

AMENDED IN SENATE MAY 17, 2011
AMENDED IN SENATE MARCH 23, 2011

SENATE BILL

No. 530

Introduced by Senator Wright

February 17, 2011

An act to add *and repeal* Part 14.5 (commencing with Section 33001) ~~to~~ of Division 2 of the Revenue and Taxation Code, relating to taxation, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 530, as amended, Wright. Taxation: direct broadcast satellite television service: tax.

Existing law imposes various taxes, including taxes on the privilege of engaging in certain activities. The Fee Collection Procedures Law, the violation of which is a crime, provides procedures for the collection of certain fees and surcharges.

This bill would impose, *until January 1, 2020*, for the privilege of selling direct broadcast satellite television service, a tax on a direct broadcast satellite television service provider at the rate of 6% of its gross revenues, as defined. The tax would be administered by the State Board of Equalization and would be collected pursuant to the procedures set forth in the Fee Collection Procedures Law, as specified. The revenues from this tax would be deposited in the Local Safety and Protection Account established in the Transportation Tax Fund, a continuously appropriated fund, *which is operative until July 1, 2011*. By depositing revenues into a continuously appropriated fund, this bill would make an appropriation. *This bill would reestablish the Local Public Safety Account in the Transportation Tax Fund on July 1, 2011.*

This bill would additionally require the Legislative Analyst’s Office to conduct, and prepare a report on, the impact of the tax on direct broadcast satellite television service providers, as specified.

Because this bill would expand the application of the Fee Collection Procedures Law, the violation of which is a crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would declare that it is to take effect immediately as an urgency statute, but its operative date would depend on its effective date.

Vote: $\frac{2}{3}$. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Part 14.5 (commencing with Section 33001) is
2 added to Division 2 of the Revenue and Taxation Code, to read:

3
4 PART 14.5. SATELLITE VIDEO FUND FOR PUBLIC SAFETY
5 TAX

6
7 CHAPTER 1. GENERAL PROVISIONS AND FINDINGS

8
9 33001. This part is known and may be cited as the Satellite
10 Video Fund for Public Safety Tax.

11 33002. The Legislature finds and declares all of the following:

12 (a) As a matter of statewide concern and for many reasons,
13 including those articulated herein, the Legislature hereby enacts
14 a new state tax on direct broadcast satellite (DBS) television service
15 providers. The purpose of this new tax is to provide funding to
16 support programs for local law enforcement and other public safety
17 services so that those programs can be maintained while funding
18 for similar programs has been reduced due to the combination of
19 the economic recession and the state’s budgetary problems.

20 (b) DBS services use satellite and terrestrial technologies to
21 provide video programming to homes and businesses in California.

1 Companies that provide DBS services benefit from both state and
2 local infrastructure as well as state and local laws and policies that
3 facilitate the receipt of the satellite programming in homes and
4 businesses.

5 (c) DBS service providers maintain offices and other property
6 within some cities and counties in California. DBS providers have
7 employees and contractors throughout California which sell, install,
8 and maintain DBS service. In this way, DBS service providers
9 operate in a manner similar to other businesses throughout cities
10 and counties in California.

11 (d) As competition in the market for video services has evolved,
12 the tax and fee structure has not protected the revenue base, and
13 that lack of protection now threatens to undermine financial support
14 for public safety programs.

15 (e) Although DBS providers benefit from both state and local
16 infrastructure as well as state and local laws and policies that
17 facilitate the receipt of the satellite programming in homes and
18 businesses, DBS does not contribute to city and county general
19 funds which support law enforcement and other public safety
20 services. Moreover, DBS providers do not provide emergency alert
21 services in California communities.

22 (f) Cities and counties throughout California have been forced
23 to reduce law enforcement and public safety budgets because of
24 the nationwide economic downturn and the cuts that have been
25 made to programs and services in California.

26 (g) Some video products, services, providers, subscribers, and
27 customers have taxes and fees that generate revenue to fund local
28 public safety programs such as: (1) purchasers and renters of DVDs
29 who pay sales taxes; (2) cable television, open-video system, and
30 video service providers who pay state or local franchise fees; and
31 (3) cable and other non-DBS video subscribers who pay local
32 utility user taxes, some of which must be spent on public safety
33 programs according to ordinances passed in local communities.

34 (h) However, DBS providers make little, if any, money available
35 to support local public safety programs.

36 (i) The Legislature finds that the disparity in the tax and fee
37 burdens on video products, services, and providers has a harmful
38 impact on public safety to the extent that, when customers migrate
39 to DBS service, various revenue bases diminish, and there are less

1 financial resources available for state and local public safety
2 programs.

