

# WEST VIRGINIA LEGISLATURE

## 2019 REGULAR SESSION

Introduced

### House Bill 3112

FISCAL  
NOTE

BY DELEGATE HANSHAW (MR. SPEAKER)

(BY REQUEST)

[Introduced February 12, 2019; Referred  
to the Committee on Finance.]

1 A BILL to repeal §11-13Q-20 the Code of West Virginia, 1931, as amended; to repeal §11-13R-  
2 11 of said code; to repeal §11-13S-10 of said code; to repeal §11-13U-8 of said code; to  
3 repeal §11-13X-11 of said code; to repeal §11-13AA-9 of said code; to repeal §11-13BB-  
4 11 of said code; to amend said code by adding thereto a new article, designated §5-9A-1,  
5 §5-9A-2, §5-9A-3 and §5-9A-4; to amend and reenact §5B-2-16 of said code; and to  
6 amend said code by adding thereto a new section, designated §5B-2-17, all relating to job  
7 creation and incentives; repealing existing requirements for tax credit analysis by the State  
8 Tax Department; creating the Tax and Economic Incentives Review Committee; providing  
9 for the review of all tax and economic incentives relating to job creation once every four  
10 years; providing guidelines for the review of incentives; providing for reports to the  
11 Governor and the Legislature relating to tax and economic incentives; specifying programs  
12 for use of moneys in the entrepreneurship and innovation fund; creating the West Virginia  
13 Entrepreneurship and Innovation Authority; granting the authority the power to act in its  
14 own power; providing that the West Virginia Development Office shall provide staff for the  
15 authority; detailing the duties of the authority to encourage and coordinate programs and  
16 investments which enhance the competitiveness of West Virginia companies in the global  
17 economy; providing the authority with the ability to expend and distribute moneys in the  
18 Entrepreneurship and Innovation Fund; and defining terms.

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

**CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE  
GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL;  
BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES,  
COMMISSIONS, OFFICES, PROGRAMS, ETC.**

**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; and

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.

**§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 preferential rate, tax rebate, or a tax benefit that: (A) Reduces the amount of a tax that would  
6 otherwise be due to the state or one of its subdivisions; (B) results in a tax refund in excess of  
7 any tax due; or (C) reduces the amount of property taxes that would otherwise be due to a political  
8 subdivision of the state; (2) a grant or loan that is intended to encourage businesses to locate,  
9 expand, invest, or remain in West Virginia, or to hire or retain employees in West Virginia; or (3)  
10 the dedication of revenue by a political subdivision to provide improvements or to retire bonds  
11 issued to pay for improvements in an economic or development area, a community revitalization  
12 area, an enterprise zone, a tax increment financing district, or any other similar area or district.

**§5A-9-3. 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, 2019,  
15 and gubernatorial appointments shall be for four years, beginning July 1, 2019. 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.
- 22           (d) No person shall be appointed to the committee who at the time of his or her  
23 appointment is an elected official. Any person who is appointed to the committee who  
24 subsequently becomes an elected official during his or her term on the committee shall be  
25 required to vacate his or her position on the committee.

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

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

34 (g) The committee may request a state or local official or a state agency, a political  
35 subdivision, a body corporate and politic, or a county or municipal entity to furnish information  
36 necessary to complete the incentive review, analysis, and evaluation required by this section. An  
37 official or entity presented with a request from the committee under this subsection shall  
38 cooperate with the committee providing the requested information. An official or entity may  
39 require that the committee adhere to the provider's rules, if any, that concern the confidential  
40 nature of the information.

**§5A-9-4. 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 an NAICS Code  
30 is 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.

## **CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.**

### **ARTICLE 2. WEST VIRGINIA DEVELOPMENT OFFICE.**

#### **§5B-2-16. Entrepreneurship and Innovation Investment Fund.**

1 (a) The Entrepreneurship and Innovation Investment Fund is hereby created. The fund  
 2 shall be administered by the West Virginia Development Office and shall consist of all moneys  
 3 made available for the purposes and from the sources set forth in this section. ~~of the code~~

4 (b) The fund consists of moneys received from the following sources:

5 (1) All appropriations provided by the Legislature;

6 (2) Any moneys available from external sources; and

7 (3) All interest and other income earned from investment of moneys in the fund.

