

# **WEST VIRGINIA LEGISLATURE**

## **2019 REGULAR SESSION**

**Introduced**

### **House Bill 3123**

BY DELEGATES S. BROWN, PYLES AND LAVENDER-BOWE

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

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
 2 designated §11-28-1, §11-28-2, §11-28-3, §11-28-4, §11-28-5, and §11-28-6, all relating  
 3 to creating the Taxpayer Protection Act; providing definitions; when a recipient corporation  
 4 is subject to subsidy recapture or rescission; enforcement actions; providing that  
 5 enforcement records are public records; and providing for severability.

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

**ARTICLE 28. THE TAXPAYER PROTECTION ACT.**

**§11-28-1. Definitions.**

1 “Corporate parent” means any person, association, corporation, joint venture, partnership,  
 2 or other entity that owns or controls 50 percent or more of a recipient corporation.

3 “Date of subsidy” means the date that a granting body provides the initial monetary value  
 4 of a development subsidy to a recipient corporation: *Provided, That* where the subsidy is for the  
 5 installation of new equipment, such date shall be the date the corporation puts the equipment into  
 6 service and: *Provided however,* That where the subsidy is for improvements to property, such  
 7 date shall be the date the improvements are finished, or the date the corporation occupies the  
 8 property, whichever is earlier.

9 “Development subsidy” means any expenditure of public funds with a value of at least  
 10 \$25,000 for the purpose of stimulating economic development within the state, including, but not  
 11 limited to, bonds, grants, loans, loan guarantees, enterprise zones, empowerment zones, tax  
 12 increment financing, grants, fee waivers, land price subsidies, matching funds, tax abatements,  
 13 tax exemptions, and tax credits.

14 “Full-time job” means a job in which an individual is employed by a recipient corporation  
 15 for at least 35 hours per week.

16 “Granting body” means any agency, board, office, public-private partnership, public benefit  
 17 corporation, or authority of the state or a local government unit that provides a development  
 18 subsidy.

19 “Local government unit” means an agency, board, commission, office, public benefit  
20 corporation, or public authority of a political subdivision of the state.

21 “New Employee” means a full-time employee who represents a net increase in the number  
22 of individuals employed by the recipient corporation in the state. “New employee” does not include  
23 an employee who performs a job that was previously performed by another employee of the  
24 recipient corporation if that job existed for at least 6 months before hiring the employee.

25 “Part-time job” means a job in which an individual is employed by a recipient corporation  
26 for less than 35 hours per week.

27 “Project site” means the site of a project for which any development subsidy is provided,  
28 as specified by street address, name of locality, and zip code.

29 “Property-taxing entity” means any entity which levies taxes upon real or personal  
30 property.

31 “Recipient corporation” means any person, association, corporation, joint venture,  
32 partnership, or other entity that receives a development subsidy.

33 “Small business” means a corporation whose corporate parent, and all subsidiaries  
34 thereof, that employed fewer than twenty full-time employees or had total gross receipts of less  
35 than \$1 million during the calendar year.

36 “State” means an agency, board, commission, office, public benefit corporation or public  
37 benefit authority of the state.

38 “Subsidy value” means the face value of any and all development subsidies provided to a  
39 recipient corporation. The face value of a loan means the amount of the loan.

40 “Temporary job” means a job in which an individual is hired for a season or for a limited  
41 period of time.

42 “Duration of subsidy” means as many years as a subsidy benefits a recipient corporation,  
43 such as the number of years a tax credit may be claimed and/or carried forward, the number of  
44 years a loan is for, or the number of years a property tax reduction applies.

**§11-28-2. Subsidy Recapture or Rescission.**

1           (a) Public agencies awarding subsidies shall cross-check job-creation and other  
2 performance data submitted by recipients against information sources such as unemployment  
3 insurance records or shall conduct period audits of company submissions using outside auditors.

4           (b) A recipient corporation shall be subject to subsidy recapture or rescission if:

5           (1) It fails to achieve its job creation, wage, and health care requirements for the project  
6 site within two years of the date of subsidy; or

7           (2) It fails to maintain its wage and benefit achievements as long as the subsidy is in effect,  
8 or five years, whichever is longer; or

9           (3) The corporate parent of the recipient corporation fails to maintain, for the duration of  
10 the subsidy or for five years, whichever is longest, at least 90 percent of its employment in the  
11 state, with the basis of December 31 of the year the subsidy was granted.

**§11-28-3. How Subsidy Recapture or Rescission takes place.**

1           Subsidy Recapture or Rescission shall take place as follows:

2           (1) For each year the recipient corporation falls short of its obligations for job creation,  
3 wages, and health care insurance, the value of the subsidy shall be reduced on a prorated basis  
4 by the same share of jobs that were not created and/or that failed to meet wage and health care  
5 insurance obligations. If the subsidy has already accrued to the recipient corporation, the state  
6 shall recapture the subsidy reduction.

7           (2) If a recipient corporation falls short on its job creation obligations by 25 percent or more  
8 for three consecutive years, the pro rata recapture shall apply for the third year in default and the  
9 subsidy shall be rescinded effective January 1 of the following year.

10           (3) For each year the corporate parent fails to maintain at least 90 percent of its base  
11 employment level in the state, the subsidy shall be reduced at twice the rate of the corporate  
12 parent's job loss from 100 percent of its basis of December 31 of the year the subsidy was

13 granted. If the subsidy has already accrued to the recipient corporation, the state shall recapture  
 14 the subsidy reduction.

15 If the corporate parent fails to maintain at least 90 percent of its base employment level in  
 16 the state for three years in a row, the pro rata recapture shall apply for the third year in default  
 17 and the subsidy shall be rescinded effective January 1 of the following year.

**§11-28-4. Private Enforcement Action.**

1 If a granting body fails to enforce any provision of this article, any individual who paid  
 2 personal income taxes to the state in the calendar year prior to the year in dispute, or any  
 3 organization representing such taxpayers, shall be entitled to bring a civil action in state court to  
 4 compel enforcement under this statute. The court shall award reasonable attorney's fees and  
 5 costs to such prevailing taxpayer or organization.

**§11-28-5. Enforcement Records are Public Records.**

1 Agencies shall publish on their website summary statistics about their enforcement  
 2 activities as well as lists of recipient companies involved in those activities.

3 All records required to be prepared or maintained under this article, including, but not  
 4 limited to, applications, performance reports, recapture proceedings, and any other records  
 5 relating thereto, shall be subject to disclosure under the state's Open Records Act.

**§11-28-6. Severability.**

1 If any provision of this article is determined to be unenforceable in a court of law, such  
 2 determination shall not affect the validity or enforceability of any other provision of this article.

NOTE: The purpose of this bill is to creating The Taxpayer Protection Act, providing definitions; stating when a recipient corporation is subject to subsidy recapture, or rescission, and providing for enforcement actions. This type of legislation is also called "Clawbacks and Rescissions".

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