3 (j) Congress anticipated that the Legislature would enact a state
4 DBS tax framework consistent with California's particular
5 circumstances when it passed Section 602 of the
6 Telecommunications Act of 1996, which authorized states to tax
7 direct-to-home satellite service. Although Section 602 preempts
8 locally imposed and administered taxes and fees on direct-to-home
9 satellite services, it permits states to allocate revenue from state
10 taxes to local governments.

11 (k) To preserve the tax base for local public safety programs
12 and comply with the provisions of Section 602 of the
13 Telecommunications Act of 1996, the Legislature creates this part
14 to be administered by the State Board of Equalization, with
15 revenues to be transferred to the Local Safety and Protection
16 Account for continuous allocation to the programs designated in
17 subdivision (b) of Section 10752.2.

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CHAPTER 2. DEFINITIONS

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21 33003. For purposes of this part:

22 (a) "Direct broadcast satellite television service" and "DBS
23 service" means television programming transmitted or broadcasted
24 by satellite directly to the subscriber's premises.

25 (b) "DBS service provider" or "DBS provider" means any
26 person that sells DBS service.

27 (c) (1) "Gross revenues" means all revenue of the DBS service
28 provider, as determined in accordance with generally accepted
29 accounting principles, that is derived from the sale of DBS service
30 in this state, including all of the following:

31 (A) All charges billed to subscribers in this state for any and all
32 DBS service, including all revenue related to programming
33 provided to the subscriber, equipment rentals, late fees, and
34 insufficient fund fees.

35 (B) Compensation received by the DBS service provider that
36 is derived from the DBS service provider's operation with respect
37 to commissions that are paid to the DBS service provider as
38 compensation for promotion or exhibition of any products or
39 services on the provider's network, such as a "home shopping" or
40 similar channel, subject to subparagraph (D) of paragraph (2).

1 (C) A pro rata portion of all revenue derived by the DBS service
2 provider or its affiliates pursuant to compensation arrangements
3 for advertising derived from DBS service in this state, subject to
4 subparagraph (A) of paragraph (2). The allocation shall be based
5 on the number of subscribers in this state divided by the total
6 number of subscribers in relation to the relevant regional or national
7 compensation arrangement.

8 (2) “Gross revenue” does not include any of the following:

9 (A) Amounts not actually received by the DBS service provider,
10 even if billed, such as bad debt; refunds, rebates, or discounts to
11 subscribers or other third parties; or revenue imputed from the
12 provision of DBS services for free or at reduced rates to any person
13 as required or allowed by law, including, but not limited to, the
14 provision of these services to public institutions, public schools,
15 governmental agencies, or employees except that foregone revenue
16 chosen not to be received in exchange for trades, barter, services,
17 or other items of value shall be included in gross revenue.

18 (B) Revenues received by any affiliate or any other person in
19 exchange for supplying goods or services used by the DBS service
20 provider to provide DBS services. However, revenue received by
21 an affiliate of the DBS service provider from the affiliate’s
22 provision of DBS service shall be included in gross revenue as
23 follows:

24 (i) To the extent that treating the revenue as revenue of the
25 affiliate, instead of revenue of the DBS provider, would have the
26 effect of evading the payment of taxes that would otherwise be
27 paid to the state under this part.

28 (ii) The revenue is not otherwise subject to the tax to be paid to
29 the state under this part.

30 (C) Revenue derived from services other than DBS service,
31 including, but not limited to, revenue derived from Internet access
32 service, telecommunications services, and information services.

33 (D) Revenue paid by subscribers to “home shopping” or similar
34 networks directly from the sale of merchandise through any home
35 shopping channel offered as part of the DBS services. However,
36 commissions or other compensation paid to the DBS service
37 provider by “home shopping” or similar networks for the promotion
38 or exhibition of products or services shall be included in gross
39 revenue.

1 (E) Revenue from the sale of DBS services for resale in which
2 the reseller is required to collect the tax under this part from the
3 reseller’s subscribers.

4 (F) Amounts billed to, and collected from, subscribers to recover
5 any tax, fee, or surcharge imposed by any governmental entity on
6 the DBS service provider, including, but not limited to, sales and
7 use taxes, gross receipts taxes, excise taxes, utility users taxes,
8 public service taxes, communication taxes, and any other fee not
9 imposed by this section.

10 (G) Revenue from the sale of capital assets or surplus equipment
11 not used by the purchaser to receive DBS services from the seller
12 of those assets or surplus equipment.

13 (H) Revenue from directory or Internet advertising revenue,
14 including, but not limited to, yellow pages, white pages, banner
15 advertisement, and electronic publishing.

