

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Enrolled

Committee Substitute

for

Committee Substitute

for

Senate Bill 579

SENATORS CLINE, AND ROBERTS, *original sponsors*

[Passed March 6, 2020; in effect 90 days from
passage]

1 AN ACT to amend and reenact §11-15-30 of the Code of West Virginia, 1931, as amended; and
2 to amend and reenact §24-6-6b of said code, all relating to changing the wireless
3 enhanced 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, 2020, and ending on June 30, 2021. Beginning on July 1,
50 2022, the Tax Commissioner shall adjust this amount annually by an amount proportionate to the
51 increase or decrease in the enhanced wireless 911 fees, the public safety fees, and the wireless
52 tower fees paid to the Public Service Commission under said section during the previous 12
53 months. The Public Service Commission shall receive, deposit, and disburse the proceeds in the
54 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” has
5 the same meaning as that set forth in the rules of the Public Service Commission. The CMRS
6 providers shall, on a monthly basis, after retaining a billing fee of three percent of the sum of the
7 wireless enhanced 911 fee, the public safety fee, and the wireless tower fee, send moneys
8 collected from the wireless enhanced 911 fee, the public safety fee, and the wireless tower fee to
9 the Public Service Commission.

10 (b) The wireless enhanced 911 fee is \$3.47 per month for each valid in-state two-way
11 service subscriber, as that term is defined by Public Service Commission rules.

12 Beginning in the year 2021, and every two years thereafter, the Public Service
13 Commission shall conduct a survey of the enhanced 911 fees imposed by counties and shall

14 recalculate the wireless enhanced 911 fee so that increases or decreases by the same
15 percentage as the change in the weighted average rounded to the nearest penny, as of March 1
16 of the respecification year, of all of the enhanced 911 fees imposed by the counties which have
17 adopted an enhanced 911 ordinance: *Provided*, That the wireless enhanced 911 fee may never
18 be increased by more than 25 percent of its value at the beginning of the respecification year:
19 *Provided, however*, That the fee may never be less than the amount set in subsection (b) of this
20 section.

21 (c) The Public Service Commission shall, on a quarterly and approximately evenly
22 staggered basis, disburse wireless enhanced 911 fee revenue in the following manner:

23 (1) Each county that does not have a 911 ordinance in effect as of the original effective
24 date of this section in the year 1997, or has enacted a 911 ordinance within the five years prior to
25 the original effective date of this section in the year 1997, shall receive eight and one-half tenths
26 of one percent of the fee revenues received by the Public Service Commission: *Provided*, That
27 after the effective date of this section, in the year 2005, when two or more counties consolidate
28 into one county to provide government services, the consolidated county shall receive one percent
29 of the fee revenues received by the Public Service Commission for itself and for each county
30 merged into the consolidated county. Each county shall receive eight and one-half tenths of one
31 percent of the remainder of the wireless enhanced 911 fee revenues received by the Public
32 Service Commission: *Provided, however*, That after the effective date of this section, in the year
33 2005, when two or more counties consolidate into one county to provide government services,
34 the consolidated county shall receive one percent of the fee revenues received by the Public
35 Service Commission for itself and for each county merged into the consolidated county. Then,
36 from any moneys remaining, each county shall receive a pro rata portion of that remainder based
37 on that county's population as determined in the most recent decennial census as a percentage
38 of the state total population. The Public Service Commission shall recalculate the county
39 disbursement percentages on a yearly basis, with the changes effective on July 1, and using data

40 as of the preceding March 1. The public utilities which normally provide local exchange
41 telecommunications service by means of lines, wires, cables, optical fibers, or by other means
42 extended to subscriber premises shall supply the data to the Public Service Commission on a
43 county specific basis no later than June 1 of each year;

