

1 *Be it enacted by the Legislature of West Virginia:*

2 That the Code of West Virginia, 1931, as amended, be amended
3 by adding thereto a new article, designated §5B-2H-1, §5B-2H-2,
4 §5B-2H-3, §5B-2H-4, §5B-2H-5 and §5B-2H-6, all to read as follows:

5 **ARTICLE 2H. THE GOOD JOBS INTERNET REPORTING ACT.**

6 **§5B-2H-1. Short title.**

7 This article may be cited as the Good Jobs Internet Reporting
8 Act.

9 **§5B-2H-2. Definitions.**

10 (1) "Base years" means the first two complete calendar years
11 following the effective date of a recipient receiving development
12 assistance.

13 (2) "Date of assistance" means the commencement date of the
14 assistance agreement, which date triggers the period during which
15 the recipient is obligated to create or retain jobs and continue
16 operations at the specific project site.

17 (3) "Default" means that a recipient has not achieved its job
18 creation, job retention, or wage or benefit goals, as applicable,
19 during the prescribed period therefore.

20 (4) "Department" means, unless otherwise noted, the Department
21 of Commerce or any successor agency.

22 (5) "Development assistance" means: (i) Tax credits and tax
23 exemptions including tax increment financing given as an incentive
24 to a recipient business organization pursuant to an initial

1 certification or an initial designation made by the Department of
2 Revenue for the Manufacturing Investment Tax Credit and the
3 Economic Opportunity Tax Credit; (ii) grants or loans given to a
4 recipient as an incentive to a business organization; (iii) the
5 West Virginia Economic Development Authority; and (iv) all
6 successor and subsequent programs and tax credits designed to
7 promote large business relocations and expansions. "Development
8 assistance" does not include participation loans, or financial
9 transactions through statutorily authorized financial
10 intermediaries in support of small business loans and investments
11 or given in connection with the development of affordable housing.

12 (6) "Development assistance agreement" means any agreement
13 executed by the state granting body and the recipient setting forth
14 the terms and conditions of development assistance to be provided
15 to the recipient consistent with the final application for
16 development assistance, including, but not limited to, the date of
17 assistance, submitted to and approved by the state granting body.

18 (7) "Full-time, permanent job" means the same as that term is
19 defined in legislation authorizing the programs described in the
20 definition of "development assistance" in subdivision (5) of this
21 section. However, if there is no such definition, then the term
22 means the same as it is defined in administrative rules
23 implementing that legislation: *Provided*, That the administrative
24 rules were in place prior to the effective date of this article. On
25 and after the effective date of this article, if there is no

1 definition of "full-time, permanent job" in either the legislation
2 authorizing a program that constitutes economic development
3 assistance under this article or in any administrative rule
4 implementing the legislation that was in place prior to the
5 effective date of this article, then "full-time, permanent job"
6 means a job in which the new employee works for the recipient at a
7 rate of at least thirty-five hours per week.

8 (8) "New employee" means the same as that term is defined in
9 legislation authorizing the programs described in the definition of
10 "development assistance" in subdivision (5) of this section.
11 However, if there is no such definition, then the term means the
12 same as it is defined in the administrative rules implementing the
13 legislation: *Provided*, That the administrative rules were in place
14 prior to the effective date of this article. On and after the
15 effective date of this article, if there is no definition of "new
16 employee" in either the legislation authorizing a program that
17 constitutes economic development assistance under this article nor
18 in any administrative rule implementing the legislation that was in
19 place prior to the effective date of this article, then "new
20 employee" means a full-time, permanent employee who represents a
21 net increase in the number of the recipient's employees statewide.
22 "New employee" includes an employee who previously filled a new
23 employee position with the recipient who was rehired or called back
24 from a layoff that occurs during or following the base years.

25 The term "New Employee" does not include any of the following:

1 (A) An employee of the recipient who performs a job that was
2 previously performed by another employee in this state, if that job
3 existed in this state for at least six months before hiring the
4 employee.

5 (B) A child, grandchild, parent, or spouse, other than a
6 spouse who is legally separated from the individual, of any
7 individual who has a direct or indirect ownership interest of at
8 least five percent in the profits, capital, or value of any member
9 of the recipient.

