WEST VIRGINIA LEGISLATURE
SEVENTY-EIGHTH LEGISLATURE
REGULAR SESSION, 2008

COMMITTEE SUBSTITUTE
FOR
ENROLLED
Senate Bill No. 552

(Senators Helmick, Plymale and Edgell, original sponsors)

[Passed March 5, 2008; in effect ninety days from passage.]
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AN ACT to amend and reenact §11-15-2 and §11-15-30 of the Code of West Virginia, 1931, as amended; and to amend and reenact §24-6-2 and §24-6-6b of said code, all relating to taxation of prepaid wireless calling service and the wireless enhanced 911 fee; defining “prepaid wireless calling service”; providing that prepaid wireless calling service is subject to the consumers sales and service tax; requiring the collection and deposit by the Tax
Commissioner of the proceeds of the consumers sales and service tax imposed on the sale of prepaid wireless calling service into the wireless enhanced 911 fee accounts maintained and administered by the Public Service Commission; and providing that prepaid wireless calling service is no longer subject to the wireless enhanced 911 fee.

Be it enacted by the Legislature of West Virginia:

That §11-15-2 and §11-15-30 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §24-6-2 and §24-6-6b of said code be amended and reenacted, all to read as follows:

CHAPTER 11. TAXATION.

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.


(a) General. — When used in this article and article fifteen-a of this chapter, words defined in subsection (b) of this section have the meanings ascribed to them in this section, except in those instances where a different meaning is provided in this article or the context in which the word is used clearly indicates that a different meaning is intended by the Legislature.

(b) Definitions. —

(1) "Business" includes all activities engaged in or caused to be engaged in with the object of gain or economic benefit, direct or indirect, and all activities of the state and its political subdivisions which involve sales of tangible personal property or the rendering of
services when those service activities compete with or may compete with the activities of other persons.

(2) "Communication" means all telephone, radio, light, light wave, radio telephone, telegraph and other communication or means of communication, whether used for voice communication, computer data transmission or other encoded symbolic information transfers and includes commercial broadcast radio, commercial broadcast television and cable television.

(3) "Contracting":

(A) In general. — "Contracting" means and includes the furnishing of work, or both materials and work, for another (by a sole contractor, general contractor, prime contractor, subcontractor or construction manager) in fulfillment of a contract for the construction, alteration, repair, decoration or improvement of a new or existing building or structure, or any part thereof, or for removal or demolition of a building or structure, or any part thereof, or for the alteration, improvement or development of real property. Contracting also includes services provided by a construction manager so long as the project for which the construction manager provides the services results in a capital improvement to a building or structure or to real property.

(B) Form of contract not controlling. — An activity that falls within the scope of the definition of contracting constitutes contracting regardless of whether the contract governing the activity is written or verbal and regardless of whether it is in substance or form a lump sum contract, a cost-plus contract, a time and materials contract, whether or not open-ended, or
any other kind of construction contract.

(C) Special rules. — For purposes of this definition:

(i) The term "structure" includes, but is not limited to, everything built up or composed of parts joined together in some definite manner and attached or affixed to real property or which adds utility to real property or any part thereof or which adds utility to a particular parcel of property and is intended to remain there for an indefinite period of time;

(ii) The term "alteration" means, and is limited to, alterations which are capital improvements to a building or structure or to real property;

(iii) The term "repair" means, and is limited to, repairs which are capital improvements to a building or structure or to real property;

(iv) The term "decoration" means, and is limited to, decorations which are capital improvements to a building or structure or to real property;

(v) The term "improvement" means, and is limited to, improvements which are capital improvements to a building or structure or to real property;

(vi) The term "capital improvement" means improvements that are affixed to or attached to and become a part of a building or structure or the real property or which add utility to real property, or any part thereof, and that last or are intended to be relatively permanent. As used herein, "relatively permanent" means lasting at least a year in duration
without the necessity for regularly scheduled recurring
service to maintain the capital improvement. "Regular
recurring service" means regularly scheduled service
intervals of less than one year;