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

47 (3) The Public Service Commission shall deposit the wireless enhanced 911 fee revenue
48 for each county which does not have an enhanced 911 ordinance in effect into an escrow account
49 which it has established for that county. Any county with an escrow account may, immediately
50 upon adopting an enhanced 911 ordinance, receive the moneys which have accumulated in the
51 escrow account for use as specified in subdivision (2) of this subsection: *Provided*, That a county
52 that adopts a 911 ordinance after the original effective date of this section in the year 1997, or
53 has adopted a 911 ordinance within five years of the original effective date of this section in the
54 year 1997, shall continue to receive one percent of the total 911 fee revenue for a period of five
55 years following the adoption of the ordinance. Thereafter, each county shall receive that county's
56 eight and one-half tenths of one percent of the remaining fee revenue, plus that county's additional
57 pro rata portion of the fee revenues then remaining, based on that county's population as
58 determined in the most recent decennial census as a percentage of the state total population:
59 *Provided, however*, That every five years from the year 1997, all fee revenue residing in escrow
60 accounts shall be disbursed on the pro rata basis specified in subdivision (1) of this subsection,
61 except that data for counties without enhanced 911 ordinances in effect shall be omitted from the
62 calculation and all escrow accounts shall begin again with a zero balance. From any funds
63 distributed to a county pursuant to this section, a total of three percent shall be set aside in a
64 special fund to be used exclusively for the purchase of equipment that will provide information
65 regarding the x and y coordinates of persons who call an emergency telephone system through

66 a commercial mobile radio service: *Provided further*, That upon purchase of the necessary
67 equipment, the special fund shall be dissolved and any surplus shall be used for general operation
68 of the emergency telephone system as may otherwise be provided by law.

69 (d) Beginning July 1, 2020, CMRS providers shall collect the public safety fee from each
70 in-state two-way service subscriber. The public safety fee shall be 29 cents per month and will be
71 shown as a separate fee on the subscriber's bill. On a monthly basis, the Public Service
72 Commission will distribute 10 cents of the public safety fee to the West Virginia State Police to be
73 used for equipment upgrades for improving and integrating their communication efforts with those
74 of the enhanced 911 systems, and the Public Service Commission will deposit 19 cents of the
75 public safety fee in a special fund established by the Division of Homeland Security and
76 Emergency Management to be used solely for the construction, maintenance, and upgrades of
77 the West Virginia Interoperable Radio Project and any other costs associated with establishing
78 and maintaining the infrastructure of the system. Any funds remaining in this fund at the end of
79 the fiscal year shall automatically be reappropriated for the following year.

80 (e) Beginning July 1, 2020, CMRS providers shall collect the wireless tower fee from each
81 in-state two-way service subscriber. The wireless tower fee shall be 8 cents per month and will
82 be shown as a separate fee on the subscriber's bill. On a monthly basis, the commission shall
83 distribute the wireless tower fee to a fund administered by the Public Service Commission, entitled
84 the Wireless Tower Access Assistance Fund, to subsidize the construction of wireless towers.
85 The moneys shall be expended in accordance with an enhanced 911 wireless tower access
86 matching grant order adopted by the Public Service Commission. The commission order shall
87 contain terms and conditions designed to provide financial assistance loans or grants to state
88 agencies, political subdivisions of the state, and wireless telephone carriers for the acquisition,
89 equipping, and construction of new wireless towers, which would not be available otherwise due
90 to marginal financial viability of the applicable tower coverage area: *Provided*, That the grants
91 shall be allocated among potential sites based on application from county commissions

92 demonstrating the need for enhanced 911 wireless coverage in specific areas of this state. Any
93 tower constructed with assistance from the fund created by this subsection shall be available for
94 use by emergency services, fire departments, and law-enforcement agencies' communications
95 equipment, so long as that use does not interfere with the carriers' wireless signal.

96 (f) CMRS providers have the same rights and responsibilities as other telephone service
97 suppliers in dealing with the failure by an in-state two-way service subscriber to timely pay the
98 wireless enhanced 911 fee, the public safety fee, and the wireless tower fee.

99 (g) Notwithstanding the provisions of §24-6-1a of this code, for the purposes of this
100 section, the term "county" means one of the counties provided in §1-1-1 of this code.

101 (h) Notwithstanding anything to the contrary in this code, prepaid wireless calling service
102 is not subject to the wireless enhanced 911 fee, the public safety fee, and the wireless tower fee.

103 (i) The Public Service Commission shall promulgate rules in accordance with §29A-3-1 *et*
104 *seq.* of this code to effectuate the provisions of this section. The Public Service Commission may
105 promulgate emergency rules pursuant to the provisions of §29A-3-15 of this code.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman, Senate Committee

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Chairman, House Committee

Originated in the Senate.

In effect 90 days from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

The within this the.....
Day of, 2020.

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Governor