

# **WEST VIRGINIA LEGISLATURE**

## **2017 REGULAR SESSION**

**Introduced**

### **House Bill 2759**

BY DELEGATE ELLINGTON, ESPINOSA AND FRICH

[Introduced March 1, 2017; Referred  
to the Committee on Government Organization then  
Finance.]

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; and to amend said code by adding thereto a new article,  
 3 designed §15-14-1, §15-14-2, §15-14-3, §15-14-4, §15-14-5, §15-14-6, §15-14-7, §15-14-  
 4 8, §15-14-9 and §15-14-10, all relating to creating Statewide Interoperable Radio Network;  
 5 establishing short title; defining terms; establishing objectives and purpose; creating  
 6 position of Statewide Interoperable Coordinator; prescribing duties for Statewide  
 7 Interoperability Coordinator; creating Statewide Interoperability Executive Committee;  
 8 prescribing duties for Statewide Interoperability Executive committee; creating the  
 9 Regional Interoperability Committee; providing for disposition of assets and staffing of  
 10 Statewide Interoperable Radio Network; establishing special revenue account for  
 11 Statewide Interoperable Radio Network; exempting Statewide Interoperable Radio  
 12 Network from certain Purchasing Division requirements; and authorizing emergency and  
 13 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; and that said code be amended  
 3 by adding thereto a new article, designated §15-14-1, §15-14-2, §15-14-3, §15-14-4, §15-14-5,  
 4 §15-14-6, §15-14-7, §15-14-8, §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. However, this subdivision does not apply to construction  
 34 or repair contracts entered into by the state for the emergency construction or repair of the  
 35 Statewide Interoperable Radio Network created by article fourteen, chapter fifteen of this code;

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

43 (11) Issue a notice to cease and desist to a spending unit when the director has credible  
 44 evidence that a spending unit has violated competitive bidding or other requirements established  
 45 by this article and the rules promulgated hereunder. Failure to abide by the notice may result in  
 46 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, including information related to the design, location, equipment

9 and operations of the Statewide Interoperable Radio Network along with flexibility to lease tower  
 10 space to private companies pursuant to terms agreeable to the division that includes a  
 11 confidentiality agreement, as it relates to the Statewide Interoperable Radio Network, created by  
 12 article fourteen, chapter fifteen of this code. However, the West Virginia Board of Education, the  
 13 West Virginia Department of Education and the county boards of education will attempt to  
 14 cooperate and collaborate with the Chief Technology Officer to the extent feasible.

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

## **CHAPTER 15. PUBLIC SAFETY.**

### **ARTICLE 14. THE STATEWIDE INTEROPERABLE RADIO NETWORK.**

#### **§15-14-1. Short title.**

1 This article may be known and cited as the "Statewide Interoperable Radio Network Act".

#### **§15-14-2. Definitions.**

1 (a) "Allied, advisory, affiliated entities" means any state governmental entity, including any  
 2 bureau, department, division, commission, agency, committee, office, board, authority,  
 3 subdivision, program, council, advisory body, cabinet, panel, system, task force, fund, compact,  
 4 institution, survey, position, coalition or other entity in the State of West Virginia.

5 (b) "Director" means the Director of West Virginia Division of Homeland Security and  
 6 Emergency Management.

7 (c) "Statewide Interoperable Radio Network" or "SIRN" means the interoperable  
 8 communications network established for the purpose of implementing and maintaining an  
 9 interoperable communications network for first responders to help assure the safety of all citizens  
 10 in the event of disaster or emergency.

11 (d) "Statewide Interoperability Coordinator" or "SWIC" means the individual appointed by

12 the Governor to oversee the state's interoperable communications efforts in planning and  
13 coordinating the SIRN.

14 (e) "Statewide Interoperability Executive Committee" or "Executive Committee" means the  
15 governing body of the SIRN.

16 (f) "WVDHSEM" means the West Virginia Division of Homeland Security and Emergency  
17 Management.

18 (g) "Regional Interoperability Committee" means the committee or committees that assist  
19 the SWIC and the Executive Committee with governing and monitoring the implementation and  
20 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 Governor 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 in 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.

23           (f) The coordinator is the point of contact for any public or private entity or individual  
24 seeking information about the radio network;

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

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

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 Governor appoints  
33 a 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 SORN's zoned  
17 master site switches not otherwise represented;
- 18 (14) The chairman of each of the Regional Interoperability Committees.;
- 19 (15) The Director of the West Virginia Parkways Authority; and
- 20 (16) The Statewide Interoperability Coordinator who shall serve in a nonvoting ex officio  
21 capacity.