10 (9) "Part-time job" means the same as that term is defined in
11 legislation authorizing the programs described in the definition of
12 "development assistance" in subdivision (5) of this section.
13 However, if there is no such definition, then the term means the
14 same as it is defined in the administrative rules implementing the
15 Legislation: *Provided*, That the administrative rules were in place
16 prior to the effective date of this article. On and after the
17 effective date of this article, if there is no definition of "part-
18 time job" in either the legislation authorizing a program that
19 constitutes economic development assistance under this article or
20 in any administrative rule implementing such legislation that was
21 in place prior to the effective date of this article, then "part-
22 time job" means a job in which the new employee works for the
23 recipient at a rate of less than thirty five hours per week.

24 (10) "Recipient" means any business that receives economic
25 development assistance. A business is any corporation, limited

1 liability company, partnership, joint venture, association, sole
2 proprietorship, or other legally recognized entity.

3 (11) "Retained employee" means the same as that term is
4 defined in legislation authorizing the programs described in the
5 definition of "development assistance" in subdivision (5) of this
6 section. However, if there is no such definition, then the term
7 means the same as it is defined in administrative rules
8 implementing that legislation: *Provided*, That the administrative
9 rules were in place prior to the effective date of this article. On
10 and after the effective date of this article, if there is no
11 definition of "retained employee" in either the legislation
12 authorizing a program that constitutes economic development
13 assistance under this article or in any administrative rule
14 implementing such legislation that was in place prior to the
15 effective date of this article, then "retained employee" means any
16 employee defined as having a full-time or full-time equivalent job
17 preserved at a specific facility or site, the continuance of which
18 is threatened by a specific and demonstrable threat, which shall be
19 specified in the application for development assistance.

20 (12) "Specific project site" means that distinct operational
21 unit to which any development assistance is applied.

22 (13) "State granting body" means the Department of Commerce,
23 any state department or state agency that provides development
24 assistance that has reporting requirements under this article, and
25 any successor agencies to any of the preceding.

1 (14) "Temporary job" means the same as that term is defined
2 in legislation authorizing the programs described in the definition
3 of "development assistance" in subdivision (5) of this section.
4 However, if there is no such definition, then the term means the
5 same as it is defined in administrative rules implementing that
6 legislation: *Provided*, That the administrative rules were in place
7 prior to the effective date of this article. On and after the
8 effective date of this article, if there is no definition of
9 "temporary job" in either the legislation authorizing a program
10 that constitutes economic development assistance under this article
11 or in any administrative rule implementing such legislation that
12 was in place prior to the effective date of this article, then
13 "temporary job" means a job in which the new employee is hired for
14 a specific duration of time or season.

15 (15) "Value of assistance" means the face value of any form of
16 development assistance.

17 **§5B-2H-3. Unified Economic Development Budget.**

18 (a) For each state fiscal year ending on or after June 30,
19 2012, the Department of Revenue shall submit an annual Unified
20 Economic Development Budget to the Legislature. The Unified
21 Economic Development Budget shall be due within three months after
22 the end of the fiscal year, and shall present all types of
23 development assistance granted during the prior fiscal year,
24 including:

25 (1) The aggregate amount of uncollected or diverted state tax

1 revenues resulting from each type of development assistance
2 provided in the tax statutes, as reported to the Department of
3 Revenue on tax returns filed during the fiscal year; and

4 (2) All state development assistance.

5 (b) All data contained in the Unified Economic Development
6 Budget presented to the Legislature shall be fully subject to the
7 Freedom of Information Act.

8 (c) The Department of Revenue shall submit a report of the
9 amounts in subdivision (1), subsection (a) of this section to the
10 department, which may append such report to the Unified Economic
11 Development Budget rather than separately reporting such amounts.

12 **§5B-2H-4. Standardized applications for state development**
13 **assistance.**

14 (a) All final applications submitted to the department or any
15 other state granting body requesting development assistance shall
16 contain, at a minimum:

17 (1) An application tracking number that is specific to both
18 the state granting agency and to each application;

19 (2) The office mailing addresses, office telephone number, and
20 chief officer of the granting body;

21 (3) The office mailing address, telephone number, six-digit
22 NAIC number or successor number, and the name of the chief officer
23 of the applicant or authorized designee for the specific project
24 site for which development assistance is requested;

25 (4) The applicant's total number of employees at the specific

1 project site on the date that the application is submitted to the
2 state granting body, including the number of full-time, permanent
3 jobs, the number of part-time jobs, and the number of temporary
4 jobs;

