

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 587**

4 (By Senators Kessler (Acting President), Unger, Browning and  
5 Stollings)

6 \_\_\_\_\_  
7 [Originating in the Committee on Economic Development;  
8 reported February 23, 2011.]  
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11  
12 A BILL to amend and reenact §5B-2E-5 of the Code of West Virginia,  
13 1931, as amended; and to amend said code by adding thereto two  
14 new sections, designated §5B-2E-7b and §5B-2E-7c, all relating  
15 generally to the West Virginia Tourism Development Act; and  
16 adding a small-scale tourism development component and an  
17 ancillary project component.

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

19 That §5B-2E-5 of the Code of West Virginia, 1931, as amended,  
20 be amended and reenacted; and that said code be amended by adding  
21 thereto two new sections, designated §5B-2E-7b and §5B-2E-7c, all  
22 to read as follows:

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

24 **§5B-2E-5. Project application; evaluation standards; consulting**  
25 **services; preliminary and final approval of projects.**

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

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

1 whichever is later.

2 (c) Based upon a review of the application and additional  
3 documentation provided by the eligible company, if the Executive  
4 Director of the Development Office determines that the applicant  
5 and the project may reasonably satisfy the criteria for final  
6 approval set forth in subsection (d) of this section, then the  
7 Executive Director of the Development Office may grant a  
8 preliminary approval of the applicant and the project.

9 (d) After preliminary approval by the Executive Director of  
10 the Development Office, the development office shall engage the  
11 services of a competent consulting firm or firms to analyze the  
12 data made available by the applicant and to collect and analyze  
13 additional information necessary to determine that, in the  
14 independent judgment of the consultant, the project:

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

17 (2) Will have approved costs in excess of ~~one million dollars~~  
18 \$2.5 million, except that a small scale tourism development project  
19 must have approved costs in excess of \$250,000 but not in excess of  
20 \$2.5 million and that an ancillary tourism facilities development  
21 project must have approved costs in excess of \$100,000 but not in  
22 excess of \$1 million;

23 (3) Will have a significant and positive economic impact on  
24 the state considering, among other factors, the extent to which the  
25 project will compete directly with or complement existing tourism  
26 attractions in the state and the amount by which increased tax

1 revenues from the project will exceed the credit given to the  
2 approved company;

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

6 (5) Will provide additional employment opportunities in the  
7 state.

8 (e) The applicant for credit under section seven or seven-a of  
9 this article shall pay to the development office, prior to the  
10 engagement of the services of a competent consulting firm or firms  
11 pursuant to the provisions of subsection (d) of this section, for  
12 the cost of the consulting report or reports and shall cooperate  
13 with the consulting firm or firms to provide all of the data that  
14 the consultant considers necessary or convenient to make its  
15 determination under subsection (d) of this section. An applicant  
16 for credit under section seven-b of this article shall pay to the  
17 development office a fee of \$1,000 per application. An applicant  
18 for credit under section seven-c of this article shall pay to the  
19 Development Office a fee of \$500 per application. The fee shall be  
20 used by that office to reimburse costs of the small business  
21 development center, a division of the development office, to review  
22 the application and make a recommendation to the Executive Director  
23 of the Development Office under subsection (d) of this section.

24 (f) The Executive Director of the Development Office, within  
25 sixty days following receipt of the consultant's final, written  
26 report or reports, shall review, in light of the consultant's

1 report or reports, the reasonableness of the project's budget and  
2 timetable for completion and, in addition to the criteria for final  
3 approval set forth in subsection (d) of this section, the following  
4 criteria:

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

7       (2) Whether there is substantial and credible evidence that  
8 the project is likely to be started and completed in a timely  
9 fashion;

10       (3) Whether the project will, directly or indirectly, improve  
11 the opportunities in the area where the project will be located for  
12 the successful establishment or expansion of other industrial or  
13 commercial businesses;

14       (4) Whether the project will, directly or indirectly, assist  
15 in the creation of additional employment opportunities in the area  
16 where the project will be located;

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

18       (6) Whether the project is consistent with the goals of this  
19 article;

20       (7) Whether the project is economically and fiscally sound  
21 using recognized business standards of finance and accounting; and

22       (8) The ability of the eligible company to carry out the  
23 project.