(vii) Contracting does not include the furnishing of
work, or both materials and work, in the nature of
hookup, connection, installation or other services if the
service is incidental to the retail sale of tangible
personal property from the service provider's inventory:
Provided, That the hookup, connection or installation of
the foregoing is incidental to the sale of the same and
performed by the seller thereof or performed in
accordance with arrangements made by the seller
thereof. Examples of transactions that are excluded
from the definition of contracting pursuant to this
subdivision include, but are not limited to, the sale of
wall-to-wall carpeting and the installation of
wall-to-wall carpeting, the sale, hookup and connection
of mobile homes, window air conditioning units,
dishwashers, clothing washing machines or dryers,
other household appliances, drapery rods, window
shades, venetian blinds, canvas awnings, free-standing
industrial or commercial equipment and other similar
items of tangible personal property. Repairs made to
the foregoing are within the definition of contracting if
the repairs involve permanently affixing to or
improving real property or something attached thereto
which extends the life of the real property or something
affixed thereto or allows or intends to allow the real
property or thing permanently attached thereto to
remain in service for a year or longer; and

(viii) The term "construction manager" means a
person who enters into an agreement to employ, direct,
coordinate or manage design professionals and contractors who are hired and paid directly by the owner or the construction manager. The business activities of a “construction manager” as defined in this subdivision constitute contracting, so long as the project for which the construction manager provides the services results in a capital improvement to a building or structure or to real property.

(4) “Directly used or consumed” in the activities of manufacturing, transportation, transmission, communication or the production of natural resources means used or consumed in those activities or operations which constitute an integral and essential part of the activities, as contrasted with and distinguished from those activities or operations which are simply incidental, convenient or remote to the activities.

(A) Uses of property or consumption of services which constitute direct use or consumption in the activities of manufacturing, transportation, transmission, communication or the production of natural resources include only:

(i) In the case of tangible personal property, physical incorporation of property into a finished product resulting from manufacturing production or the production of natural resources;

(ii) Causing a direct physical, chemical or other change upon property undergoing manufacturing production or production of natural resources;

(iii) Transporting or storing property undergoing
transportation, communication, transmission, manufacturing production or production of natural resources;

(iv) Measuring or verifying a change in property directly used in transportation, communication, transmission, manufacturing production or production of natural resources;

(v) Physically controlling or directing the physical movement or operation of property directly used in transportation, communication, transmission, manufacturing production or production of natural resources;

(vi) Directly and physically recording the flow of property undergoing transportation, communication, transmission, manufacturing production or production of natural resources;

(vii) Producing energy for property directly used in transportation, communication, transmission, manufacturing production or production of natural resources;

(viii) Facilitating the transmission of gas, water, steam or electricity from the point of their diversion to property directly used in transportation, communication, transmission, manufacturing production or production of natural resources;

(ix) Controlling or otherwise regulating atmospheric conditions required for transportation, communication, transmission, manufacturing production or production of natural resources;
(x) Serving as an operating supply for property undergoing transmission, manufacturing production or production of natural resources, or for property directly used in transportation, communication, transmission, manufacturing production or production of natural resources;

(xi) Maintaining or repairing of property, including maintenance equipment, directly used in transportation, communication, transmission, manufacturing production or production of natural resources;

(xii) Storing, removal or transportation of economic waste resulting from the activities of manufacturing, transportation, communication, transmission or the production of natural resources;

(xiii) Engaging in pollution control or environmental quality or protection activity directly relating to the activities of manufacturing, transportation, communication, transmission or the production of natural resources and personnel, plant, product or community safety or security activity directly relating to the activities of manufacturing, transportation, communication, transmission or the production of natural resources; or

(xiv) Otherwise using as an integral and essential part of transportation, communication, transmission, manufacturing production or production of natural resources.

(B) Uses of property or services which do not constitute direct use or consumption in the activities of manufacturing, transportation, transmission,
communication or the production of natural resources include, but are not limited to:

(i) Heating and illumination of office buildings;

(ii) Janitorial or general cleaning activities;

(iii) Personal comfort of personnel;

(iv) Production planning, scheduling of work or inventory control;

(v) Marketing, general management, supervision, finance, training, accounting and administration; or

(vi) An activity or function incidental or convenient to transportation, communication, transmission, manufacturing production or production of natural resources, rather than an integral and essential part of these activities.

