

H. B. 4352

(By Delegates Guthrie, Walker,  
L. Phillips, Poore, Sponaugle, Craig, Fragale,  
Skaff and Caputo)

[Introduced January 28, 2014; referred to the  
Committee on Small Business, Entrepreneurship & Economic  
Development.]

**FISCAL  
NOTE**

A BILL to amend the Code of West Virginia, 1931, as amended, by  
adding thereto a new article, designated §5B-2I-1, §5B-2I-2,  
§5B-2I-3, §5B-2I-4, §5B-2I-5 and §5B-2I-6, all relating to  
requiring entities that receive public moneys for the purpose  
of economic development to file an annual report to the West  
Virginia Economic Development Office providing data to insure  
that public moneys are being utilized to provide jobs and  
other economic benefit; filing fee required; report data  
considered public records; and recapture of moneys upon  
noncompliance.

*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 §5B-2I-1, §5B-2I-2,  
§5B-2I-3, §5B-2I-4, §5B-2I-5 and §5B-2I-6, all to read as follows:

**ARTICLE 2I. Accountability of Businesses Receiving Economic  
Development Incentives.**

1 **§5B-2I-1. Economic incentives - businesses to report.**

2 (a) Notwithstanding any provision of law to the contrary, any  
3 business, as defined in subsection (b) of this section that  
4 receives an expenditure of public moneys from the state, including  
5 tax credits, in the amount of \$25,000 or more for the purpose of  
6 stimulating economic development in the state shall file an annual  
7 progress report with the West Virginia Development Office within  
8 ninety days of receiving the incentive. The annual progress report  
9 shall be submitted in addition to any information that the business  
10 is required to submit pursuant to the terms of the economic  
11 incentive received.

12 (b) For purposes of this article, "business" means any  
13 corporation, limited liability company, partnership, sole  
14 proprietorship, trust or foundation, or other individual or  
15 organization carrying on a business, whether or not operated for  
16 profit.

17 **§5B-2I-2. Contents of report.**

18 The annual progress report required pursuant to section one of  
19 this article shall include, but may not be limited to, the  
20 following:

21 (1) (A) If the recipient is a corporation, the corporate name  
22 of the recipient and the name of the chief officer; or

23 (B) If the recipient is one or more individuals doing business  
24 as a partnership or other pass-through entity under a distinct

1 business name, the business name used by the partnership or other  
2 pass-through entity;

3 (2) The business address and business phone number of the  
4 recipient;

5 (3) If the recipient received the economic incentive for the  
6 purpose of creating jobs:

7 (A) A statement of the number of jobs created by the  
8 recipient;

9 (B) Payroll or other data to verify the number of jobs created  
10 by the recipient since receipt of the economic incentive;

11 (C) The position title, monthly wage, and benefits for each  
12 job created;

13 (D) The employer-sponsored health benefits for each detailed  
14 occupational level; and

15 (E) A statement as to whether the recipient reduced employment  
16 at any other site in the state that is controlled by the recipient  
17 as a result of automation, merger, acquisition, corporate  
18 restructuring, or other business activity;

19 (4) If the recipient received the economic incentive for a  
20 purpose other than job creation, a statement that specifies the  
21 goals of the economic incentive and a detailed statement that  
22 specifies how the recipient is achieving those goals;

23 (5) Any other information reasonably required by the West  
24 Virginia Development Office to evaluate the progress and

1 effectiveness of the particular economic incentive received; and

2 (6) A certification as to the accuracy of the progress report  
3 signed by the chief officer of the recipient that is a corporation  
4 or signed by an individual, or an authorized agent thereof,  
5 benefitting from the economic incentive due to an ownership  
6 interest in a partnership or other pass-through entity.

7 **§5B-2I-3. Filing fee.**

8 The recipient shall submit with the report required pursuant  
9 to section one of this article a filing fee in an amount equal to  
10 one percent of the economic incentive received to the West Virginia  
11 Economic Development Office. Such moneys shall be used to cover the  
12 costs of carrying out the purposes of this article.

13 **§5B-2I-4. West Virginia Economic Development Office to present**  
14 **reports to the Legislature.**

15 The Economic Development Office shall condense and summarize  
16 the annual progress reports submitted to the development office  
17 pursuant to section one of this article and shall present an  
18 aggregate report of the data contained in the progress reports to  
19 the Legislature no later than the first day of the regular session  
20 each year.

21 **§5B-2I-5. Reports are public records.**

22 (a) Notwithstanding any provision of law to the contrary,  
23 information submitted in the annual progress reports to the West

1 Virginia Economic Development Office pursuant to section one of  
2 this article are considered public records under article one,  
3 chapter twenty-nine-b of this code and shall be preserved for at  
4 least five years by the commission. The development office shall  
5 be the custodian of the reports and shall make the reports  
6 available for inspection by any person at reasonable times. Nothing  
7 in this section may be construed to permit the disclosure to the  
8 public of any West Virginia income tax return or of any information  
9 that reveals the amount of compensation paid to any individual  
10 employee of the recipient.

11 (b) The West Virginia Economic Development Office shall  
12 publish the aggregate report specified in section four of this  
13 article on its official website.

14 **§5B-2I-6. Recapture of moneys.**

15 (a) If the reporting requirements specified in section two of  
16 this article are not fulfilled or if the West Virginia Economic  
17 Development Office, upon review of the report, determines that the  
18 person or entity that received the economic incentive has not  
19 complied with the requirements of the economic incentive, the  
20 development office may recapture the moneys expended on the  
21 economic incentive.

22 (2) The West Virginia Economic Development Office shall  
23 provide notice and explanation to the recipient of the economic  
24 incentive of the development office's intent to recapture the grant

1 or loan and state the amount to be recaptured. The recipient shall  
2 remit the amount to the development office within thirty calendar  
3 days of the date of the notice.

NOTE: The purpose of this bill is to require any entity that receives public moneys for the purpose of economic development to file an annual report to the West Virginia Economic Development Office providing data to insure that public moneys are being utilized to provide jobs and other economic benefit. The bill also provides for a filing fee and recapture of moneys for noncompliance with reporting requirements or failure to comply with the requirements of the economic incentives. The bill also specifies the contents of the report and requires the development authority to present a report of the aggregate data to the Legislature each year.

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