5 (5) The type of development assistance and value of assistance
6 being requested;

7 (6) The number of jobs to be created and retained or both
8 created and retained by the applicant as a result of the
9 development assistance, including the number of full-time,
10 permanent jobs, the number of part-time jobs, and the number of
11 temporary jobs;

12 (7) A detailed list of the occupation or job classifications
13 and number of new employees or retained employees to be hired in
14 full-time, permanent jobs, a schedule of anticipated starting dates
15 of the new hires and the anticipated average wage by occupation or
16 job classification and total payroll to be created as a result of
17 the development assistance;

18 (8) A list of all other forms of development assistance that
19 the applicant is requesting for the specific project site and the
20 name of each state granting body from which that development
21 assistance is being requested;

22 (9) A narrative, if necessary, describing why the development
23 assistance is needed and how the applicant's use of the development
24 assistance may reduce employment at any site in West Virginia; and

25 (10) A certification by the chief officer of the applicant, or

1 his or her authorized designee, that the information contained in
2 the application submitted to the granting body contains no knowing
3 misrepresentation of material facts upon which eligibility for
4 development assistance is based.

5 (b) Every state granting body either shall complete, or shall
6 require the applicant to complete, an application form that meets
7 the minimum requirements as prescribed in this section each time an
8 applicant applies for development assistance covered by this
9 article.

10 (c) The department shall have the discretion to modify any
11 standardized application for state development assistance required
12 under subsection (a) of this section for any grants under the
13 Business and Industrial Training Program that are not given as an
14 incentive to a recipient business organization.

15 **§5B-2H-5. State development assistance disclosure.**

16 (a) Beginning May 1, 2012 and each year thereafter, every
17 state granting body shall submit to the department copies of all
18 development assistance agreements that it approved in the prior
19 calendar year.

20 (b) For each development assistance agreement for which the
21 date of assistance has occurred in the prior calendar year, each
22 recipient shall submit to the department a progress report that
23 shall include, but not be limited to, the following:

24 (1) The application tracking number;

25 (2) The office mailing address, telephone number, and the name

1 of the chief officer of the granting body;

2 (3) The office mailing address, telephone number, 6-digit NAIC
3 number or successor number, and the name of the chief officer of
4 the applicant or authorized designee for the specific project site
5 for which the development assistance was approved by the state
6 granting body;

7 (4) The type of development assistance program and value of
8 assistance that was approved by the state granting body;

9 (5) The applicant's total number of employees at the specific
10 project site on the date that the application was submitted to the
11 state granting body and the applicant's total number of employees
12 at the specific project site on the date of the report, including
13 the number of full-time, permanent jobs, the number of part-time
14 jobs, and the number of temporary jobs, and a computation of the
15 gain or loss of jobs in each category;

16 (6) The number of new employees and retained employees the
17 applicant stated in its development assistance agreement, if any,
18 if not, then in its application, would be created by the
19 development assistance broken down by full-time, permanent, part-
20 time, and temporary;

21 (7) A declaration of whether the recipient is in compliance
22 with the development assistance agreement;

23 (8) A detailed list of the occupation or job classifications
24 and number of new employees or retained employees to be hired in
25 full-time, permanent jobs, a schedule of anticipated starting dates

1 of the new hires and the actual average wage by occupation or job
2 classification and total payroll to be created as a result of the
3 development assistance;

4 (9) A narrative, if necessary, describing how the recipient's
5 use of the development assistance during the reporting year has
6 reduced employment at any site in West Virginia; and

7 (10) A certification by the chief officer of the applicant, or
8 his or her authorized designee, that the information in the
9 progress report contains no knowing misrepresentation of material
10 facts upon which eligibility for development assistance is based.

11 (c) The state granting body, or a successor agency, shall have
12 full authority to verify information contained in the recipient's
13 progress report, including the authority to inspect the specific
14 project site and inspect the records of the recipient that are
15 subject to the development assistance agreement.

16 (d) By June 1, 2012 and by June 1 of each year thereafter, the
17 department shall compile and publish all data in all of the
18 progress reports in both written and electronic form.