(5) "Directly used or consumed" in the activities of gas storage, the generation or production or sale of electric power, the provision of a public utility service or the operation of a utility business means used or consumed in those activities or operations which constitute an integral and essential part of those activities or operation, as contrasted with and distinguished from activities or operations which are simply incidental, convenient or remote to those activities.

(A) Uses of property or consumption of services which constitute direct use or consumption in the activities of gas storage, the generation or production or sale of electric power, the provision of a public utility service
or the operation of a utility business include only:

(i) Tangible personal property, custom software or services, including equipment, machinery, apparatus, supplies, fuel and power and appliances, which are used immediately in production or generation activities and equipment, machinery, supplies, tools and repair parts used to keep in operation exempt production or generation devices. For purposes of this subsection, production or generation activities shall commence from the intake, receipt or storage of raw materials at the production plant site;

(ii) Tangible personal property, custom software or services, including equipment, machinery, apparatus, supplies, fuel and power, appliances, pipes, wires and mains, which are used immediately in the transmission or distribution of gas, water and electricity to the public, and equipment, machinery, tools, repair parts and supplies used to keep in operation exempt transmission or distribution devices, and these vehicles and their equipment as are specifically designed and equipped for those purposes are exempt from the tax when used to keep a transmission or distribution system in operation or repair. For purposes of this subsection, transmission or distribution activities shall commence from the close of production at a production plant or wellhead when a product is ready for transmission or distribution to the public and shall conclude at the point where the product is received by the public;

(iii) Tangible personal property, custom software or services, including equipment, machinery, apparatus, supplies, fuel and power, appliances, pipes, wires and mains, which are used immediately in the storage of gas
or water, and equipment, machinery, tools, supplies and
repair parts used to keep in operation exempt storage
devices;

(iv) Tangible personal property, custom software or
services used immediately in the storage, removal or
transportation of economic waste resulting from the
activities of gas storage, the generation or production or
sale of electric power, the provision of a public utility
service or the operation of a utility business;

(v) Tangible personal property, custom software or
services used immediately in pollution control or
environmental quality or protection activity or
community safety or security directly relating to the
activities of gas storage, generation or production or
sale of electric power, the provision of a public utility
service or the operation of a utility business.

(B) Uses of property or services which would not
constitute direct use or consumption in the activities of
gas storage, generation or production or sale of electric
power, the provision of a public utility service or the
operation of a utility business include, but are not
limited to:

(i) Heating and illumination of office buildings;

(ii) Janitorial or general cleaning activities;

(iii) Personal comfort of personnel;

(iv) Production planning, scheduling of work or
inventory control;
(v) Marketing, general management, supervision, finance, training, accounting and administration; or

(vi) An activity or function incidental or convenient to the activities of gas storage, generation or production or sale of electric power, the provision of public utility service or the operation of a utility business.

(6) “Gas storage” means the injection of gas into a storage reservoir or the storage of gas for any period of time in a storage reservoir or the withdrawal of gas from a storage reservoir engaged in by businesses subject to the business and occupation tax imposed by sections two and two-e, article thirteen of this chapter.

(7) “Generating or producing or selling of electric power” means the generation, production or sale of electric power engaged in by businesses subject to the business and occupation tax imposed by section two, two-d, two-m or two-n, article thirteen of this chapter.

(8) “Gross proceeds” means the amount received in money, credits, property or other consideration from sales and services within this state, without deduction on account of the cost of property sold, amounts paid for interest or discounts or other expenses whatsoever. Losses may not be deducted, but any credit or refund made for goods returned may be deducted.

(9) “Includes” and “including”, when used in a definition contained in this article, does not exclude other things otherwise within the meaning of the term being defined.

(10) “Manufacturing” means a systematic operation or
integrated series of systematic operations engaged in as a business or segment of a business which transforms or converts tangible personal property by physical, chemical or other means into a different form, composition or character from that in which it originally existed.

(11) “Person” means any individual, partnership, association, corporation, limited liability company, limited liability partnership or any other legal entity, including this state or its political subdivisions or an agency of either, or the guardian, trustee, committee, executor or administrator of any person.

