

HB 2309

FILED

2007 MAR 22 PM 4: 24

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**  
FIRST REGULAR SESSION, 2007



**ENROLLED**

**COMMITTEE SUBSTITUTE  
FOR  
House Bill No. 2309**

(By Mr. Speaker, (Mr. Thompson) and Delegate Armstead)  
[By Request of the Executive]



Passed March 10, 2007

In Effect Ninety Days from Passage

FILED

ENROLLED MAR 22 PM 4: 24

COMMITTEE SUBSTITUTE OFFICE WEST VIRGINIA  
SECRETARY OF STATE

FOR

# H. B. 2309

(BY MR. SPEAKER, (MR. THOMPSON) AND DELEGATE ARMSTEAD)  
[BY REQUEST OF THE EXECUTIVE]

[Passed March 10, 2007; in effect ninety days from passage.]

AN ACT to amend and reenact §5B-2E-3, §5B-2E-4, §5B-2E-5, §5B-2E-6, §5B-2E-7, §5B-2E-8, §5B-2E-9 and §5B-2E-11 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §5B-2E-7a, all relating to tourism development act tax credits; providing definitions; making certain entities ineligible for the credit; modifying total amount of tourism development project tax credit available on or near reclaimed surface mining operation; setting certain deadlines; modifying total amount of tourism development project tax credit available during calendar years; creating a tourism development expansion project credit; implementing a one million five hundred thousand dollar tax credit maximum availability for tourism development expansion projects; authorizing the promulgation of rules to establish a tourism development expansion project application process; and establishing a termination date for action on applications for tourism development projects and validity of such projects not previously approved.

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

That §5B-2E-3, §5B-2E-4, §5B-2E-5, §5B-2E-6, §5B-2E-7, §5B-2E-8, §5B-2E-9 and §5B-2E-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §5B-2E-7a, all to read as follows:

**ARTICLE 2E. WEST VIRGINIA TOURISM DEVELOPMENT ACT.**

**§5B-2E-3. Definitions.**

1 As used in this article, unless the context clearly indicates  
2 otherwise:

3 (1) "Agreement" means a tourism development  
4 agreement entered into, pursuant to section six of this article,  
5 between the development office and an approved company  
6 with respect to a project.

7 (2) "Approved company" means any eligible company  
8 approved by the development office pursuant to section five  
9 of this article seeking to undertake a project.

10 (3) "Approved costs" means:

11 (a) *Included costs*:

12 (i) Obligations incurred for labor and to vendors,  
13 contractors, subcontractors, builders, suppliers, delivery  
14 persons and material persons in connection with the  
15 acquisition, construction, equipping or installation of a  
16 project;

17 (ii) The costs of acquiring real property or rights in real  
18 property and any costs incidental thereto;

19 (iii) The cost of contract bonds and of insurance of all  
20 kinds that may be required or necessary during the course of  
21 the acquisition, construction, equipping, or installation of a  
22 project which is not paid by the vendor, supplier, delivery  
23 person, contractor or otherwise provided;

24 (iv) All costs of architectural and engineering services,  
25 including, but not limited to: Estimates, plans and  
26 specifications, preliminary investigations and supervision of  
27 construction, installation, as well as for the performance of  
28 all the duties required by or consequent to the acquisition,  
29 construction, equipping or installation of a project;

30 (v) All costs required to be paid under the terms of any  
31 contract for the acquisition, construction, equipping or  
32 installation of a project;

33 (vi) All costs required for the installation of utilities,  
34 including, but not limited to: Water, sewer, sewer treatment,  
35 gas, electricity, communications and off-site construction of  
36 utility extensions to the boundaries of the real estate on which  
37 the facilities are located, all of which are to be used to  
38 improve the economic situation of the approved company in  
39 a manner that allows the approved company to attract  
40 persons; and

41 (vii) All other costs comparable with those described in  
42 this subdivision;

43 (b) *Excluded costs.* -- The term "approved costs" does not  
44 include any portion of the cost required to be paid for the  
45 acquisition, construction, equipping or installation of a  
46 project that is financed with governmental incentives, grants  
47 or bonds or for which the eligible taxpayer elects to qualify  
48 for other tax credits, including, but not limited to, those  
49 provided by article thirteen-q, chapter eleven of this code.