16 (I) Revenue received as reimbursement by programmers of
17 specific, identifiable marketing costs incurred by the DBS service
18 provider for the introduction of new programming.

19 (J) Security deposits received from subscribers of a DBS service
20 provider, excluding security deposits applied to the outstanding
21 balance of a subscriber’s account and thereby taken into revenue.

22 (3) For purposes of determining gross revenue under this part,
23 the DBS service provider shall use the same method of determining
24 revenues under generally accepted accounting principles as that
25 which the DBS service provider uses in determining revenues for
26 the purpose of reporting to national and state regulatory agencies.

27 (d) “Subscriber” means any person, firm, partnership,
28 corporation, limited liability company, or other entity paying to
29 receive video service in this state.

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31 CHAPTER 3. IMPOSITION OF TAX

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33 33004. (a) For the privilege of selling DBS service to a
34 subscriber in this state, a tax is hereby imposed on DBS service
35 providers at the rate of 6 percent of its gross revenues.

36 (b) For purposes of this part, in the case of a DBS service that
37 may be bundled or integrated functionally with other services,
38 capabilities, or applications, the tax herein shall be applied to the
39 gross revenue received by the DBS provider. Where the DBS
40 service provider or any affiliate bundles, integrates, ties, or

1 combines DBS services with other products or services creating
2 a bundled package, so that subscribers pay a single fee for more
3 than one class of service or receive a discount on DBS services,
4 gross revenues shall be determined based on an equal allocation
5 of the package discount, that is, the total price of the individual
6 classes of service at advertised rates compared to the package
7 price, among all classes of service comprising the package. The
8 DBS service provider's offering of a bundled package shall not
9 be deemed a promotional activity. If the DBS service provider
10 does not offer any component of the bundled package separately,
11 the DBS service provider shall declare a stated retail value for each
12 component based on reasonable comparable prices for the product
13 or service for the purpose of determining the tax based on the
14 package discount.

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16 CHAPTER 4. COLLECTION AND ADMINISTRATION

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18 33006. The taxes imposed by this part are due and payable to
19 the state quarterly on or before the last day of the month next
20 succeeding each calendar quarter.

21 33007. All amounts required to be paid to the state pursuant
22 to this part shall be paid in the form of remittances payable to the
23 board.

24 33008. On or before the last day of the month following each
25 calendar quarter, a return for the preceding quarterly period shall
26 be filed with the board in a form prescribed by the board.

27 33009. The board shall collect the tax pursuant to the Fee
28 Collection Procedures Law (Part 30 (commencing with Section
29 55001)) to the extent these provisions are not inconsistent with
30 this part. For purposes of administration of the tax pursuant to this
31 part, references in the Fee Collection Procedures Law to "feepayer"
32 and "fee" shall include "taxpayer" and "tax."

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34 CHAPTER 5. DISPOSITION OF PROCEEDS

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36 33010. (a) All revenues, less refunds, derived under this part
37 shall be deposited ~~into~~ *in the General Fund and transferred to* the
38 Local Safety and Protection Account established in the
39 Transportation Tax Fund by Section 10752.2.

1 (b) (1) *The Local Public Safety and Protection Account is*
2 *hereby reestablished in the Transportation Tax Fund on July 1,*
3 *2011. Notwithstanding Section 13340 of the Government Code,*
4 *all moneys in the account are hereby continuously appropriated,*
5 *without regard to fiscal year, to the Controller for allocation*
6 *pursuant to Sections 29553, 30061, and 30070 of the Government*
7 *Code, Section 13821 of the Penal Code, and Sections 18220 and*
8 *18220.1 of the Welfare and Institutions Code.*

9 (2) *Paragraph (1) continues the existence of the Local Public*
10 *Safety and Protection Account established in the Transportation*
11 *Tax Fund by Section 10752.5, which is inoperative on July 1, 2011.*

12 (c) (1) *In 2012 and each calendar year thereafter, the Director*
13 *of Finance shall, no later than January 10 and upon the enactment*
14 *of the Budget Act during the calendar year, make a written*
15 *determination of whether any of the moneys derived from taxes*
16 *collected pursuant to Section 33004 are being allocated by the*
17 *state for any purpose not authorized by subdivision (b), and shall*
18 *immediately submit his or her written determination to all of the*
19 *following:*

20 (A) *The board.*

21 (B) *The Joint Legislative Budget Committee.*

22 (C) *The Senate Committee on Appropriations and the Assembly*
23 *Committee on Appropriations.*

