

# **WEST VIRGINIA LEGISLATURE**

## **2020 REGULAR SESSION**

### **Committee Substitute**

**for**

### **Committee Substitute**

**for**

## **Senate Bill 521**

SENATORS TARR, SWOPE, SYPOLT, CLINE, AND ROBERTS,

*original sponsors*

[Originating in the Committee on Government

Organization; reported on February 24, 2020]



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; requiring Secretary of Commerce to review all tax and economic  
4 incentives; establishing guidelines for review of incentives; requiring annual report;  
5 providing confidentiality provisions; 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 West Virginia Development Office needs flexibility to assess potential  
10 economic incentives to be competitive in attracting industries to West Virginia and for those  
11 analyses to become a part of the budget and policy-making process.

**§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.

13 “Secretary” means the Secretary of Commerce.

**§5-9A-3. Power of Secretary of Commerce**

1 (a) The secretary may contract with a private company, nonprofit, or academic institution  
2 to assist with evaluation of each incentives. The secretary may further require that no recipient or  
3 potential recipient of an incentive or representative of a recipient or potential recipient shall contact  
4 the entity or individual with whom the secretary contracts pursuant to this subsection unless the  
5 entity or individual specifically requests information or documentation for purposes of the incentive  
6 evaluation process.

7 (b) The secretary or his or her designees may request a state or local official or a state  
8 agency, a political subdivision, a body corporate and politic, or a county or municipal entity to  
9 furnish information necessary to complete the incentive review, analysis, and evaluation required  
10 by this section. An official or entity presented with a request from the secretary under this  
11 subsection shall cooperate with the secretary providing the requested information. An official or  
12 entity may require that the secretary or contracting entity adhere to the provider’s rules, if any,  
13 that concern the confidential nature of the information.

**§5-9A-4. Review of incentive evaluations.**

1 (a) The secretary, on or before July 1 of each year, shall develop and publish a multiyear  
2 schedule that lists all incentives and indicates the year when the report will be published for each

3 incentive reviewed. The secretary may exempt from evaluation any incentive that it concludes  
4 has a minimal fiscal impact. The secretary may revise the schedule as long as the secretary  
5 provides for a systematic review, analysis, and evaluation of all incentives at least once every five  
6 years. The initial schedule for evaluating the incentives shall be developed so that the incentives  
7 having the highest fiscal impact to the state revenue system, including, but not limited to, the  
8 General Revenue Fund, shall be evaluated before other incentives.

9 (b) The secretary 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 secretary 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 secretary shall, before October 1 of each year that an economic incentive is  
65 evaluated pursuant to §5-9A-1 of this code, submit a report to the Joint Committee on Government  
66 and Finance containing the results of the secretary's review, analysis, and evaluation. The report  
67 must include at least the following:

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

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

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