50 (4) "Base tax revenue amount" means the average  
51 monthly amount of consumer sales and service tax collected  
52 by an approved company, based on the twelve-month period  
53 ending immediately prior to the opening of a new tourism  
54 development project for business or a tourism development  
55 expansion project, as certified by the State Tax  
56 Commissioner.

57 (5) "Development office" means the West Virginia  
58 Development Office as provided in article two of this  
59 chapter.

60 (6) "Crafts and products center" means a facility  
61 primarily devoted to the display, promotion and sale of West  
62 Virginia products and at which a minimum of eighty percent  
63 of the sales occurring at the facility are of West Virginia arts,  
64 crafts or agricultural products.

65 (7) "Eligible company" means any corporation, limited  
66 liability company, partnership, limited liability partnership,  
67 sole proprietorship, business trust, joint venture or any other  
68 entity operating or intending to operate a project, whether  
69 owned or leased, within the state that meets the standards  
70 required by the development office. An eligible company  
71 may operate or intend to operate directly or indirectly  
72 through a lessee.

73 (8) "Ineligible company" means any West Virginia pari-  
74 mutuel racing facility licensed to operate multiple video  
75 lottery machines as authorized by article twenty-two-a,  
76 chapter twenty-nine of this code or any limited lottery retailer  
77 holding a valid license issued under article seven, chapter  
78 sixty of this code.

79 (9) "Entertainment destination center" means a facility  
80 containing a minimum of two hundred thousand square feet  
81 of building space adjacent or complementary to an existing  
82 tourism attraction, an approved project, or a major  
83 convention facility and which provides a variety of  
84 entertainment and leisure options that contain at least one  
85 major theme restaurant and at least three additional  
86 entertainment venues, including, but not limited to, live  
87 entertainment, multiplex theaters, large-format theaters,  
88 motion simulators, family entertainment centers, concert  
89 halls, virtual reality or other interactive games, museums,  
90 exhibitions or other cultural and leisure time activities.  
91 Entertainment and food and drink options shall occupy a  
92 minimum of sixty percent of total gross area, as defined in  
93 the application, available for lease and other retail stores shall  
94 occupy no more than forty percent of the total gross area  
95 available for lease.

96 (10) "Final approval" means the action taken by the  
97 executive director of the development office qualifying the  
98 eligible company to receive the tax credits provided in this  
99 article.

100 (11) "Preliminary approval" means the action taken by  
101 the executive director of the development office conditioning  
102 final approval.

103 (12) "Project" means a tourism development project  
104 and/or a tourism development expansion project administered  
105 in accordance with the provisions of this article.

106 (13) "State agency" means any state administrative body,  
107 agency, department, division, board, commission or  
108 institution exercising any function of the state that is not a  
109 municipal corporation or political subdivision.

110 (14) "Tourism attraction" means a cultural or historical  
111 site, a recreation or entertainment facility, an area of natural  
112 phenomenon or scenic beauty, a West Virginia crafts and  
113 products center or an entertainment destination center. A  
114 project or tourism attraction does not include any of the  
115 following:

116 (A) Lodging facility, unless:

117 (i) The facility constitutes a portion of a project and  
118 represents less than fifty percent of the total approved cost of  
119 the project, or the facility is to be located on recreational  
120 property owned or leased by the state or federal government  
121 and the facility has received prior approval from the  
122 appropriate state or federal agency;

123 (ii) The facility involves the restoration or rehabilitation  
124 of a structure that is listed individually in the national register  
125 of historic places or is located in a national register historic  
126 district and certified by the state historic preservation officer  
127 as contributing to the historic significance of the district and  
128 the rehabilitation or restoration project has been approved in  
129 advance by the state historic preservation officer; or