24 (D) *The Assembly Committee on Revenue and Taxation and the*
25 *Senate Committee on Governance and Finance.*

26 (2) *If the Director of Finance determines that any moneys*
27 *derived from taxes collected pursuant to Section 33004 are being*
28 *allocated by the state for a purpose not authorized by subdivision*
29 *(b), the board shall, upon receipt of the written determination,*
30 *immediately cease collection of the taxes imposed by Section*
31 *33004, and shall resume collection of those taxes only upon his*
32 *or her receipt of a written determination provided under paragraph*
33 *(1) that the moneys derived from taxes collected pursuant to Section*
34 *33004 are being allocated by the state only for a purpose*
35 *authorized by.*

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CHAPTER 6. MISCELLANEOUS

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39 33012. The provisions of this part are not severable and, should
40 a court hold in a final nonappealable order that any provision herein

1 is unconstitutional or is otherwise invalid, the whole part shall be
2 null and void.

3 *33013. This part shall remain in effect only until January 1,*
4 *2020, and as of that date is repealed.*

5 *SEC. 2. (a) The Legislative Analyst's Office, in collaboration*
6 *with the board, shall conduct a study, on or before December 31,*
7 *2018, to assess and evaluate the impact of the tax imposed by Part*
8 *14.5 (commencing with Section 33001) of Division 2 of the Revenue*
9 *and Taxation Code). The Legislative Analyst's Office shall report*
10 *the results of the study to the Assembly Committee on Revenue and*
11 *Taxation and the Senate Committee on Governance and Finance.*

12 *(b) The Legislative Analyst's Office shall establish an advisory*
13 *committee regarding the study comprised as follows:*

14 *(1) At least three industry representatives, including one*
15 *representative from the cable industry and one representative from*
16 *the satellite industry.*

17 *(2) At least one representative from academia who is an expert*
18 *in this field.*

19 *(3) At least two representatives from the relevant policy*
20 *committees of the Legislature.*

21 *(4) One representative from the Federal Communications*
22 *Commission, if possible.*

23 *(5) One representative from the California Public Utilities*
24 *Commission.*

25 *(6) Any other representatives deemed appropriate by the*
26 *Legislative Analyst's Office.*

27 *(c) (1) The Legislative Analyst's Office shall consult with the*
28 *chairs and vice chairs of the appropriate legislative committees*
29 *regarding key questions for the study.*

30 *(2) The Legislative Analyst's Office shall design a study that is*
31 *responsive and uses the best available practices for evaluation.*
32 *The study shall address, but not be limited to, the following*
33 *concerns:*

34 *(A) The impact of the tax in a competitive marketplace for the*
35 *transmissions of news, information, and entertainment content by*
36 *satellite, broadband, cable, over the air, or any successor*
37 *technology affected by the tax.*

38 *(B) The impact of the tax on equity and access to the consumer*
39 *to digital media or successor technologies.*

1 (C) An assessment of the impact of the tax and how changes to
2 the tax structure would impact programs impacted by the tax.

3 (D) The implication of the tax on successor technologies
4 including hardware, software, modes of transmission, or related
5 technologies.

6 (d) Notwithstanding any other provision, any costs related to
7 the study shall be allocated to the Legislative Analyst’s Office and
8 the board from revenues deposited into the Local Safety and
9 Protection Account pursuant to Section 33010 of the Revenue and
10 Taxation Code.

11 ~~SEC. 2.~~

12 SEC. 3. No reimbursement is required by this act pursuant to
13 Section 6 of Article XIII B of the California Constitution because
14 the only costs that may be incurred by a local agency or school
15 district will be incurred because this act creates a new crime or
16 infraction, eliminates a crime or infraction, or changes the penalty
17 for a crime or infraction, within the meaning of Section 17556 of
18 the Government Code, or changes the definition of a crime within
19 the meaning of Section 6 of Article XIII B of the California
20 Constitution.

21 ~~SEC. 3.~~

22 SEC. 4. The provisions of Section 1 of this act shall become
23 operative on the first day of the first calendar quarter commencing
24 more than 90 days after the effective date of this act.

25 ~~SEC. 4.~~

26 SEC. 5. This act is an urgency statute necessary for the
27 immediate preservation of the public peace, health, or safety within
28 the meaning of Article IV of the Constitution and shall go into
29 immediate effect. The facts constituting the necessity are:

30 In order to provide funding to support and maintain public safety
31 services that have been reduced due to the economic recession and
32 state’s budgetary problems, it is necessary that this act go into
33 immediate effect. However, the provisions of this act shall become
34 operative on the first day of the first calendar quarter commencing
35 more than 90 days after the effective date of this act.