

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Committee Substitute

for

Committee Substitute

for

Senate Bill 579

SENATORS SYPOLT, CLINE, AND ROBERTS, *original*

sponsors

[Originating in the Committee on Finance; reported on

February 19, 2020]

1 A BILL to amend and reenact §11-15-30 of the Code of West Virginia, 1931, as amended; and to
2 amend and reenact §24-6-6b of said code, all relating to changing the wireless enhanced
3 911 fee; and establishing a separate public safety fee and wireless tower fee.

Be it enacted by the Legislature of West Virginia:

CHAPTER 11. TAXATION.

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX

§11-15-30. Proceeds of tax; appropriation of certain revenues.

1 (a) The proceeds of the tax imposed by this article shall be deposited in the General
2 Revenue Fund of the state except as otherwise expressly provided in this article.

3 (b) *School Major Improvement Fund.* — After the payment or commitment of the proceeds
4 or collections of this tax for the purposes set forth in §11-15-16 of this code, on the first day of
5 each month, there shall be dedicated monthly from the collections of this tax the amount of
6 \$416,667, and the amount dedicated shall be deposited on a monthly basis into the School Major
7 Improvement Fund created pursuant to §18-9D-6 of this code: *Provided*, That for fiscal year 2016,
8 the amount so dedicated and deposited annually under this subsection is reduced by \$2,000,004,
9 and the amount so dedicated and deposited monthly is reduced to \$250,000 for fiscal year 2016.
10 This reduction shall cease for fiscal years beginning after June 30, 2016: *Provided, however*, That
11 for fiscal year 2017, the amount so dedicated and deposited annually under this subsection is
12 reduced by \$999,996, and the amount so dedicated and deposited monthly is reduced to
13 \$333,334 for fiscal year 2017. This reduction shall cease for fiscal years beginning after June 30,
14 2017.

15 (c) *School Construction Fund.* — After the payment or commitment of the proceeds or
16 collections of this tax for the purposes set forth in §11-15-16 of this code:

17 (1) On the first day of each month, there shall be dedicated monthly from the collections
18 of this tax the amount of \$1,416,667 and the amount dedicated shall be deposited into the School
19 Construction Fund created pursuant to §18-9D-6 of this code.

20 (2) Except as provided in subdivision (3) of this subsection, effective July 1, 1998, there
21 shall be dedicated from the collections of this tax an amount equal to any annual difference that
22 may occur between the debt service payment for the 1997 fiscal year for school improvement
23 bonds issued under the Better School Building Amendment under the provisions of §18-9C-1 *et*
24 *seq.* of this code and the amount of funds required for debt service on these school improvement
25 bonds in any current fiscal year thereafter. This annual difference shall be prorated monthly,
26 added to the monthly deposit in subdivision (1) of this subsection and deposited into the School
27 Construction Fund created pursuant to §18-9D-6 of this code.

28 (3) After June 30, 2015, the provisions of subdivisions (1) and (2) of this subsection shall
29 have no force or effect. After June 30, 2015, there shall be dedicated from the collections of this
30 tax the amount of \$27,216,996 annually. This amount shall be prorated monthly and deposited
31 into the School Construction Fund created pursuant to §18-9D-6 of this code: *Provided*, That for
32 fiscal year 2016, the amount so dedicated annually under this subdivision is reduced by \$6 million.
33 This reduction shall cease for fiscal years beginning after June 30, 2016: *Provided, however*, That
34 for fiscal year 2017, the amount so dedicated and deposited annually under this subdivision is
35 reduced by \$3 million. This reduction shall cease for fiscal years beginning after June 30, 2017.
36 Amendments to this subdivision enacted in the 2016 regular legislative session are retroactive, in
37 accordance with dates and fiscal years specified herein.

38 (d) *Prepaid wireless calling service.* — The proceeds or collections of this tax from the
39 sale of prepaid wireless service are dedicated as follows:

40 (1) The tax imposed by this article upon the sale of prepaid wireless calling service is in
41 lieu of the wireless enhanced 911 fee, the public safety fee, and the wireless tower fee imposed
42 by §24-6-6b of this code.

43 (2) Within 30 days following the end of each calendar month, the Tax Commissioner shall
44 remit to the Public Service Commission the proceeds of the tax imposed by this article upon the
45 sale of prepaid wireless calling service in the preceding month, determined as follows: For

46 purposes of determining the amount of those monthly proceeds, the Tax Commissioner shall use
47 an amount equal to one twelfth of the wireless enhanced 911 fees, the public safety fees, and the
48 wireless tower fees collected from prepaid wireless calling service under §24-6-6b of this code
49 during the period beginning on July 1, 2007 2020, and ending on June 30, 2008 2021. Beginning
50 on July 1, 2009 2022, the Tax Commissioner shall adjust this amount annually by an amount
51 proportionate to the increase or decrease in the enhanced wireless 911 fees, the public safety
52 fees, and the wireless tower fees paid to the Public Service Commission under said section during
53 the previous 12 months. The Public Service Commission shall receive, deposit, and disburse the
54 proceeds in the manner prescribed in said section.

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 moneys 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 wireless enhanced 911 fee revenues received by the Public
78 Service Commission: *Provided, however*, That after the effective date of this section, in the year
79 2005, when two or more counties consolidate into one county to provide government services,
80 the consolidated county shall receive one percent of the fee revenues received by the Public
81 Service Commission for itself and for each county merged into the consolidated county. Then,
82 from any moneys remaining, each county shall receive a pro rata portion of that remainder based
83 on that county's population as determined in the most recent decennial census as a percentage
84 of the state total population. The Public Service Commission shall recalculate the county
85 disbursement percentages on a yearly basis, with the changes effective on July 1, and using data
86 as of the preceding March 1. 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
99 has adopted a 911 ordinance within five years of the original effective date of this section in the
100 year 1997, shall continue to receive one percent of the total 911 fee revenue for a period of five
101 years following the adoption of the ordinance. Thereafter, each county shall receive that county's
102 eight and one-half tenths of one percent of the remaining fee revenue, plus that county's additional
103 pro rata portion of the fee revenues then remaining, based on that county's population as
104 determined in the most recent decennial census as a percentage of the state total population:
105 *Provided, however*, That every five years from the year 1997, all fee revenue residing in escrow
106 accounts shall be disbursed on the pro rata basis specified in subdivision (1) of this subsection,
107 except that data for counties without enhanced 911 ordinances in effect shall be omitted from the
108 calculation and all escrow accounts shall begin again with a zero balance. From any funds
109 distributed to a county pursuant to this section, a total of three percent shall be set aside in a
110 special fund to be used exclusively for the purchase of equipment that will provide information
111 regarding the x and y coordinates of persons who call an emergency telephone system through
112 a commercial mobile radio service: *Provided further*, That upon purchase of the necessary
113 equipment, the special fund shall be dissolved and any surplus shall be used for general operation
114 of the emergency telephone system as may otherwise be provided by law.

115 ~~(d)~~ (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 moneys 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 subsection 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 a 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 §24-6-1a of this code, for the purposes of this
147 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~~ not subject to the wireless enhanced 911 fee, the public safety
156 fee, and the wireless tower fee.

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