130 (iii) The facility involves the construction, reconstruction,  
131 restoration, rehabilitation or upgrade of a full-service lodging  
132 facility or the reconstruction, restoration, rehabilitation or  
133 upgrade of an existing structure into a full-service lodging  
134 facility having not less than five hundred guest rooms, with  
135 construction, reconstruction, restoration, rehabilitation or  
136 upgrade costs exceeding ten million dollars;

137 (B) A facility that is primarily devoted to the retail sale of  
138 goods, other than an entertainment destination center, a West  
139 Virginia crafts and products center or a project where the sale  
140 of goods is a secondary and subordinate component of the  
141 project; and

142 (C) A recreational facility that does not serve as a likely  
143 destination where individuals who are not residents of the  
144 state would remain overnight in commercial lodging at or  
145 near the project or existing attraction.

146 (15) "Tourism development project" means the  
147 acquisition, including the acquisition of real estate by a  
148 leasehold interest with a minimum term of ten years,  
149 construction and equipping of a tourism attraction; the  
150 construction and installation of improvements to facilities  
151 necessary or desirable for the acquisition, construction,  
152 installation of a tourism attraction, including, but not limited  
153 to, surveys, installation of utilities, which may include water,  
154 sewer, sewage treatment, gas, electricity, communications  
155 and similar facilities; and off-site construction of utility  
156 extensions to the boundaries of the real estate on which the  
157 facilities are located, all of which are to be used to improve  
158 the economic situation of the approved company in a manner  
159 that allows the approved company to attract persons, but does  
160 not include a project that will be substantially owned,  
161 managed or controlled by an eligible company with an  
162 existing project located within a ten mile radius, or by a  
163 person or persons related by a family relationship, including  
164 spouses, parents, children or siblings, to an owner of an  
165 eligible company with an existing project located within a ten  
166 mile radius.

167 (16) "Tourism development expansion project" means the  
168 acquisition, including the acquisition of real estate by a  
169 leasehold interest with a minimum term of ten years; the  
170 construction and installation of improvements to facilities  
171 necessary or desirable for the expansion of an existing  
172 tourism attraction including, but not limited to, surveys,  
173 installation of utilities, which may include water, sewer,  
174 sewage treatment, gas, electricity, communications and  
175 similar facilities; and off-site construction of utility extension  
176 to the boundaries of real estate on which the facilities are  
177 located, all of which are to be used to improve the economic  
178 situation of the approved company in a manner that allows  
179 the approved company to attract persons.

180 (17) "Tourism development project tax credit" means the  
181 tourism development project tax credit allowed by section  
182 seven of this article.

183 (18) "Tourism development expansion project tax credit"  
184 means the tourism development expansion project tax credit  
185 allowed by section seven-a of this article.

**§5B-2E-4. Additional powers and duties of the development  
office.**

1 The development office has the following powers and  
2 duties, in addition to those set forth in this case, necessary to  
3 carry out the purposes of this article including, but not  
4 limited to:

5 (1) Make preliminary and final approvals of all  
6 applications for projects and enter into agreements pertaining  
7 to projects with approved companies;

8 (2) Employ fiscal consultants, attorneys, appraisers and  
9 other agents as the executive director of the development  
10 office finds necessary or convenient for the preparation and  
11 administration of agreements and documents necessary or  
12 incidental to any project; and

13 (3) Impose and collect fees and charges in connection  
14 with any transaction.



**§5B-2E-5. Project application; evaluation standards; consulting services; preliminary and final approval of projects.**

1 (a) Each eligible company that seeks to qualify a project  
2 for the tourism development project tax credit provided by  
3 section seven of this article, or for the tourism development  
4 expansion project tax credit provided by section seven-a of  
5 this article, as applicable, must file a written application for  
6 approval of the project with the development office.