8 (c) The West Virginia ~~Development Office~~ Entrepreneurship and Innovation Authority shall  
 9 use moneys in the fund to support entrepreneurship, creation of business startups, improvements  
 10 in workforce participation, and attracting individuals to relocate to West Virginia, including, but not



11 limited to, the following:

12 (1) An SBIR matching funds program for West Virginia-based technology businesses.

13 Businesses meeting the following criteria shall be eligible to apply for an award:

14 (A) The applicant has received a Phase I or Phase 2 SBIR award;

15 (B) The applicant employs fewer than 12 full-time employees;

16 (C) At least 51 percent of the applicant's employees reside in West Virginia; and

17 (D) At least 51 percent of the applicant's property is located in West Virginia.

18 The length of time that a business has been incorporated shall have no bearing on an  
19 applicant's eligibility for an award. Applicants shall be eligible for matching grants of up to \$50,000  
20 of a Phase I or \$250,000 of a Phase 2 award. All applicants shall be required to submit a  
21 commercialization plan with their application.

22 (2) A matching grants program, not to exceed \$250,000 per award, to assist qualifying  
23 institutions and other research institutions in leveraging federal and private funds designated for  
24 the commercialization of qualified research or technologies. The Development Office is authorized  
25 to issue letters of financial commitment to assist applicants in leveraging federal and private funds.

26 (3) A commercialization program to incentivize the commercialization of a product or  
27 service related to a qualifying technology, not to exceed \$50,000 per award. An eligible applicant  
28 shall have operations in the State of West Virginia, and the project proposed by the applicant  
29 shall:

30 (A) Commercialize a product or service related to a qualifying technology;

31 (B) Have a demonstrable economic development benefit to the state;

32 (C) Match the award, on at least a one-to-one basis, from private funds or funds from a  
33 qualifying institution collaborating on the project; and

34 (D) Have a reasonable probability of enhancing the state's national and global  
35 competitiveness.

36 Priority shall be given to those applications that propose projects that: (i) Are collaborative

37 between private and nonprofit entities, public or private agencies, and qualifying institutions or  
38 research institutions; (ii) project a short time to commercialization, although transformative  
39 projects with a longer projected time to commercialization shall not be discounted; (iii) have active  
40 third-party equity holders; (iv) have technology and management in place that are likely to  
41 successfully bring the product or service to the marketplace; or (v) are from applicants who have  
42 a history of successful projects funded by the fund. The length of time that a business has been  
43 incorporated shall have no bearing on an applicant's eligibility for an award.

44 (4) An incubator and accelerator matching grant program, not to exceed \$250,000 per  
45 award, to enhance incubation and acceleration of new businesses in the state. For purposes of  
46 applications pursuant to this subdivision, the applicant shall be or have a collaborative agreement  
47 with a state public institution of higher education. In order to qualify for an award, the applicant  
48 shall provide a strategic plan for incubation or acceleration, including identification of co-working  
49 spaces in which it provides access to a network of startups, mentors, events and other valuable  
50 resources for learning how to build and grow a business from scratch and provide tailored  
51 mentorship, education and training designed for early stage startups to help further grow their  
52 business and scale their technology. The applicant must also match the award, on at least a one-  
53 to-one basis, from the federal government or a nongovernmental source.

54 (5) Any other program developed or established by the authority designed to encourage  
55 and coordinate programs and investments which enhance the competitiveness of state  
56 companies in the global economy.

57 (d) Any application for an award from the fund shall include a strategic plan that, at a  
58 minimum, identifies: (1) Other funds that may be reasonably expected from other sources as a  
59 result of an award from the fund; (2) the potential for commercialization of the research or  
60 technology underlying the application; and (3) opportunities for public and private collaboration.

