

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

Senate Bill 521

FISCAL
NOTE

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ROBERTS

[Introduced January 16, 2020; referred
to the Committee on Economic Development; and
then to the Committee on Government Organization]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §5-9A-1, §5-9A-2, §5-9A-3, and §5-9A-4, all relating to job creation and
3 economic incentives; making findings and stating its purpose; creating the Tax and
4 Economic Incentives Review Committee; establishing who may serve on the committee;
5 establishing the committee's powers; providing for the review of all tax and economic
6 incentives every five years; providing guidelines for the review of incentives; requiring
7 reports; and defining terms.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 9A. REVIEW, EVALUATION, AND ANALYSIS OF TAX AND ECONOMIC
INCENTIVES.**

§5-9A-1. Legislative intent and purpose.

1 The Legislature finds and declares that:

2 (1) The State of West Virginia and its political subdivisions rely on a number of tax and
3 economic development incentives, including credits, exemptions, and deductions, as well as
4 economic development programs that utilize the proceeds of state and local revenues to
5 encourage businesses to locate, hire employees, expand, invest, and/or remain in the state;

6 (2) These various tax incentives and economic development programs are intended as a
7 tool for economic development, promoting new jobs and business growth in West Virginia;

8 (3) Given the changing nature of the economy and tax structures of other states, the
9 Legislature finds that the state needs a systematic approach for evaluating whether incentives
10 and economic development programs are fulfilling their intended purposes in a cost-effective
11 manner and for those analyses to become a part of the budget and policymaking process; and

12 (4) A committee is necessary to make recommendations to optimize tax policy with the
13 intent to increase GDP growth across any and all existing or potential revenue sectors of the West
14 Virginia economy.

§5-9A-2. Definition.

1 As used in this article, “incentive” means a benefit provided by the state, a political
2 subdivision of the state, or through a state or local tax or economic development entity that is
3 intended to alter, reward, or subsidize a particular economic action or economic behavior by the
4 incentive recipient. The term includes the following: (1) A tax exemption, tax deduction, tax credit,
5 tax rate, tax rebate, or a tax benefit that: (A) Reduces the amount of a tax that would otherwise
6 be due to the state or one of its subdivisions; (B) results in a tax refund in excess of any tax due;
7 or (C) reduces the amount of property taxes that would otherwise be due to a political subdivision
8 of the state; (2) a grant or loan that is intended to encourage businesses to locate, expand, invest,
9 or remain in West Virginia, or to hire or retain employees in West Virginia; or (3) the dedication of
10 revenue by a political subdivision to provide improvements or to retire bonds issued to pay for
11 improvements in an economic or development area, a community revitalization area, an
12 enterprise zone, a tax increment financing district, or any other similar area or district.

§5-9A-3. Tax and Economic Incentives Review Committee.

1 (a) There is hereby established the Tax and Economic Incentives Review Committee,
2 consisting of:
3 (1) A certified public accountant, appointed by the Governor;
4 (2) Two individuals with experience in economic development, appointed by the Governor;
5 (3) An Auditor who is employed by a private auditing firm, appointed by the Governor;
6 (4) The deans of the College of Business and Economics (or similar entity) at West Virginia
7 University and Marshall University, or designee with experience as an economist;
8 (5) The president of the West Virginia Economic Development Authority;
9 (6) The West Virginia Secretary of Commerce or designee, who shall be an *ex officio* and
10 nonvoting position;
11 (7) The West Virginia Secretary of Revenue or designee, who shall be an *ex officio* and
12 nonvoting position; and

13 (8) The West Virginia Legislative Auditor, who shall be an *ex officio* and nonvoting position.

14 (b) Appointments made by the Governor shall initially be made on or before July 1, 2020,
15 and gubernatorial appointments shall be for four years, beginning July 1, 2020. Any vacancy shall
16 be filled by the Governor for the remainder of the unexpired term.

17 (c) No person shall serve on the committee or be appointed to the committee who is
18 employed by a company that receives any incentive or who holds a substantial interest in
19 ownership in a company that receives any incentive. As used in this subsection, "substantial
20 interest" means the ownership, directly or indirectly, of more than 50 percent of the equity interest
21 with voting rights for any lawfully recognized business entity, or has served as a lobbyist within
22 five years prior to the appointment.

23 (d) No person shall be appointed to the committee who at the time of his or her
24 appointment is an elected official. Any person who is appointed to the committee who
25 subsequently becomes an elected official during his or her term on the committee shall be
26 required to vacate his or her position on the committee.

27 (e) The Legislative Auditor shall provide staff and administrative support to the committee.
28 The West Virginia Department of Commerce and the West Virginia Department of Revenue shall
29 assist as needed in providing staff and administrative support to the committee.

30 (f) The committee may contract with a private company, nonprofit, or academic institution
31 to assist with evaluation of each incentive. No recipient or potential recipient of an incentive or
32 representative of a recipient or potential recipient shall contact the entity or individual with whom
33 the committee contracts pursuant to this subsection unless the entity or individual specifically
34 requests information or documentation for purposes of the incentive evaluation process.

35 (g) The committee may request a state or local official or a state agency, a political
36 subdivision, a body corporate and politic, or a county or municipal entity to furnish information
37 necessary to complete the incentive review, analysis, and evaluation required by this section. An
38 official or entity presented with a request from the committee under this subsection shall

39 cooperate with the committee providing the requested information. An official or entity may
40 require that the committee adhere to the provider's rules, if any, that concern the confidential
41 nature of the information.