7 (b) With respect to each eligible company making an  
8 application to the development office for a tourism  
9 development project tax credit or a tourism development  
10 expansion project tax credit, the development office shall  
11 make inquiries and request documentation, including a  
12 completed application, from the applicant that shall include:  
13 A description and location of the project; capital and other  
14 anticipated expenditures for the project and the sources of  
15 funding therefor; the anticipated employment and wages to  
16 be paid at the project; business plans that indicate the average  
17 number of days in a year in which the project will be in  
18 operation and open to the public; and the anticipated  
19 revenues and expenses generated by the project. The  
20 executive director of the development office shall act to grant  
21 or not to grant any preliminary approval of an application  
22 within forty-five days following its receipt or receipt of  
23 additional information requested by the development office,  
24 whichever is later.

25 (c) Based upon a review of the application and additional  
26 documentation provided by the eligible company, if the  
27 executive director of the development office determines that  
28 the applicant and the project may reasonably satisfy the  
29 criteria for final approval set forth in subsection (d) of this  
30 section, then the executive director of the development office  
31 may grant a preliminary approval of the applicant and the  
32 project.

33 (d) After preliminary approval by the executive director  
34 of the development office, the development office shall

35 engage the services of a competent consulting firm or firms  
36 to analyze the data made available by the applicant and to  
37 collect and analyze additional information necessary to  
38 determine that, in the independent judgment of the  
39 consultant, the project:

40 (1) Likely will attract at least twenty-five percent of its  
41 visitors from outside of this state;

42 (2) Will have approved costs in excess of one million  
43 dollars;

44 (3) Will have a significant and positive economic impact  
45 on the state considering, among other factors, the extent to  
46 which the project will compete directly with or complement  
47 existing tourism attractions in the state and the amount by  
48 which increased tax revenues from the project will exceed the  
49 credit given to the approved company;

50 (4) Will produce sufficient revenues and public demand  
51 to be operating and open to the public for a minimum of one  
52 hundred days per year; and

53 (5) Will provide additional employment opportunities in  
54 the state.

55 (e) The applicant shall pay to the development office,  
56 prior to the engagement of the services of a competent  
57 consulting firm or firms pursuant to the provisions of  
58 subsection (d) of this section, for the cost of the consulting  
59 report or reports and shall cooperate with the consulting firm  
60 or firms to provide all of the data that the consultant  
61 considers necessary or convenient to make its determination  
62 under subsection (d) of this section.

63 (f) The executive director of the development office,  
64 within sixty days following receipt of the consultant's final,  
65 written report or reports, shall review, in light of the  
66 consultant's report or reports, the reasonableness of the  
67 project's budget and timetable for completion and, in addition  
68 to the criteria for final approval set forth in subsection (d) of  
69 this section, the following criteria:

70 (1) The quality of the proposed project and how it  
71 addresses economic problems in the area in which the project  
72 will be located;

73 (2) Whether there is substantial and credible evidence  
74 that the project is likely to be started and completed in a  
75 timely fashion;

76 (3) Whether the project will, directly or indirectly,  
77 improve the opportunities in the area where the project will  
78 be located for the successful establishment or expansion of  
79 other industrial or commercial businesses;

80 (4) Whether the project will, directly or indirectly, assist  
81 in the creation of additional employment opportunities in the  
82 area where the project will be located;

83 (5) Whether the project helps to diversify the local  
84 economy;

85 (6) Whether the project is consistent with the goals of this  
86 article;

87 (7) Whether the project is economically and fiscally  
88 sound using recognized business standards of finance and  
89 accounting; and

90 (8) The ability of the eligible company to carry out the  
91 project.

92 (g) The development office may establish other criteria  
93 for consideration when approving the applications.

94 (h) The executive director of the development office may  
95 give its final approval to the applicant's application for a  
96 project and may grant to the applicant the status of an  
97 approved company.