22 (b) The director shall serve as the chairman of the Executive Committee.

23 (c) Members of the Executive Committee shall serve without compensation. However,

24 each member of the Executive Committee may receive reimbursement from the SIRN account,  
25 for actual expenses, including travel expenses, in accordance with state travel guidelines.

26 (d) The Executive Committee may appoint, as nonvoting members, individuals with  
27 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 or  
5 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) Report regularly at each legislative session on the implementation of the purposes set  
12 forth in this article;

13 (8) Investigate all matters relating to integrity, foresight in funding and operations and  
14 planning for the SIRN; and

15 (9) Coordinate the implementation of any grant funding received related to 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 and property owned, managed, directed, controlled, and  
6 governed by allied, advisory, and affiliated entities associated with the statewide interoperable  
7 radio and/or microwave network and medical command radio system, are transferred to,  
8 incorporated in and administered as a part of the WVDHSEM.

9 (c) Allied, advisory, and affiliated entities associated with the statewide interoperable radio  
10 and/or microwave network and medical command radio system shall be assessed for and bear a  
11 proportionate share of the cost of the maintenance and operation of the statewide interoperable  
12 radio and/or microwave network and medical command radio system.

13 (d) The director or his/her designee is responsible for all interoperable communications  
14 efforts associated with any and all emergency or planned events within the state.

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

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

23 (g) The WVDHSEM is exempt from the requirements and associated fees of any local  
24 ordinances of any political subdivision of the state relating to the construction of towers or other  
25 infrastructure for use by the radio network to enhance interoperable communications.

26 (h) The WVDHSEM shall support a unified approach to interoperable communications  
27 across state, county, and municipal government, to include:

28 (1) Providing ongoing assistance and support to the State's Medical Command System;  
29 and

30 (2) Providing ongoing assistance and support to state agencies in the development of

31 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 (nonlaw-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) Nonfirst 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.

36 However, each Regional Interoperability Committee member may receive reimbursement from  
37 the SIRN account for actual expenses, including travel expenses, in accordance with state travel  
38 guidelines.

**§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 separate special revenue account,  
2 which shall be an interest bearing account, to be known as the "Statewide Interoperable Radio  
3 Network Account." The special revenue account shall consist of income generated from the SIRN,  
4 appropriations made by the Legislature, income from the investment of moneys held in the special  
5 revenue account, grant money and all other sums available for deposit to the special revenue  
6 account from any source, public or private. No expenditures for purposes of this section are  
7 authorized from collections except in accordance with the provisions of article three, chapter  
8 twelve of this code and upon fulfillment of the provisions set forth in article two, chapter five-a of  
9 this code. No expenses incurred under this section are charges against the General Funds of the  
10 state.

11 (b) Moneys in the special revenue account shall be appropriated to WVDHSEM and used  
12 exclusively, in accordance with appropriations by the Legislature, to pay costs, fees and expenses  
13 incurred, or to be incurred for the following purposes: (1) The maintenance, upkeep and repair of  
14 the SIRN; (2) operations of the Executive Committee; (3) payment of salaries for the SWIC and  
15 any personnel required to operate and maintain the SIRN; (4) the design, implementation and  
16 management of the SIRN; (5) all other related SIRN activities approved by the Executive  
17 Committee; and (6) all costs incurred in the administration of the SIRN account.

18 (c) Any balance remaining in the special revenue account at the end of any state fiscal  
19 year shall not revert to the General Revenue Fund but shall remain in the special revenue account  
20 and shall be used solely in a manner consistent with this section.

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

24 (e) Quarterly, the director shall prepare an accounting of all moneys disbursed from the  
25 added to the SIRN account. This accounting shall include the reason for the withdraw, the  
26 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.

NOTE: The purpose of this bill is to create the Statewide Interoperable Radio Network. The bill establishes a short title. The bill defines terms. The bill establishes objectives and a purpose. The bill prescribes duties for the Statewide Interoperability Coordinator. The bill prescribes duties for the statewide Interoperability Executive Committee. The bill provides for disposition of assets and staffing of the Statewide Interoperable Radio Network. The bill establishes a special revenue account for the Statewide Interoperable Radio Network. The bill exempts the Statewide Interoperable Radio Network from certain Purchasing Division requirements. The bill authorizes emergency and legislative rule-making.

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