§5-9A-4. Review of incentives.

1 (a) The committee, on or before July 1 of each year, shall develop and publish a multi-
2 year schedule that lists all incentives and indicates the year when the report will be published for
3 each incentive reviewed. The commission may exempt from evaluation any incentive that it
4 concludes has a minimal fiscal impact. The committee may revise the schedule as long as the
5 committee provides for a systematic review, analysis, and evaluation of all incentives at least
6 once every five years. The initial schedule for evaluating the incentives shall be developed so
7 that the incentives having the highest fiscal impact to the state revenue system, including, but not
8 limited to, the General Revenue Fund, shall be evaluated before other incentives.

9 (b) The committee shall conduct a systematic and comprehensive review, analysis, and
10 evaluation of each incentive scheduled for review. The review, analysis, and evaluation must
11 include information about each incentive which may include any of the following:

12 (1) The basic attributes and policy goals of the incentive, including the statutory and
13 programmatic goals of the incentive, the economic parameters of the incentive, the original scope
14 and purpose of the incentive, and how the scope or purpose has changed over time;

15 (2) The incentive's equity, simplicity, competitiveness, public purpose, adequacy, and
16 extent of conformance with the original purposes of the legislation enacting the incentive;

17 (3) The types of activities on which the incentive is based and how effective the incentive
18 has been in promoting these targeted activities and in assisting recipients of the incentive and the
19 extent to which the incentive may be having unintended or negative consequences;

20 (4) The count of the following:

21 (A) Applicants for the incentive;

22 (B) Applicants that qualify for the incentive;

- 23 (C) Qualified applicants that, if applicable, are approved to receive the incentive;
- 24 (D) Taxpayers that actually claim the incentive; and
- 25 (E) Taxpayers that actually receive the incentive.
- 26 (5) The dollar amount of the incentive benefits that has been actually claimed by all entities
- 27 or individuals over time, including the following:
- 28 (A) The dollar amount of the incentive, listed by the North American Industrial
- 29 Classification System (NAICS) Code associated with the incentive recipients, if a NAICS Code is
- 30 available; and
- 31 (B) The dollar amount of any tax credits that can be carried forward for the next five state
- 32 fiscal years if applicable.
- 33 (6) An estimate of the economic impact of the incentive, including the following:
- 34 (A) A return on investment calculation for the incentive;
- 35 (B) A cost-benefit comparison of the state and local revenue foregone and property taxes
- 36 shifted to other taxpayers as a result of allowing the incentive, compared to tax revenue generated
- 37 by the taxpayer receiving the incentive, including direct taxes applied to the taxpayer and taxes
- 38 applied to the taxpayer's employees;
- 39 (C) An estimate of the number of jobs that were the direct result of the incentive, with a
- 40 focus on increasing full-time employment and wages of jobs created;
- 41 (D) An analysis of the number of new businesses and business expansions caused by the
- 42 incentive;
- 43 (E) An analysis of whether the incentive revitalized rural and other distressed areas of the
- 44 state; and
- 45 (F) An analysis of whether the incentive diversified the state's economy and positioned
- 46 West Virginia to stimulate entrepreneurial and technology firms.
- 47 (7) The methodology and assumptions used in carrying out the reviews, analyses, and
- 48 evaluations required under this section;

49 (8) The estimated cost to the state or political subdivision to administer the incentive;

50 (9) An estimate of the extent to which benefits of the incentive remained in West Virginia
51 or flowed outside West Virginia;

52 (10) Whether the effectiveness of the incentive could be determined more definitively if
53 the Legislature were to clarify or modify the incentive's goals and intended purpose, including an
54 assessment of whether adequate protections are in place to ensure the fiscal impact of the
55 incentive does not increase substantially beyond the state's expectations in future years;

56 (11) Whether measuring the economic impact is significantly limited due to data
57 constraints and whether any changes in statute would facilitate data collection in a way that would
58 allow for better review, analysis, or evaluation;

59 (12) An estimate of the indirect economic benefit or activity stimulated by the incentive;
60 and

61 (13) Any additional review, analysis, or evaluation the committee considers advisable,
62 including comparisons with incentives offered by other states if those comparisons would add
63 value to the review, analysis, and evaluation.

64 (c) The committee shall, before October 1 of each year, submit a report to the Joint
65 Committee on Government and Finance, containing the results of the committee's review,
66 analysis, and evaluation. The report must include at least the following:

67 (1) A detailed description of the review, analysis, and evaluation for each incentive
68 reviewed;

69 (2) Information to be used by the Legislature to determine whether a reviewed incentive
70 should be continued, modified, or terminated, the basis for the recommendation, and the expected
71 impact of the recommendation on the state's economy; and

72 (3) Information to be used by the Legislature to better align a reviewed incentive with the
73 original intent of the legislation that enacted the incentive. The report required by this subsection
74 must not disclose any proprietary or otherwise confidential taxpayer information.

NOTE: The purpose of this bill is to provide for job creation and economic incentives. The bill makes findings and states its purpose. The bill creates the Tax and Economic Incentives Review Committee, and establishes who may serve on the committee. The bill establishes the committee's powers. The bill provides for the review of all tax and economic incentives every five years. The bill provides guidelines for the review of incentives. The bill requires reports, defines terms.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.