98 The executive director of the development office shall act  
99 to approve or not approve any application within sixty days  
100 following the receipt of the consultant's final, written report

101 or reports or the receipt of any additional information  
102 requested by the development office, whichever is later. The  
103 decision by the executive director of the development office  
104 is final.

**§5B-2E-6. Agreement between development office and approved company.**

1 The development office, upon final approval of an  
2 application by the executive director, may enter into an  
3 agreement with any approved company with respect to its  
4 project. The terms and provisions of each agreement shall  
5 include, but not be limited to:

6 (1) The amount of approved costs of the project that  
7 qualify for a sales tax credit, as provided in section seven or  
8 section seven-a of this article, as applicable. Within three  
9 months of the completion date, the approved company shall  
10 document the actual cost of the project through a certification  
11 of the costs to the development office by an independent  
12 certified public accountant acceptable to the development  
13 office; and

14 (2) A date certain by which the approved company shall  
15 have completed and opened the project to the public. Any  
16 approved company that has received final approval may  
17 request and the development office may grant an extension or  
18 change, however, in no event shall the extension exceed three  
19 years from the date of final approval to the completion date  
20 specified in the agreement with the approved company.

**§5B-2E-7. Amount of credit allowed for tourism development project; approved projects.**

1 (a) Approved companies are allowed a credit against the  
2 West Virginia consumers sales and service tax imposed by  
3 article fifteen, chapter eleven of this code and collected by  
4 the approved company on sales generated by or arising from  
5 the operations of the tourism development project: *Provided,*

6 That if the consumers sales and service tax collected by the  
7 approved company is not solely attributable to sales resulting  
8 from the operation of the new tourism development project,  
9 the credit shall only be applied against that portion of the  
10 consumers sales and service tax collected in excess of the  
11 base tax revenue amount. The amount of this credit is  
12 determined and applied as provided in this article.

13 (b) The maximum amount of credit allowable in this  
14 article is equal to twenty-five percent of the approved  
15 company's approved costs as provided in the agreement:  
16 *Provided*, That, if the tourism development project site is  
17 located within the permit area or an adjacent area of a surface  
18 mining operation, as these terms are defined in section three,  
19 article three, chapter twenty-two of this code, from which all  
20 coal has been or will be extracted prior to the commencement  
21 of the tourism development project, the maximum amount of  
22 credit allowable is equal to thirty-five percent of the approved  
23 company's approved costs as provided in the agreement.

24 (c) The amount of credit allowable must be taken over a  
25 ten-year period, at the rate of one tenth of the amount thereof  
26 per taxable year, beginning with the taxable year in which the  
27 project is opened to the public, unless the approved company  
28 elects to delay the beginning of the ten-year period until the  
29 next succeeding taxable year. This election shall be made in  
30 the first consumers sales and service tax return filed by the  
31 approved company following the date the project is opened  
32 to the public. Once made, the election cannot be revoked.

33 (d) The amount determined under subsection (b) of this  
34 section is allowed as a credit against the consumers sales and  
35 service tax collected by the approved company on sales from  
36 the operation of the tourism development project. The  
37 amount determined under said subsection may be used as a  
38 credit against taxes required to be remitted on the approved  
39 company's monthly consumers sales and service tax returns  
40 that are filed pursuant to section sixteen, article fifteen,  
41 chapter eleven of this code. The approved company shall

42 claim the credit by reducing the amount of consumers sales  
 43 and service tax required to be remitted with its monthly  
 44 consumers sales and service tax returns by the amount of its  
 45 aggregate annual credit allowance until such time as the full  
 46 current year annual credit allowance has been claimed. Once  
 47 the total credit claimed for the tax year equals the approved  
 48 company's aggregate annual credit allowance no further  
 49 reductions to its monthly consumers sales and service tax  
 50 returns will be permitted.