(12) “Personal service” includes those: (A) Compensated by the payment of wages in the ordinary course of employment; and (B) rendered to the person of an individual without, at the same time, selling tangible personal property, such as nursing, barbering, shoe shining, manicuring and similar services.

(13) “Prepaid wireless calling service” means a telecommunications service that provides the right to utilize mobile wireless service as well as other nontelecommunications services, including the download of digital products delivered electronically, content and ancillary services, which must be paid for in advance that is sold in predetermined units or dollars of which the number decline with use in a known amount.

(14) Production of natural resources.

(A) “Production of natural resources” means, except for oil and gas, the performance, by either the owner of
the natural resources or another, of the act or process of exploring, developing, severing, extracting, reducing to possession and loading for shipment and shipment for sale, profit or commercial use of any natural resource products and any reclamation, waste disposal or environmental activities associated therewith and the construction, installation or fabrication of ventilation structures, mine shafts, slopes, boreholes, dewatering structures, including associated facilities and apparatus, by the producer or others, including contractors and subcontractors, at a coal mine or coal production facility.

(B) For the natural resources oil and gas, “production of natural resources” means the performance, by either the owner of the natural resources, a contractor or a subcontractor, of the act or process of exploring, developing, drilling, well-stimulation activities such as logging, perforating or fracturing, well-completion activities such as the installation of the casing, tubing and other machinery and equipment and any reclamation, waste disposal or environmental activities associated therewith, including the installation of the gathering system or other pipeline to transport the oil and gas produced or environmental activities associated therewith and any service work performed on the well or well site after production of the well has initially commenced.

(C) All work performed to install or maintain facilities up to the point of sale for severance tax purposes is included in the “production of natural resources” and subject to the direct use concept.

(D) “Production of natural resources” does not include
the performance or furnishing of work, or materials or
work, in fulfillment of a contract for the construction,
alteration, repair, decoration or improvement of a new
or existing building or structure, or any part thereof, or
for the alteration, improvement or development of real
property, by persons other than those otherwise directly
engaged in the activities specifically set forth in this
subdivision as "production of natural resources".

(15) "Providing a public service or the operating of a
utility business" means the providing of a public service
or the operating of a utility by businesses subject to the
business and occupation tax imposed by sections two
and two-d, article thirteen of this chapter.

(16) "Purchaser" means a person who purchases
tangible personal property, custom software or a service
taxed by this article.

(17) "Sale", "sales" or "selling" includes any transfer
of the possession or ownership of tangible personal
property or custom software for a consideration,
including a lease or rental, when the transfer or delivery
is made in the ordinary course of the transferor's
business and is made to the transferee or his or her
agent for consumption or use or any other purpose.
"Sale" also includes the furnishing of a service for
consideration. Notwithstanding anything to the
contrary in this code, effective after the thirtieth day of
June, two thousand eight, "sale" also includes the
furnishing of prepaid wireless calling service for
consideration.

(18) "Service" or "selected service" includes all
nonprofessional activities engaged in for other persons
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for a consideration, which involve the rendering of a service as distinguished from the sale of tangible personal property or custom software, but does not include contracting, personal services or the services rendered by an employee to his or her employer or any service rendered for resale. Provided, That the term "service" or "selected service" does not include payments received by a vendor of tangible personal property as an incentive to sell a greater volume of such tangible personal property under a manufacturer's, distributor's or other third party's marketing support program, sales incentive program, cooperative advertising agreement or similar type of program or agreement, and these payments are not considered to be payments for a "service" or "selected service" rendered, even though the vendor may engage in attendant or ancillary activities associated with the sales of tangible personal property as required under the programs or agreements.

(19) "Streamlined Sales and Use Tax Agreement" or "agreement", when used in this article, has the same meaning as when used in article fifteen-b of this chapter, except when the context in which the word "agreement" is used clearly indicates that a different meaning is intended by the Legislature.

(20) "Tax" includes all taxes, additions to tax, interest and penalties levied under this article or article ten of this chapter.

(21) "Tax Commissioner" means the State Tax Commissioner or his or her delegate. The term "delegate" in the phrase "or his or her delegate", when used in reference to the Tax Commissioner, means any
officer or employee of the State Tax Division duly authorized by the Tax Commissioner directly, or indirectly by one or more redelegations of authority, to perform the functions mentioned or described in this article or rules promulgated for this article.

