, immediately
96 upon adopting an enhanced 911 ordinance, receive the moneys which have accumulated in the

97 escrow account for use as specified in subdivision (2) of this subsection: *Provided*, That a county
98 that adopts a 911 ordinance after the original effective date of this section in the year 1997 or has
99 adopted a 911 ordinance within five years of the original effective date of this section in the year
100 1997 shall continue to receive one percent of the total 911 fee revenue for a period of five years
101 following the adoption of the ordinance. Thereafter, each county shall receive that county's eight
102 and one-half tenths of one percent of the remaining fee revenue, plus that county's additional pro
103 rata portion of the fee revenues then remaining, based on that county's population as determined
104 in the most recent decennial census as a percentage of the state total population: *Provided*,
105 *however*, That every five years from the year 1997, all fee revenue residing in escrow accounts
106 shall be disbursed on the pro rata basis specified in subdivision (1) of this subsection, except that
107 data for counties without enhanced 911 ordinances in effect shall be omitted from the calculation
108 and all escrow accounts shall begin again with a zero balance. From any funds distributed to a
109 county pursuant to this section, a total of three percent shall be set aside in a special fund to be
110 used exclusively for the purchase of equipment that will provide information regarding the x and
111 y coordinates of persons who call an emergency telephone system through a commercial mobile
112 radio service: *Provided*, That upon purchase of the necessary equipment, the special fund shall
113 be dissolved and any surplus shall be used for general operation of the emergency telephone
114 system as may otherwise be provided by law.

115 ~~(e)~~ (d) Beginning July 1, 2020, CMRS providers shall collect the public safety fee from
116 each in-state two-way service subscriber. The public safety fee shall be 29 cents per month and
117 will be shown as a separate fee on the subscriber's bill. On a monthly basis, the Public Service
118 Commission will distribute 10 cents of the public safety fee to the West Virginia State Police to be
119 used for equipment upgrades for improving and integrating their communication efforts with those
120 of the enhanced 911 systems, and the Public Service Commission will deposit 19 cents of the
121 public safety fee in a special fund established by the Division of Homeland Security and
122 Emergency Management to be used solely for the construction, maintenance, and upgrades of

123 the West Virginia Interoperable Radio Project and any other costs associated with establishing
124 and maintaining the infrastructure of the system. Any funds remaining in this fund at the end of
125 the fiscal year shall automatically be reappropriated for the following year.

126 (e) Beginning July 1, 2020, CMRS providers shall collect the wireless tower fee from each
127 in-state two-way service subscriber. The wireless tower fee shall be 8 cents per month and will
128 be shown as a separate fee on the subscriber's bill. On a monthly basis, the commission shall
129 distribute the wireless tower fee to a fund administered by the Public Service Commission, entitled
130 the Wireless Tower Access Assistance Fund, to subsidize the construction of wireless towers.
131 The monies shall be expended in accordance with an enhanced 911 wireless tower access
132 matching grant order adopted by the Public Service Commission. The commission order shall
133 contain terms and conditions designed to provide financial assistance loans or grants to state
134 agencies, political subdivisions of the state, and wireless telephone carriers for the acquisition,
135 equipping, and construction of new wireless towers, which would not be available otherwise due
136 to marginal financial viability of the applicable tower coverage area: *Provided*, That the grants
137 shall be allocated among potential sites based on application from county commissions
138 demonstrating the need for enhanced 911 wireless coverage in specific areas of this state. Any
139 tower constructed with assistance from the fund created by this subdivision shall be available for
140 use by emergency services, fire departments, and law-enforcement agencies' communications
141 equipment, so long as that use does not interfere with the carriers' wireless signal.

142 ~~(e)~~ (f) CMRS providers have the same rights and responsibilities as other telephone
143 service suppliers in dealing with the failure by an in-state two-way service subscriber of a CMRS
144 provider to timely pay the wireless enhanced 911 fee, the public safety fee, and the wireless tower
145 fee.

146 ~~(f)~~(g) Notwithstanding the provisions of section one-a of this article, for the purposes of
147 this section, the term "county" means one of the counties provided in §1-1-1 of this code.

148 ~~(g)~~ From any funds distributed to a county pursuant to this section, a total of three percent

149 ~~shall be set aside in a special fund to be used exclusively for the purchase of equipment that will~~
150 ~~provide information regarding the x and y coordinates of persons who call an emergency~~
151 ~~telephone system through a commercial mobile radio service: *Provided*, That upon purchase of~~
152 ~~the necessary equipment, the special fund shall be dissolved and any surplus shall be used for~~
153 ~~general operation of the emergency telephone system as may otherwise be provided by law~~

154 (h) Notwithstanding anything to the contrary in this code, ~~beginning July 1, 2008~~ prepaid
155 wireless calling service is ~~no longer~~ subject to the wireless enhanced 911 fee, the public safety
156 fee, and the wireless tower fee.

157 (i) The Public Service Commission shall propose rules for legislative approval in
158 accordance with §29A-3-1 et seq. of this code to effectuate the provisions of this section. The
159 Public Service Commission may promulgate emergency rules pursuant to the provisions of §29A-
160 3-15 of this code.

NOTE: The purpose of this bill is to change the wireless enhanced 911 fee and to add a public safety fee and a wireless tower fee to be collected by CMRS providers each month and distributed to the State Police, Homeland Security, and the Wireless Tower Access Assistance 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.