51 (e) If any credit remains after application of subsection  
 52 (d) of this section, the amount of credit is carried forward to  
 53 each ensuing tax year until used or until the expiration of the  
 54 third taxable year subsequent to the end of the initial ten-year  
 55 credit application period. If any unused credit remains after  
 56 the thirteenth year, that amount is forfeited. No carryback to  
 57 a prior taxable year is allowed for the amount of any unused  
 58 portion of any annual credit allowance.

**§5B-2E-7a. Amount of credit allowed for tourism development  
 expansion project; approved projects.**

1 (a) Approved companies are allowed a credit against the  
 2 West Virginia consumers sales and service tax imposed by  
 3 article fifteen, chapter eleven of this code and collected by  
 4 the approved company on sales generated by or arising from  
 5 the operations of the tourism development expansion project:  
 6 *Provided*, That the tourism development expansion project  
 7 tax credit allowed under this section is separate and distinct  
 8 from any credit allowed for a tourism development project in  
 9 accordance with the provisions of section seven of this  
 10 article: *Provided, however*, That if the consumers sales and  
 11 service tax collected by the approved company is not solely  
 12 attributable to sales resulting from the operation of the  
 13 tourism development expansion project, the credit shall only  
 14 be applied against that portion of the consumers sales and  
 15 service tax collected in excess of the base tax revenue  
 16 amount. The amount of this credit is determined and applied  
 17 as provided in this article.

18 (b) The maximum amount of credit allowable in this  
19 article is equal to twenty-five percent of the approved  
20 company's approved costs as provided in the agreement:  
21 *Provided*, That, if the tourism development expansion project  
22 site is located within the permit area or an adjacent area of a  
23 surface mining operation, as these terms are defined in  
24 section three, article three, chapter twenty-two of this code,  
25 from which all coal has been or will be extracted prior to the  
26 commencement of the tourism development project, the  
27 maximum amount of credit allowable is equal to thirty-five  
28 percent of the approved company's approved costs as  
29 provided in the agreement.

30 (c) The amount of credit allowable must be taken over a  
31 ten-year period, at the rate of one tenth of the amount thereof  
32 per taxable year, beginning with the taxable year in which the  
33 project is opened to the public, unless the approved company  
34 elects to delay the beginning of the ten-year period until the  
35 next succeeding taxable year. This election shall be made in  
36 the first consumers sales and service tax return filed by the  
37 approved company following the date the project is opened  
38 to the public. Once made, the election cannot be revoked.

39 (d) The amount determined under subsection (b) of this  
40 section is allowed as a credit against the consumers sales and  
41 service tax collected by the approved company on sales from  
42 the operation of the tourism development expansion project.  
43 The amount determined under said subsection may be used  
44 as a credit against taxes required to be remitted on the  
45 approved company's monthly consumers sales and service tax  
46 returns that are filed pursuant to section sixteen, article  
47 fifteen, chapter eleven of this code. The approved company  
48 shall claim the credit by reducing the amount of consumers  
49 sales and service tax required to be remitted with its monthly  
50 consumers sales and service tax returns by the amount of its  
51 aggregate annual credit allowance until such time as the full  
52 current year annual credit allowance has been claimed. Once  
53 the total credit claimed for the tax year equals the approved  
54 company's aggregate annual credit allowance no further

55 reductions to its monthly consumers sales and service tax  
56 returns will be permitted.

57 (e) If any credit remains after application of subsection  
58 (d) of this section, the amount of credit is carried forward to  
59 each ensuing tax year until used or until the expiration of the  
60 third taxable year subsequent to the end of the initial ten-year  
61 credit application period. If any unused credit remains after  
62 the thirteenth year, that amount is forfeited. No carryback to  
63 a prior taxable year is allowed for the amount of any unused  
64 portion of any annual credit allowance.

65 (f) The total amount of tourism development expansion  
66 project tax credits for all approved companies pursuant to this  
67 section may not exceed one million five hundred thousand  
68 dollars each calendar year.