(22) “Taxpayer” means any person liable for the tax imposed by this article or additions to tax, penalties and interest imposed by article ten of this chapter.

(23) “Transmission” means the act or process of causing liquid, natural gas or electricity to pass or be conveyed from one place or geographical location to another place or geographical location through a pipeline or other medium for commercial purposes.

(24) “Transportation” means the act or process of conveying, as a commercial enterprise, passengers or goods from one place or geographical location to another place or geographical location.

(25) “Ultimate consumer” or “consumer” means a person who uses or consumes services or personal property.

(26) “Vendor” means any person engaged in this state in furnishing services taxed by this article or making sales of tangible personal property or custom software. “Vendor” and “seller” are used interchangeably in this article.

(c) Additional definitions. — Other terms used in this article are defined in article fifteen-b of this chapter, which definitions are incorporated by reference into article fifteen of this chapter. Additionally, other
sections of this article may define terms primarily used in the section in which the term is defined.


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

(b) School Major Improvement Fund. —

After the payment or commitment of the proceeds or collections of this tax for the purposes set forth in sections sixteen and eighteen of this article, on the first day of each month, there shall be dedicated monthly from the collections of this tax, the amount of four hundred sixteen thousand six hundred sixty-seven dollars and the amount dedicated shall be deposited on a monthly basis into the School Major Improvement Fund created pursuant to section six, article nine-d, chapter eighteen of this code.

(c) School Construction Fund. —

After the payment or commitment of the proceeds or collections of this tax for the purposes set forth in sections sixteen and eighteen of this article:

(1) On the first day of each month, there shall be dedicated monthly from the collections of this tax the amount of one million four hundred sixteen thousand six hundred sixty-seven dollars and the amount dedicated shall be deposited into the School Construction Fund created pursuant to section six,
(2) Effective the first day of July, one thousand nine hundred ninety-eight, there shall be dedicated from the collections of this tax an amount equal to any annual difference that may occur between the debt service payment for the one thousand nine hundred ninety-seven fiscal year for school improvement bonds issued under the Better School Building Amendment under the provisions of article nine-c, chapter eighteen of this code and the amount of funds required for debt service on these school improvement bonds in any current fiscal year thereafter. This annual difference shall be prorated monthly, added to the monthly deposit in subdivision (1) of this subsection and deposited into the School Construction Fund created pursuant to section six, article nine-d, chapter eighteen of this code.

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

(1) The tax imposed by this article upon the sale of prepaid wireless calling service is in lieu of the wireless enhanced 911 fee imposed by section six-b, article six, chapter twenty-four of this code.

(2) Within thirty days following the end of each calendar month, the Tax Commissioner shall remit to the Public Service Commission the proceeds of the tax imposed by this article upon the sale of prepaid wireless calling service in the preceding month, determined as follows: For purposes of determining the amount of those monthly proceeds, the Tax Commissioner shall use an amount equal to one twelfth of the wireless enhanced
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57 911 fees collected from prepaid wireless calling service
58 under section six-b, article six, chapter twenty-four of
59 this code during the period beginning on the first day of
60 July, two thousand seven, and ending on the last day of
61 June, two thousand eight. Beginning on the first day of
62 July, two thousand nine, the Tax Commissioner shall
63 adjust this amount annually by an amount
64 proportionate to the increase or decrease in the
65 enhanced wireless 911 fees paid to the Public Service
66 Commission under said section during the previous
67 twelve months. The Public Service Commission shall
68 receive, deposit and disburse the proceeds in the manner
69 prescribed in said section.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 6. LOCAL EMERGENCY TELEPHONE SYSTEM.

§24-6-2. Definitions.

1 As used in this article, unless the context clearly
2 requires a different meaning:

3 (1) "Commercial mobile radio service provider" or
4 "CMRS provider" means cellular licensees, broadband
5 personal communications services (PCS) licensees and
6 specialized mobile radio (SMR) providers, as those
7 terms are defined by the Federal Communications
8 Commission, which offer on a post-paid or prepaid basis
9 or via a combination of those two methods, real-time,
10 two-way switched voice service that is interconnected
11 with the public switched network and includes resellers
12 of any commercial mobile radio service.

