

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

Senate Bill 235

BY SENATORS ROMANO AND LINDSAY

[Introduced January 12, 2022; referred
to the Committee on Economic Development; and
then to the Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §12-9-1, §12-9-2, and §12-9-3, all relating to creating the Corporate Anti-
3 Subsidy Act; permitting West Virginia to enter into the Interstate Compact Agreement
4 Prohibiting Company-Specific Subsidies; and setting a level playing field that would
5 abolish the nationwide practice of company-specific subsidies that currently pits states
6 against one another.

Be it enacted by the Legislature of West Virginia:

ARTICLE 9. CORPORATE ANTI-SUBSIDY ACT.

§12-9-1. Findings.

1 The Legislature finds that state governments are caught in a race to the bottom offering
2 ever-larger company-specific tax breaks or grants in an attempt to lure large companies to stay
3 or relocate in their state, despite overwhelming evidence that the company-specific tax breaks
4 are neither an efficient use of public dollars nor a determining factor in a company's eventual
5 decision where to locate, and

6 (1) State governments in the aggregate spend tens of billions of dollars annually on
7 company-specific subsidies, and

8 (2) Spending those economic development dollars on universal infrastructure such as
9 transportation or education that benefits all employers, not just the few large for-profit companies
10 that negotiate a special subsidy, is a far superior use of state budget resources, and

11 (3) The ability of the world's most profitable companies to set off a bidding war, often in
12 secret, between states to package the largest subsidy imaginable in order to lure the company to
13 that state demonstrates the inherently weak bargaining position of states in any company-specific
14 subsidy negotiation, driving up the prices of these policies, and

15 (4) Providing special subsidies for one company puts all the competitors to that company
16 at a disadvantage, as they must pay the full tax rate or operative without the benefit of the grant
17 which further exacerbates the largest companies getting even greater market share than they

18 otherwise would if all companies paid the same tax rate, and

19 (5) It would be far superior for all employers if states competed for companies based on
20 their overall economic condition that all employers enjoyed, including taxes, infrastructure,
21 workforce and regulations, and not on a company-specific subsidy package which only benefits
22 a small number of the wealthiest companies, and

23 (6) Despite widespread recognition of the wasteful nature of these company-specific
24 subsidies, no one state is able to unilaterally end the practice as doing so is perceived to put that
25 state at a competitive disadvantage to other states, and

26 (7) To set a level playing field and abolish the practice of company-specific subsidies,
27 states should enter into an agreement not to engage in the practice that becomes binding for any
28 companies located in any state that is a member of the agreement, especially among neighboring
29 states until all 50 states are able to join the agreement, and

30 (8) This legislation is a first version of such an interstate compact and intends to be
31 replaced in 2021 after input from experts and organizations from all sides of the political spectrum.

§12-9-2. Short title.

1 This article may be cited as the Corporate Anti-Subsidy Act.

§12-9-3. Execution of the compact.

1 The Corporate Anti-Subsidy Act is hereby enacted into law and entered into with any state
2 or the District of Columbia which legally joins in substantially the following form:

3 INTERSTATE COMPACT AGREEMENT PROHIBITING COMPANY-SPECIFIC
4 SUBSIDIES

5 The contracting states agree that:

6 **ARTICLE I. MEMBERSHIP.**

7 Any State of the United States and the District of Columbia may become a member of the
8 “Interstate Compact Agreement Prohibiting Company-Specific Subsidies” by enacting this
9 agreement.

10 **ARTICLE II. DEFINITIONS.**

11 “Company-specific tax incentive” means any change in the general tax rate or valuation
12 offered or presented to a specific company that is not available to other similarly-situated
13 companies. Any tax incentive that is part of a special agreement negotiated with an official of the
14 state government is hereby defined as a company-specific tax incentive and not permitted under
15 this law.

16 “Company-specific grant” means any disbursement of funds via property, cash or deferred
17 tax liability by the state government to a particular company and is not permitted under this law.

18 “Workforce development grants” means grants that train employees.

19 **ARTICLE III. COMPANY-SPECIFIC SUBSIDIES.**

20 Each member state agrees to not offer company-specific subsidies for companies
21 currently located in or considering locating in any member state, including, but not limited to, for
22 corporate headquarters, manufacturing facilities, office space, or other real estate developments.
23 Provided, That this article shall not apply to this state with regard to any company to which any
24 company-specific tax incentive, grant or other subsidy is offered by a non-member state
25 competing for the same facility or business.

26 **ARTICLE IV. EXCLUSIONS.**

27 Existing company-specific subsidies are not impacted by this agreement, since this
28 agreement is not retroactive, except that any changes to the terms, including renewals or
29 reenactments, of any existing company-specific subsidies are to be considered new company-
30 specific subsidies and not permitted under this agreement. Workforce development grants are not
31 subject to this agreement since the company receiving the grant may benefit, but the employees
32 receiving the training are the largest beneficiary.

33 **ARTICLE V. RETROACTIVE APPLICATION EXCLUDED.**

34 Existing company-specific grants are not impacted by this agreement, as this agreement
35 is not retroactive, except that any changes to the terms of any existing company-specific grants

36 are to be considered new company-specific grants and thus not permitted under the terms of this
37 agreement.

38 **ARTICLE VI. WITHDRAWAL.**

39 Any member state may withdraw from this agreement with six-months' notice and shall do
40 so in writing to the Chief Executive Officer of every other member state to the agreement.

41 **ARTICLE VII. BOARD.**

42 A Board of Member States to the "Interstate Compact Agreement Prohibiting Company-
43 Specific Subsidies" is established by this agreement.

44 Each member state shall appoint five members to the board, one from the Chief Executive
45 Officer, one each from the majority leader of each chamber and one each from the minority leader
46 of each chamber.

47 The board shall convene at least annually, elect officers from its membership and establish
48 rules and procedures for its governance.

49 The purpose of the board is to collect testimony from all interested parties, including
50 member states and organizations and associations representing state legislators, taxpayers and
51 subject matter experts on how the agreement can be improved and strengthened.

52 The board may draft and disseminate suggested revisions to this agreement from time to
53 time.

NOTE: The purpose of this bill is to create the Corporate Anti-Subsidy Act. The bill permits West Virginia to enter into the "Interstate Compact Agreement Prohibiting Company-Specific Subsidies." The bill sets a level playing field that would abolish the nation-wide practice of company-specific subsidies that pits states against one another. The bill provides that member states to the compact agree not to offer company-specific subsidies for companies currently located in or considering locating in the member state, including, but not limited to, for corporate headquarters, manufacturing facilities, office space, or other real estate developments. The bill excludes existing company-specific subsidies (until terms change, are renewed, or are reenacted) and workforce from abolition under the compact. The bill provides for withdrawal of a member state with six-months' written notice.

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