**§5B-2E-8. Forfeiture of unused tax credits; credit recapture;  
recapture tax imposed; information  
required to be submitted annually to  
development office; transfer of tax credits  
to successors.**

1 (a) The approved company shall forfeit the tourism  
2 development project tax credit allowed by section seven of  
3 this article, or the tourism development expansion tax credit  
4 allowed by section seven-a of this article, as applicable, with  
5 respect to any calendar year and shall pay the recapture tax  
6 imposed by subsection (b) of this section, if:

7 (1) In any year following the first calendar year the  
8 project is open to the public, the project fails to attract at least  
9 twenty-five percent of its visitors from among persons who  
10 are not residents of the state;

11 (2) In any year following the first year the project is open  
12 to the public, the project is not operating and open to the  
13 public for at least one hundred days; or



14 (3) The approved company, as of the beginning of each  
15 calendar year, has an outstanding obligation to a Workers'  
16 Compensation Fund, as defined in article two-c of chapter  
17 twenty-three of this code, an outstanding obligation under the  
18 West Virginia Unemployment Compensation Act, or an  
19 outstanding obligation under the West Virginia state tax and  
20 revenue laws.

21 (b) In addition to the loss of credit allowed under this  
22 article for the calendar year, any approved company or  
23 successor eligible company that forfeits the tourism  
24 development project tax credit or the tourism development  
25 expansion project credit under the provisions of subsection  
26 (a) of this section, credit recapture shall apply and the  
27 approved company, and successor eligible companies, shall  
28 return to the state all previously claimed tourism  
29 development project tax credit or tourism development  
30 expansion project credit allowed by this article. An amended  
31 return shall be filed with the State Tax Commissioner for the  
32 prior calendar year, or calendar years, for which credit  
33 recapture is required, along with interest, as provided in  
34 section seventeen, article ten, chapter eleven of this code:  
35 *Provided*, That the approved company and successor eligible  
36 companies who previously claimed the tourism development  
37 project tax credit or the tourism development expansion  
38 project credit allowed by this article are jointly and severally  
39 liable for payment of any recapture tax subsequently imposed  
40 under this section.

41 (c) Within forty-five days after the end of each calendar  
42 year during the term of the agreement, the approved company  
43 shall supply the development office with all reports and  
44 certifications the development office requires demonstrating  
45 to the satisfaction of the development office that the  
46 approved company is in compliance with applicable  
47 provisions of law. Based upon a review of these materials  
48 and other documents that are available, the development  
49 office shall then certify to the Tax Commissioner that the  
50 approved company is in compliance with this section.

51 (d) The tax credit allowed in this article is transferable,  
52 subject to the written consent of the development office, to an  
53 eligible successor company that continues to operate the  
54 approved project.

**§5B-2E-9. Promulgation of rules.**

1 The executive director of the development office may  
2 promulgate rules to implement the project application  
3 approval process and to describe the criteria and procedures  
4 it has established in connection therewith. These rules are  
5 not subject to the provisions of chapter twenty-nine-a of this  
6 code but shall be filed with the Secretary of State.

**§5B-2E-11. Termination.**

1 The development office may not accept any new project  
2 application after the thirty-first day of December, two  
3 thousand thirteen, and all applications submitted prior to the  
4 first day of January, two thousand thirteen, that have not been  
5 previously approved or not approved, shall be deemed not  
6 approved and shall be null and void as of the first day of  
7 January, two thousand thirteen.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.



Chairman Senate Committee



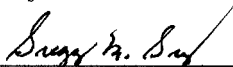
Chairman House Committee

Originating in the House.

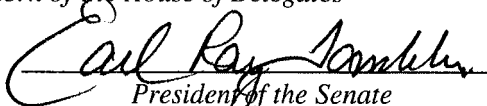
In effect ninety days from passage.



Clerk of the Senate



Clerk of the House of Delegates




President of the Senate



Speaker of the House of Delegates

The within is approved this the 22nd  
day of March 2007.



Governor

PRESENTED TO THE  
GOVERNOR

MAR 18 2007

Time 2:01 pm