19 (e) If a recipient of development assistance fails to comply
20 with subsection (b) of this section, the department shall, within
21 twenty working days after the reporting submittal deadlines set
22 forth in: (i) The legislation authorizing; (ii) the administrative
23 rules implementing; or (ii) specific provisions in development
24 assistance agreements pertaining to the development assistance
25 programs, suspend within thirty-three working days any current

1 development assistance to the recipient under its control, and
2 shall be prohibited from completing any current or providing any
3 future development assistance until it receives proof that the
4 recipient has come into compliance with the requirements of
5 subsection (b) of this section.

6 **§5B-2H-6. Recapture.**

7 (a) All development assistance agreements shall contain, at a
8 minimum, the following recapture provisions:

9 (1) The recipient must: (i) Make the level of capital
10 investment in the economic development project specified in the
11 development assistance agreement; and (ii) create or retain, or
12 both, the requisite number of jobs, paying not less than specified
13 wages for the created and retained jobs, within and for the
14 duration of the time period specified in the legislation
15 authorizing, or the administrative rules implementing, the
16 development assistance programs and the development assistance
17 agreement;

18 (2) If the recipient fails to create or retain the requisite
19 number of jobs within and for the time period specified, in the
20 legislation authorizing, or the administrative rules implementing,
21 the development assistance programs and the development assistance
22 agreement, the recipient shall be deemed to no longer qualify for
23 the state economic assistance and the applicable recapture
24 provisions shall take effect;

25 (3) If the recipient receives state economic assistance in the

1 form of a Manufacturing Investment Tax Credit or the Economic
2 Opportunity Tax Credit and the business receives the benefit of the
3 exemption and the recipient fails to create or retain the requisite
4 number of jobs, as determined by the legislation authorizing the
5 development assistance programs or the administrative rules
6 implementing such legislation, or both, within the requisite period
7 of time, the recipient shall be required to pay to the state a pro
8 rata amount of the state tax exemption that it received; and

9 (4) If the recipient receives a grant or loan and the
10 recipient fails to create or retain the requisite number of jobs
11 for the requisite time period, as provided in the legislation
12 authorizing the development assistance programs or the
13 administrative rules implementing such legislation, or both, or in
14 the development assistance agreement, the recipient shall be
15 required to repay to the state a pro rata amount of the grant; that
16 amount shall reflect the percentage of the deficiency between the
17 requisite number of jobs to be created or retained by the recipient
18 and the actual number of such jobs in existence as of the date the
19 department determines the recipient is in breach of the job
20 creation or retention covenants contained in the development
21 assistance agreement. If the recipient of development assistance
22 ceases operations at the specific project site, during the five
23 year period commencing on the date of assistance, the recipient
24 shall be required to repay the entire amount of the grant or to
25 accelerate repayment of the loan back to the state.

1 (b) The director may elect to waive enforcement of any
2 contractual provision arising out of the development assistance
3 agreement required by this article based on a finding that the
4 waiver is necessary to avert an imminent and demonstrable hardship
5 to the recipient that may result in such recipient's insolvency or
6 discharge of workers. If a waiver is granted, the recipient must
7 agree to a contractual modification, including recapture
8 provisions, to the development assistance agreement. The existence
9 of any waiver granted pursuant to this subsection, the date of the
10 granting of such waiver, and a brief summary of the reasons
11 supporting the granting of such waiver shall be disclosed
12 consistent with the provisions of this article.

13 (c) Beginning June 1, 2012, the department shall annually
14 compile a report on the outcomes and effectiveness of recapture
15 provisions by program, including but not limited to: (i) The total
16 number of companies that receive development assistance as defined
17 in this article; (ii) the total number of recipients in violation
18 of development agreements with the department; (iii) the total
19 number of completed recapture efforts; (iv) the total number of
20 recapture efforts initiated; and (v) the number of waivers granted.
21 This report shall be disclosed consistent with the provisions of
22 this article.

NOTE: The purpose of this bill is to create the Good Jobs Internet Reporting Act. The bill authorizes state departments and

agencies to provide developmental assistance to qualified recipients. The bill defines developmental assistance to include, tax credits, tax exemptions, grants and loans and sets forth the requirements for applications for developmental assistance. The bill sets forth the requirements of developmental assistance agreements and the requirements for annual progress reports by recipients of developmental assistance. The bill also requires all state departments and agencies to annually submit copies of all developmental assistance agreements to the Department of Revenue. The bill requires the Department of Revenue to submit an annual unified economic development budget to the Legislature and sets forth what that budget must contain. The bill also defines additional terms.

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