

SB 386 S

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WEST VIRGINIA LEGISLATURE
SEVENTY-EIGHTH LEGISLATURE
REGULAR SESSION, 2007

OFFICE OF THE CLERK
WEST VIRGINIA
SECRETARY OF STATE

ENROLLED

COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 386

(SENATORS BOLEY AND LOVE, *original sponsors*)

[Passed March 10, 2007; in effect ninety days from passage.]

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AN ACT to amend and reenact §29B-1-4 of the Code of West Virginia, 1931, as amended, relating to exempting from public disclosure specific engineering plans of existing public utility plants and equipment; and exempting customer proprietary network information from public disclosure of information, consistent with federal law.

Be it enacted by the Legislature of West Virginia:

That §29B-1-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. PUBLIC RECORDS.

§29B-1-4. Exemptions.

1 (a) The following categories of information are
2 specifically exempt from disclosure under the
3 provisions of this article:

4 (1) Trade secrets, as used in this section, which may
5 include, but are not limited to, any formula, plan
6 pattern, process, tool, mechanism, compound,
7 procedure, production data or compilation of
8 information which is not patented which is known only
9 to certain individuals within a commercial concern who
10 are using it to fabricate, produce or compound an
11 article or trade or a service or to locate minerals or
12 other substances, having commercial value, and which
13 gives its users an opportunity to obtain business
14 advantage over competitors;

15 (2) Information of a personal nature such as that kept
16 in a personal, medical or similar file, if the public
17 disclosure thereof would constitute an unreasonable
18 invasion of privacy, unless the public interest by clear
19 and convincing evidence requires disclosure in the
20 particular instance: *Provided*, That nothing in this
21 article shall be construed as precluding an individual
22 from inspecting or copying his or her own personal,
23 medical or similar file;

24 (3) Test questions, scoring keys and other examination
25 data used to administer a licensing examination,
26 examination for employment or academic examination;

27 (4) Records of law-enforcement agencies that deal
28 with the detection and investigation of crime and the
29 internal records and notations of such law-enforcement
30 agencies which are maintained for internal use in
31 matters relating to law enforcement;

32 (5) Information specifically exempted from disclosure
33 by statute;

34 (6) Records, archives, documents or manuscripts
35 describing the location of undeveloped historic,
36 prehistoric, archaeological, paleontological and
37 battlefield sites or constituting gifts to any public body
38 upon which the donor has attached restrictions on usage
39 or the handling of which could irreparably damage such
40 record, archive, document or manuscript;

41 (7) Information contained in or related to
42 examination, operating or condition reports prepared
43 by, or on behalf of, or for the use of any agency
44 responsible for the regulation or supervision of financial
45 institutions, except those reports which are by law
46 required to be published in newspapers;

47 (8) Internal memoranda or letters received or prepared
48 by any public body;

49 (9) Records assembled, prepared or maintained to
50 prevent, mitigate or respond to terrorist acts or the
51 threat of terrorist acts, the public disclosure of which
52 threaten the public safety or the public health;

53 (10) Those portions of records containing specific or
54 unique vulnerability assessments or specific or unique
55 response plans, data, databases and inventories of goods

56 or materials collected or assembled to respond to
57 terrorist acts; and communication codes or deployment
58 plans of law enforcement or emergency response
59 personnel;

60 (11) Specific intelligence information and specific
61 investigative records dealing with terrorist acts or the
62 threat of a terrorist act shared by and between federal
63 and international law-enforcement agencies, state and
64 local law enforcement and other agencies within the
65 Department of Military Affairs and Public Safety;

66 (12) National security records classified under federal
67 executive order and not subject to public disclosure
68 under federal law that are shared by federal agencies
69 and other records related to national security briefings
70 to assist state and local government with domestic
71 preparedness for acts of terrorism;

72 (13) Computing, telecommunications and network
73 security records, passwords, security codes or programs
74 used to respond to or plan against acts of terrorism
75 which may be the subject of a terrorist act;

76 (14) Security or disaster recovery plans, risk
77 assessments, tests or the results of those tests;

78 (15) Architectural or infrastructure designs, maps or
79 other records that show the location or layout of the
80 facilities where computing, telecommunications or
81 network infrastructure used to plan against or respond
82 to terrorism are located or planned to be located;

83 (16) Codes for facility security systems; or codes for
84 secure applications for such facilities referred to in

85 subdivision (15) of this subsection;

86 (17) Specific engineering plans and descriptions of
87 existing public utility plants and equipment; and

88 (18) Customer proprietary network information of
89 other telecommunications carriers, equipment
90 manufacturers and individual customers, consistent
91 with 47 U. S. C. §222.

92 (b) As used in subdivisions (9) through (16), inclusive,
93 subsection (a) of this section, the term "terrorist act"
94 means an act that is likely to result in serious bodily
95 injury or damage to property or the environment and is
96 intended to:

97 (1) Intimidate or coerce the civilian population;

98 (2) Influence the policy of a branch or level of
99 government by intimidation or coercion;

100 (3) Affect the conduct of a branch or level of
101 government by intimidation or coercion; or

102 (4) Retaliate against a branch or level of government
103 for a policy or conduct of the government.

104 (c) Nothing in the provisions of subdivisions (9)
105 through (16), inclusive, subsection (a) of this section
106 should be construed to make subject to the provisions of
107 this chapter any evidence of an immediate threat to
108 public health or safety unrelated to a terrorist act or the
109 threat thereof which comes to the attention of a public
110 entity in the course of conducting a vulnerability
111 assessment response or similar activity.

Enr. Com. Sub. for S. B. No. 386] 6

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.



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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 House of Delegates

The within is approved this
the 4th Day of April 2007.


.....
Governor

PRESENTED TO THE
GOVERNOR

APR 03 2007

Time 1:30p