61 (e) No award shall be made from the fund until a performance agreement or memorandum  
62 of understanding is agreed to by the Development Office and the recipient of the award

63 memorializing the terms and conditions of the award. The agreement or memorandum of  
64 understanding shall set forth any conditions for receipt of the award, any dates certain for the  
65 completion of certain acts by the recipient, and provisions for the repayment of any award,  
66 including the rate of interest to be charged if any, if the recipient does not meet the terms of the  
67 agreement. In the event that an award is to be made over a multiyear period, the performance  
68 agreement or memorandum of understanding shall establish certain benchmarks or performance  
69 standards against which to measure the interim success of the project before additional funds are  
70 disbursed from the fund.

71 (f) The authority shall provide the Governor and the Legislature with an annual report to  
72 include a detailed list of awards and loans committed, the amount of each approved award, a  
73 description of the approved proposals, and the amount of federal or private matching funds  
74 anticipated where applicable, a statement concerning how the approved proposals further the  
75 goals of the fund, including an assessment of the effectiveness of the fund.

76 ~~(d)~~(g) Any balance, including accrued interest and any other returns, in the  
77 Entrepreneurship and Innovation Investment Fund at the end of each fiscal year shall not expire  
78 to the General Revenue Fund but remain in the fund and be expended for the purposes provided  
79 by this section.

80 ~~(e)~~(h) Fund balances may be invested with the state's Consolidated Investment Fund.  
81 Earnings on the investments shall be used solely for the purposes defined in §5B-2-16(c) of this  
82 code.

83 (i) Definitions:

84 (1) "Qualified research and technologies" means research programs or technologies  
85 identified by the West Virginia Entrepreneurship and Innovation Authority as areas of focus for  
86 technology investment in West Virginia and development of startup companies.

87 (2) "Qualifying institution" means: (A) A public institution of higher education in the state  
88 or its associated research corporation that adopts a policy regarding the ownership, protection,

89 assignment, and use of intellectual property; or (B) a federal research facility located in West  
90 Virginia.

91 (3) "SBIR" means the Small Business Innovation Research Program authorized under 15  
92 U.S.C. §638.

93 (4) "STTR" means the Small Business Technology Transfer Program authorized under 15  
94 U.S.C. §638.

**§5B-2-17. West Virginia Entrepreneurship and Innovation Authority.**

1 (a) Creation. -- There is hereby created a public authority and instrumentality of the State  
2 of West Virginia known as the West Virginia Entrepreneurship and Innovation Authority. The  
3 authority shall be a body corporate and politic and exercise the powers of the State of West  
4 Virginia as an agency of the state.

5 (b) Management. -- The powers of the authority shall be exercised by the board.

6 (c) Staffing. -- The development office shall provide staff services to the authority. The  
7 department may, with the approval of the Governor, contract with consultants or other entities to  
8 augment these services as needed.

9 (d) Powers. --The authority, through action of the board, shall have all of the following  
10 powers:

11 (1) To adopt bylaws, guidelines, and rules as it deems necessary.

12 (2) To contract and to execute instruments necessary or convenient for the carrying on of  
13 its business.

14 (3) To appoint committees and subcommittees as are needed.

15 (4) To sue and be sued, complain and defend in court.

16 (5) To accept funds from all available sources.

17 (e) Duties. -- The authority shall encourage and coordinate programs and investments  
18 which advance the competitiveness of West Virginia companies in the global economy. The  
19 authority shall:

20 (1) Develop policies and implement programs which promote an entrepreneurial business  
21 environment, advances technologies, and a technology-ready work force.

22 (2) Select and certify regional nonprofit corporations and state institutions of higher  
23 education as approved collaborators.

24 (3) Coordinate and distribute funding for the programs, initiatives and actions of the  
25 authority and the partners, including the West Virginia Entrepreneurship and Innovation Fund.

26 (4) Award grants and other forms of financial incentives to companies, economic  
27 development agencies, educational institutions, government agencies or other entities for  
28 research and activities related to economic development at academic and research institutions  
29 and community-based and economic development technology initiatives.

30 (5) Establish a revolving loan fund for the purpose of making financing available to  
31 technology companies.

32 (6) Invest in companies, economic development agencies, educational institutions,  
33 government agencies or other entities as necessary to carry out the authority's activities.

