

H. B. 2792

(By Delegates Caputo, Marshall, Butcher,
D. Poling, Manypenny and Guthrie)

[Introduced January 24, 2011; referred to the
Committee on Finance.]

**FISCAL
NOTE**

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §11-28-1, §11-28-2 and §11-28-3, all relating to taxation of certain transfers, leases, sales or other disposition of the whole or any part of the franchises, licenses, permits, plants, equipment, business or other property of any public utility, or any merger or consolidation thereof and every contract, purchase of stocks, arrangement, transfer or acquisition of control or other transaction covered by §24-2-12 of the Code of West Virginia.

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 article, designated §11-28-1, §11-28-2 and §11-28-3, all to read as follows:

ARTICLE 28. EXCISE TAX ON TRANSFERS OF PUBLIC UTILITIES.

§11-28-1. Definitions.

As used in this article:

(1) "Commissioner" means the State Tax Commissioner.

1 (2) "Public utility" has the same meaning as in section one,
2 article two, chapter twenty-four of this code.

3 (3) "Reverse Morris Trust" means any transaction pursuant to
4 §361 of the Internal Revenue Code (relating to nonrecognition of
5 gain or loss to corporations; treatment of distributions) where
6 property is transferred to a corporation (hereinafter in this
7 subsection referred to as the "controlled corporation") pursuant to
8 a plan of reorganization described in Section 368(a)(1)(D) of the
9 Internal Revenue Code and pursuant to such plan of reorganization,
10 stock or securities in the controlled corporation are distributed
11 in transaction which qualifies under Section 355(e) of the Internal
12 Revenue Code of the United States.

13 (4) "Transfer" means any and all actions of any public utility
14 covered by section twelve, article two, chapter twenty-four of this
15 code.

16 **§11-28-2. Determination of tax; when and to whom payable.**

17 (a) Any public utility which files with the Public Service
18 Commission of West Virginia an application for approval of a
19 transfer of all or a portion of a public utility shall file with the
20 commissioner notice of such filing and shall provide to the
21 commissioner any and all information requested by the commissioner
22 concerning the federal, state and local tax impact of the transfer.

23 (b) Following the filing required by subsection (a) of this
24 section, the commissioner shall determine if the proposed transfer

1 utilizes a Reverse Morris Trust and the amount of federal, state and
2 local taxes that would have been paid by the public utility if the
3 proposed transaction did not utilize a Reverse Morris Trust. The
4 amounts determined by the commissioner pursuant to this subsection
5 shall be available to the public.

6 (c) Following the determination by the commissioner, the
7 commissioner shall inform the public utility of the amount the
8 commissioner determined pursuant to subsection (b) of this section.

9 (d) At or before the close of the transfer the public utility
10 that owned or controlled the franchises, licenses, permits, plants,
11 equipment, business or other property of any public utility before
12 the close shall pay to the State of West Virginia an excise tax
13 equal to the amount determined by the commissioner pursuant to
14 subsection(b) of this section for the state and local taxes that
15 would have been paid by the public utility if the proposed
16 transaction did not utilize the Reverse Morris Trust.

17 **§11-28-3. Effective date.**

18 This article is effective upon enactment and applies to all
19 transfers that have not as of that date closed.

NOTE: The purpose of this bill is to provide an excise tax on transfers of utilities.

This article is new; therefore, it has been completely underscored.