WEST VIRGINIA CODE CHAPTER 5b ARTICLE 10

WV Legislature

§5B-10-1. Short title.

This article shall be known and cited as the “West Virginia Development Achievements Transparency Act” or the “West Virginia DATA Act”.

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§5B-10-2. Purpose and findings.

(a) The Legislature finds that public tax dollars are expended annually, whether directly in the form of grants or indirectly in the form of tax credits and incentives, for the purpose of developing and improving economic industries within the State of West Virginia.

(b) The Legislature further finds that the State of West Virginia should inform state taxpayers about these direct or indirect expenditures, the objectives of the expenditures, and whether the state met the intended objectives of the expenditures.

(c) The Legislature further finds that any funds deposited into the Grant Recovery Fund pursuant to §12-4-14(e)(10) of this code should be appropriated by the Legislature to the granting body that originally granted the funds to a grantee or subgrantee.

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§5B-10-3. Definitions.

For the purpose of this article:

“Auditor” means the State Auditor of West Virginia, by himself or herself, or by any person appointed, designated, or approved by the State Auditor to perform the service.

“Business type” means the legal form of organization of a corporate parent or recipient corporation, including, but not limited to, a corporation, partnership, sole proprietorship, or limited liability company.

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

“Confidential information” means any internal, deliberative, preliminary, proprietary, personal, or protected economic development or taxpayer information as defined in §5B-10-6 of this code, §11-10-5d of this code, or Chapter 29B of this code, that is exempt from public disclosure.

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

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

“Duration of subsidy” means as many years as a subsidy benefits a recipient corporation, such as the time period of a grant, the number of years a tax credit may be claimed and/or carried forward, the number of years or term length of a loan, or the number of years a property tax reduction applies.

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

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

“NAICS code” means the assigned code maintained by the North American Industry Classification System which describes a particular industry.

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

"Official report" means a formal, written report prepared by a granting body delivered to a third party, including, but not limited to, the Joint Committee on Government and Finance, Governor's Office, or the public.

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

"Project site" means the site of a project for which any development subsidy is provided, as specified by street address, city name, and zip code.

"Recipient corporation" means any person, association, corporation, joint venture, partnership or other entity that receives a development subsidy.

"Subsidy type" means the classification of a development subsidy transaction, including, but not limited to, bonds, grants, loans, loan guarantees, enterprise zones, empowerment zones, tax increment financing, grants, fee waivers, land price subsidies, matching funds, tax abatements, tax exemptions, and tax credits.

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

"Temporary job" means a job in which an individual is hired for a season or for a limited period of time.

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§5B-10-4. Reporting requirements.

(a) Within 30 days of the end of the fiscal year, each granting body shall provide the Auditor with the information required in §5B-10-6 of this code for each development subsidy provided to a recipient corporation by a granting body: *Provided*, That no development subsidy approved and legally obligated by the State of West Virginia shall be exempt from disclosure under this article.

(b) The Auditor shall provide guidance to each granting body regarding the standard and manner of reporting specified in this section.

(c) The Auditor may accept one or multiple official reports of a granting body to satisfy the requirements of this section provided the information provided in the official reports discloses the information required by §5B-10-6 of this code.

(d) The West Virginia Department of Economic Development may fulfill the requirements of this section on behalf of any granting bodies.

(e) The West Virginia Department of Economic Development may fulfill the requirements of this section by providing any agreements entered into or signed by the West Virginia Department of Economic Development which obligates public funds as of the date the agreement is entered into, signed or otherwise made public.

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§5B-10-5. Auditor's searchable economic development website created.

No later than January 1, 2022, the Auditor shall develop and make publicly available a searchable financial transparency website containing the information specified in §5B-10-6 of this code.

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§5B-10-6. Contents of the searchable website.

(a) The Auditor shall include as part of the searchable economic development transparency website the following content for each fiscal year and the previous three fiscal years:

(1) The name of the recipient corporation of a development subsidy: *Provided*, That if a name of a recipient corporation of a development subsidy be considered confidential information, the granting body shall provide the business type of the recipient corporation instead of the name;

(2) The name of the corporate parent of the recipient corporation, if applicable: *Provided*, That should a name of a corporate parent of a recipient corporation of a development subsidy be considered confidential information, the granting body shall provide the business type of the corporate parent instead of the name;

(3) The project site: *Provided*, That should the project site be considered confidential information, the granting body shall provide the city, state, and zip code, but not the street address;

(4) The NAICS code or codes of the recipient corporation;

(5) The date of subsidy;

(6) The subsidy value;

(7) The duration of subsidy;

(8) The subsidy type;

(9) The number of new employees the development subsidy is expected to create within the duration of subsidy, classified by full-time jobs, part-time jobs, and temporary jobs;

(10) The number of new employees the development subsidy has actually created within the duration of subsidy, classified by full-time jobs, part-time jobs, and temporary jobs: *Provided*, That this number may be estimated if an accurate count is not available, but the granting body shall clearly disclose that the reported number is an estimate;

(11) Any other direct or indirect benefits to the state the granting body intends the development subsidy to achieve, including, but not limited to, creation of public infrastructure, vocational training, apprenticeships, workforce development, or state tourism visitor or permanent resident population increases;

(12) Any other direct or indirect benefit to the state actually achieved by the development subsidy, including, but not limited to, creation of public infrastructure, vocational training, apprenticeships, workforce development, or state tourism visitor or permanent resident population increases; and

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(13) The name or names of the granting body or bodies providing the development subsidy.

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§5B-10-7. Confidentiality.

(a) Nothing in this article may be construed as requiring the West Virginia Department of Economic Development or the West Virginia Tax Department to release confidential information as defined in this article.

(b) If information regarding a development subsidy is confidential information, a granting body shall redact only those confidential items but shall disclose any other information pertaining to a development subsidy that is not confidential information.

(c) The Auditor may consult with the granting body to determine the confidentiality of development subsidy data required in §5B-10-6 of this code and determine the appropriate disclosures on the searchable economic development website created in §5B-10-5 of this code to preserve confidentiality.

(d) The Auditor shall identify any redacted items not appearing on the searchable economic development transparency website and the justification as to why the items were redacted.

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§5B-10-8. Source and accuracy of information; failure to report.

(a) To fulfill the requirements of this article, a granting body may independently compile the information required in §5B-10-6 of this code or request the information from a recipient corporation.

(b) A granting body shall review information received from a recipient corporation to ensure it is reasonably accurate but is not required to audit or certify the accuracy of the information.

(c) The Auditor shall publish a list on the searchable economic development transparency website detailing any granting body or recipient corporation who fails to comply with the requirements of this article.

(d) The Auditor shall publish a list on the searchable economic development transparency website detailing any granting body or recipient corporation who intentionally submits false, misleading, or fraudulent information: *Provided*, That the Auditor shall notify the Joint Committee on Government and Finance of any granting body or recipient corporation who intentionally submits false, misleading, or fraudulent information to the Auditor.

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§5B-10-9. Public hearings.

The Auditor may conduct public hearings or training sessions to assist any recipient corporation or granting body in complying with the requirements of this article.

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