13 (2) "County answering point" means a facility to
14 which enhanced emergency telephone system calls for a
county are initially routed for response and where county personnel respond to specific requests for emergency service by directly dispatching the appropriate emergency service provider, relaying a message to the appropriate provider or transferring the call to the appropriate provider.

(3) "Emergency services organization" means the organization established under article five, chapter fifteen of this code.

(4) "Emergency service provider" means any emergency services organization or public safety unit.

(5) "Emergency telephone system" means a telephone system which through normal telephone service facilities automatically connects a person dialing the primary emergency telephone number to an established public agency answering point, but does not include an enhanced emergency telephone system.

(6) "Enhanced emergency telephone system" means a telephone system which automatically connects the person dialing the primary emergency number to the county answering point and in which the telephone network system automatically provides to personnel receiving the call, immediately on answering the call, information on the location and the telephone number from which the call is being made and, upon direction from the personnel receiving the call, routes or dispatches the call by telephone, radio or any other appropriate means of communication to emergency service providers that serve the location from which the call is made.
(7) "Prepaid wireless calling service" means prepaid wireless calling service as defined in section two, article fifteen, chapter eleven of this code.

(8) "Public agency" means the state and any municipality, county, public district or public authority which provides or has authority to provide fire fighting, police, ambulance, medical, rescue or other emergency services.

(9) "Public safety unit" means a functional division of a public agency which provides fire fighting, police, medical, rescue or other emergency services.

(10) "Telephone company" means any public utility and any CMRS provider which is engaged in the provision of telephone service whether primarily by means of wire or wireless facilities.

(11) "Comprehensive plan" means a plan pertaining to the installing, modifying or replacing of telephone switching equipment; a telephone utility's response in a timely manner to requests for emergency telephone service by a public agency; a telephone utility's responsibility to report to the Public Service Commission; charges and tariffs for the services and facilities provided by a telephone utility; and access to an emergency telephone system by emergency service organizations.

(12) "Technical and operational standards" means those standards of telephone equipment and processes necessary for the implementation of the comprehensive plan as defined in subdivision (11) of this subsection.
§24-6-6b. Wireless enhanced 911 fee.

(a) All CMRS providers as defined in section two of this article shall, on a monthly basis or otherwise for good cause and as directed by order of the Public Service Commission, collect from each of their in-state two-way service subscribers a wireless enhanced 911 fee. As used in this section "in-state two-way service subscriber" shall have the same meaning as that set forth in the rules of the Public Service Commission. No later than the first day of June, two thousand six, the Public Service Commission shall, after the receipt of comments and the consideration of evidence presented at a hearing, issue an updated order which directs the CMRS providers regarding all relevant details of wireless enhanced 911 fee collection, including the determination of who is considered an in-state two-way service subscriber and which shall specify how the CMRS providers shall deal with fee collection shortfalls caused by uncollectible accounts. The Public Service Commission shall solicit the views of the wireless telecommunications utilities prior to issuing the order.