34 (7) Assist efforts to identify and pursue funding opportunities from the federal government  
35 and other sources.

36 (8) Establish and require audits, disclosures and other review procedures for all activities  
37 funded by the authority.

38 (f) *Members.* -- The authority shall be governed by a board consisting of 17 members. The  
39 following individuals shall be members of the board:

40 (1) The Governor.

41 (2) The Secretary of Commerce.

42 (3) The State Superintendent of Schools.

43 (4) The President of West Virginia University.

44 (5) The President of Marshall University.

45 (6) Eight representatives appointed by the Governor, including three from the technology

46 business sector, one from the private capital community, one from the community development.  
47 sector, one from organized labor, and one from higher education with expertise in research.

48 (7) Four members of the Legislature, serving in an ex-officio, nonvoting manner, appointed  
49 as follows:

50 (A) One member appointed by the President of the Senate.

51 (B) One member appointed by the Minority Leader of the Senate.

52 (C) One member appointed by the Speaker of the House of Delegates.

53 (D) One member appointed by the Minority Leader of the House of Delegates.

54 (g) Terms. —

55 (1) The Governor, the Secretary of Commerce, the Superintendent of Schools, and the  
56 Presidents of West Virginia University and Marshall University shall serve for as long as they hold  
57 their respective positions.

58 (2) For the initial appointments by the Governor, two shall be for a term of one year, two  
59 shall be for a term of two years, two shall be for a term of three years, and the remaining to shall  
60 be for a full, four year term.

61 (3) All of the respective successors appointed by the Governor shall serve for terms of  
62 four years or until their respective successors shall be duly appointed by the Governor. Any  
63 members appointed to fill a vacancy created otherwise than by expiration of term shall be  
64 appointed for the unexpired term of the member whom he or she is to succeed.

65 (h) Designees. -- A public officer of the board, including representatives from state  
66 universities, may designate an officer or employee of the state to represent him or her at meetings  
67 of the board. A designee may lawfully vote and otherwise act on behalf of the member of the  
68 board. The designation shall be in writing, delivered to the authority and continue in effect until  
69 revoked or amended in writing.

## CHAPTER 11. TAXATION.

**ARTICLE 13Q. ECONOMIC OPPORTUNITY TAX CREDIT.**

**§11-13Q-20. Tax credit review and accountability.**

1 [Repealed]

**ARTICLE 13R. STRATEGIC RESEARCH AND DEVELOPMENT TAX CREDIT.**

**§11-13R-11. Tax credit review and accountability.**

1 [Repealed]

**ARTICLE 13S. MANUFACTURING INVESTMENT TAX CREDIT.**

**§11-13S-10. Tax credit review and accountability.**

1 [Repealed]

**ARTICLE 13U. HIGH-GROWTH BUSINESS INVESTMENT TAX CREDIT.**

**§11-13U-8. Tax credit review and accountability.**

1 [Repealed]

**ARTICLE 13X. WEST VIRGINIA FILM INDUSTRY INVESTMENT ACT.**

**§11-13X-11. Tax credit review and accountability.**

1 [Repealed]

**ARTICLE 13AA. COMMERCIAL PATENT INCENTIVES TAX ACT.**

**§11-13AA-9. Tax credit review and accountability.**

1 [Repealed]

**ARTICLE 13BB. WEST VIRGINIA INNOVATIVE MINE SAFETY TECHNOLOGY TAX  
CREDIT ACT.**

**§11-13BB-11. Tax credit review and accountability.**

1 [Repealed]

NOTE: The purpose of this bill is to require an analysis of the economic impact and strengths and weaknesses of incentives provided for job creation in West Virginia and to facilitate job creation in West Virginia. The bill delineates the uses of moneys in the

Entrepreneurship And Innovation Fund. The bill establishes an Entrepreneurship and Innovation authority to encourage and coordinate programs and investments that advances the competitiveness of West Virginia companies in the global economy.

The bill repeals §11-13Q-20, §11-13R-11, §11-13S-10, §11-13U-8, §11-13X-11, §11-13AA-9, and §11-13BB-11.

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