WEST VIRGINIA LEGISLATURE
SEVENTY-NINTH LEGISLATURE
REGULAR SESSION, 2010

ENROLLED
COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 345
(By Senators Tomblin (Mr. President) and Caruth,
By Request of the Executive)

[Passed March 9, 2010; in effect ninety days from passage.]
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Senate Bill No. 345

(BY SENATORS TOMBLIN (MR. PRESIDENT) AND CARUTH,
BY REQUEST OF THE EXECUTIVE)

[Passed March 9, 2010; in effect ninety days from passage.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new section, designated §11-13B-19,
relating to requiring a study of the telecommunications tax;
authorizing the Tax Commissioner to order the disclosure
of certain information; exempting certain information
received by the Tax Commissioner from the West Virginia
Freedom of Information Act; prohibiting the disclosure of
certain information received by the Tax Commissioner;
providing for criminal and civil penalties; defining terms;
and authorizing the Tax Commissioner to promulgate rules
and emergency rules.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be
amended by adding thereto a new section, designated §11-13B-19,
to read as follows:

ARTICLE 13B. TELECOMMUNICATIONS TAX.

(a) Findings and purpose. – The Legislature finds that the tax imposed by this article fails to account for modern business models, operational structures, technologies and fundamental economics of the business of telecommunications. The Legislature further finds that the tax imposed under this article should be amended to provide for a reasonable, fair and efficient tax that inures to the benefit and general welfare of West Virginia. Therefore, it is the purpose of this section to require a study of telecommunications services relative to the imposition of a telecommunications tax, to provide the Tax Commissioner with plenary authority to order the disclosure of financial information and other data necessary to undertake the study and to provide for the confidentiality of financial information and other data disclosed as part of the study.

(b) Telecommunications tax study. – The Tax Commissioner shall study the business of telecommunications service and related businesses and shall file a report with the Governor and the Legislature on or before July 1, 2011. The report shall recommend amendments to the tax imposed under this article or any other tax pertaining to telecommunications service and shall include recommended legislation. The Tax Commissioner in his report shall examine the feasibility and fiscal implications on affected governmental entities or political subdivisions of a single uniform statewide telecommunications service tax or, alternatively, imposition of the sales and use tax on the retail sale of telecommunications services as a replacement for, or in addition to, other taxes and fees on telecommunications service. The Tax Commissioner may include this study as part of the findings and recommendations of the Governor's Tax Modernization Project and may cooperate with persons engaged in the Governor’s Tax Modernization Project to further the purposes of this study. Any consultant under contract with the Tax Commissioner who
assists in conducting this study is “an agent of this state” for the purposes of section five-d, article ten of this chapter and is subject to the requirements of that section and subsection (e) of this section: Provided, That witnesses, experts, government officials, consultants and industry representatives who provide data, information or statistics to the Tax Commissioner or others engaged in the study mandated by this section shall not be treated as being subject to the confidentiality restrictions of section five-d, article ten of this chapter and shall not be treated as subject to the confidentiality requirements of subsection (e) of this section, solely by reason of having provided information to the study. For purposes of this study, the Tax Commissioner may seek and examine the information, data, records and testimony of: Experts in the fields of law, economics and taxation; representatives of state, county, local and municipal governmental subdivisions of this state and other states of the United States; persons and entities engaged in telecommunications services businesses; persons knowledgeable about the telecommunications industry, taxation of the telecommunications industry and the economics of the telecommunications industry; and any other person or entity that may have information relevant to the study mandated by this section.

(c) Definitions. – As used in this section:

(1) “Person” means any individual, firm, partnership, limited partnership, company, copartnership, joint venture, association, corporation, organization or entity, whether private or public.

(2) “Telecommunications service” when used in this article shall have the same meaning as that term is defined in the Streamlined Sales and Use Tax Administration Act in article fifteen-b of this chapter.

(d) Disclosure of financial information and other data. –
(1) Notwithstanding any provision of this code to the contrary, the Tax Commissioner may, for the purpose of conducting the study required by this section, order the disclosure of financial information and other data in the possession of any person or entity that may have information relevant to the study mandated by this section, including, but not limited to, government entities and persons or entities engaged in a telecommunications service business in this state or a related business. The disclosures shall be on forms prescribed by the Tax Commissioner and shall be completed and filed pursuant to instructions provided by the Tax Commissioner.

(2) Any person failing to comply with an order of disclosure within ninety days of receipt of the initial written order of disclosure, which order may be in the form of a letter or other written order, or in the form of a subpoena or subpoena duces tecum, shall be subject to a penalty, collectible as provided in article ten of this chapter. The amount of the penalties shall be an initial penalty of $25,000 which shall be imposed upon the passage of the first ninety days subsequent to receipt of such written order of disclosure during which the failure to comply occurs and an additional penalty of $1,000 per day for each day after the first ninety days during which the failure to comply continues. The count of days for purposes of this penalty shall not cease by reason of the completion of the study or by reason of the completion and issuance of the study report, but shall continue in perpetuity until such time as the information which was the subject of the order is disclosed in full to the Tax Commissioner or until the Tax Commissioner issues a written order for cessation of the count of Days. The Tax Commissioner may issue a written order for cessation of the count of days, for purposes of this penalty, no earlier than the date on which the study report mandated by this section has been completed and issued by the Tax Commissioner.

In the case of information which has been the subject of a
subpoena or subpoena duces tecum, the $25,000 initial
penalty and the $1,000 per day penalty imposed by this
section shall be in addition to all applicable civil and
criminal penalties lawfully imposed for failure to comply
with a subpoena or subpoena duces tecum. The Tax
Commissioner may waive all or any part of such penalty
for good cause shown.

(3) The Tax Commissioner, or his or her designee, may
issue subpoenas and subpoenas duces tecum, in the
manner prescribed in and subject to the requirements of
section five-b, article ten of this chapter, to enforce the
disclosure requirements of this section. Failure to comply
with any such subpoena or subpoena duces tecum shall be
subject to all applicable civil and criminal penalties
lawfully imposed for failure to comply with a subpoena or
subpoena duces tecum.

Confidentiality.

(1) Financial information and other data disclosed to the
Tax Commissioner under the provisions of this section
shall be considered confidential and exempt from article
one, chapter twenty-nine-b of this code.

(2) Any information disclosed to the Tax Commissioner
pursuant to the requirements of this section shall have all
of the confidentiality protections given to a "return"
under section five-d of article ten of this Chapter and any
disclosure not authorized by that section, or this section,
shall be subject to all of the penalties provided for unlaw-
ful disclosure of a "return". Notwithstanding any provi-
sion of this code to the contrary, the Tax Commissioner
may share financial information and other data disclosed
under this section with any consultant under contract with
the Tax Commissioner to assist in conducting the study.
It is unlawful for the Tax Commissioner or any person
conducting the study, including any consultant under
contract with the Tax Commissioner to assist in conduct-
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143    ing the study, to disclose to any person not conducting the
144    study any financial information or other data disclosed
145    under this section. Such disclosure shall be a violation of
146    the tax information confidentiality provisions of section
147    five-d, article ten of this chapter.
148    (3) Nothing in this section may be construed as prohibit-
149    ing the publication or release of statistics so classified as
150    to prevent the identification of a particular person or
151    entity.

152    (f) Rules authorized. – The Tax Commissioner may
153    promulgate rules, including emergency rules, to implement
154    the provisions of this section. For the purposes of article
155    three, chapter twenty-nine-a of this code, a sufficient
156    emergency exists to justify the promulgation of the
157    emergency rules.
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 last approved this the 7th Day of , 2010.

Governor