(b) The wireless enhanced 911 fee is three dollars per month for each valid retail commercial mobile radio service subscription, as that term is defined by the Public Service Commission in its order issued under subsection (a) of this section: Provided, That beginning on the first day of July, two thousand five, the wireless enhanced 911 fee shall include ten cents to be distributed to the West Virginia State Police to be used for equipment upgrades for improving and integrating their communication efforts with those of the enhanced 911 systems: Provided, however, That for the fiscal year beginning on the first day of July, two thousand five,
and for every fiscal year thereafter, one million dollars
of the wireless enhanced 911 fee shall be distributed by
the Public Service Commission to subsidize the
construction of towers. The moneys shall be deposited
in a fund administered by the West Virginia Public
Service Commission, entitled Enhanced 911 Wireless
tower Access Assistance Fund, and shall be expended
in accordance with an enhanced 911 wireless tower
access matching grant order adopted by the Public
Service Commission. The commission order shall
contain terms and conditions designed to provide
financial assistance loans or grants to state agencies,
political subdivisions of the state and wireless telephone
carriers for the acquisition, equipping and construction
of new wireless towers, which would provide enhanced
911 service coverage and which would not be available
otherwise due to marginal financial viability of the
applicable tower coverage area: Provided further, That
the grants shall be allocated among potential sites based
on application from county commissions demonstrating
the need for enhanced 911 wireless coverage in specific
areas of this state. Any tower constructed with
assistance from the fund created by this subdivision
shall be available for use by emergency services, fire
departments and law-enforcement agencies
communication equipment, so long as that use does not
interfere with the carrier's wireless signal: And
provided further, That the Public Service Commission
shall promulgate rules in accordance with article three,
chapter twenty-nine-a of this code to effectuate the
provisions of this subsection. The Public Service
Commission is specifically authorized to promulgate
emergency rules: And provided further, That for the
fiscal year beginning on the first day of July, two
thousand six, and for every fiscal year thereafter, five
percent of the wireless enhanced 911 fee money received by the Public Service Commission shall be deposited in a special fund established by the Division of Homeland Security and Emergency Management to be used solely for the construction, maintenance and upgrades of the West Virginia Interoperable Radio Project and any other costs associated with establishing and maintaining the infrastructure of the system. Any funds remaining in this fund at the end of the fiscal year shall automatically be reappropriated for the following year.

(c) Beginning in the year one thousand nine hundred ninety-seven, and every two years thereafter, the Public Service Commission shall conduct an audit of the wireless enhanced 911 fee and shall recalculate the fee so that it is the weighted average rounded to the nearest penny, as of the first day of March of the respecification year: Provided, That the wireless enhanced 911 fee may never be increased by more than twenty-five percent of its value at the beginning of the respecification year: Provided, however, That the fee may never be less than the amount set in subsection (b) of this section: Provided further, That beginning on the first day of July, two thousand five, the wireless enhanced 911 fee shall include ten cents to be distributed to the West Virginia State Police to be used for equipment upgrades for improving and integrating their communication efforts with those of the enhanced 911 systems: And provided further, That beginning on the first day of July, two thousand five, one million dollars of the wireless enhanced 911 fee shall be distributed by the Public Service Commission to subsidize the construction of wireless towers as
(d) The CMRS providers shall, after retaining a three-percent billing fee, send the wireless enhanced 911 fee moneys collected, on a monthly basis, to the Public Service Commission. The Public Service Commission shall, on a quarterly and approximately evenly staggered basis, disburse the fee revenue in the following manner:

(1) Each county that does not have a 911 ordinance in effect as of the original effective date of this section in the year one thousand nine hundred ninety-seven or has enacted a 911 ordinance within the five years prior to the original effective date of this section in the year one thousand nine hundred ninety-seven shall receive eight and one-half tenths of one percent of the fee revenues received by the Public Service Commission: Provided, That after the effective date of this section, in the year two thousand five, when two or more counties consolidate into one county to provide government services, the consolidated county shall receive one percent of the fee revenues received by the Public Service Commission for itself and for each county merged into the consolidated county. Each county shall receive eight and one-half tenths of one percent of the remainder of the fee revenues received by the Public Service Commission: Provided, however, That after the effective date of this section, in the year two thousand five, when two or more counties consolidate into one county to provide government services, the consolidated county shall receive one percent of the fee revenues received by the Public Service Commission for itself and for each county merged into the consolidated county. Then, from any moneys remaining, each county shall
receive a pro rata portion of that remainder based on that county's population as determined in the most recent decennial census as a percentage of the state total population. The Public Service Commission shall recalculate the county disbursement percentages on a yearly basis, with the changes effective on the first day of July, and using data as of the preceding first day of March. The public utilities which normally provide local exchange telecommunications service by means of lines, wires, cables, optical fibers or by other means extended to subscriber premises shall supply the data to the Public Service Commission on a county specific basis no later than the first day of June of each year;

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

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

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

(f) Notwithstanding the provisions of section one-a of this article, for the purposes of this section, the term “county” means one of the counties provided in section one, article one, chapter one of this code.

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

(h) Notwithstanding anything to the contrary in this code, beginning the first day of July, two thousand eight, prepaid wireless calling service is no longer subject to the wireless enhanced 911 fee.
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The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this 21st Day of March, 2008.

Governor