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

26       (h) The Executive Director of the Development Office may give

1 its final approval to the applicant's application for a project and  
2 may grant to the applicant the status of an approved company. The  
3 Executive Director of the Development Office shall act to approve  
4 or not approve any application within sixty days following the  
5 receipt of the consultant's final, written report or reports or the  
6 receipt of any additional information requested by the Development  
7 Office, whichever is later. The decision by the Executive Director  
8 of the Development Office is final.

9 **§5B-2E-7b. Amount of credit allowed for small scale tourism**  
10 **development project; approved projects.**

11 (a) As used in this article, "small scale tourism development  
12 project" means a tourism development project as defined in section  
13 three of this article where the cost of the project will exceed  
14 \$250,000 but will not exceed \$2.5 million, except that a small scale  
15 tourism development project may include the construction,  
16 reconstruction or rehabilitation or expansion of a lodging facility  
17 where the project, as specifically set forth and defined in the  
18 application, consists of no more than thirty guest rooms,  
19 notwithstanding any other provision in this article to the contrary.

20 (b) Approved companies are allowed a credit against the West  
21 Virginia consumers sales and service tax imposed by article fifteen,  
22 chapter eleven of this code and collected by the approved company on  
23 sales generated by or arising from the operations of the small scale  
24 tourism development project. A project that qualifies for the  
25 credit allowed by this section may not claim any credit under  
26 section seven, seven-a or seven-c of this article. The amount of

1 this credit is determined and applied as provided in this article.

2 (c) The maximum amount of credit allowable in this article is  
3 equal to twenty-five percent of the approved company's approved  
4 costs as provided in the agreement: *Provided*, That if the small  
5 scale tourism development project site is located within the permit  
6 area or an adjacent area of a surface mining operation, as these  
7 terms are defined in section three, article three, chapter twenty-  
8 two of this code, from which all coal has been or will be extracted  
9 prior to the commencement of the tourism development project, the  
10 maximum amount of credit allowable is equal to thirty-five percent  
11 of the approved company's approved costs as provided in the  
12 agreement.

13 (d) The amount of credit allowable must be taken over a ten-  
14 year period, at the rate of one tenth of the amount thereof per  
15 taxable year, beginning with the taxable year in which the project  
16 is opened to the public, unless the approved company elects to delay  
17 the beginning of the ten-year period until the next succeeding  
18 taxable year. This election shall be made in the first consumers  
19 sales and service tax return filed by the approved company following  
20 the date the project is opened to the public. Once made, the  
21 election cannot be revoked.

22 (e) The amount determined under subsection (c) of this section  
23 is allowed as a credit against the consumers sales and service tax  
24 collected by the approved company on sales from the operation of the  
25 small scale tourism development project. The amount determined  
26 under said subsection may be used as a credit against taxes required

1 to be remitted on the approved company's monthly consumers sales and  
2 service tax returns that are filed pursuant to section sixteen,  
3 article fifteen, chapter eleven of this code. The approved company  
4 shall claim the credit by reducing the amount of consumers sales and  
5 service tax required to be remitted with its monthly consumers sales  
6 and service tax returns by the amount of its aggregate annual credit  
7 allowance until such time as the full current year annual credit  
8 allowance has been claimed. Once the total credit claimed for the  
9 tax year equals the approved company's aggregate annual credit  
10 allowance no further reductions to its monthly consumers sales and  
11 service tax returns will be permitted.

12 (f) If any credit remains after application of subsection (e)  
13 of this section, the amount of credit is carried forward to each  
14 ensuing tax year until used or until the expiration of the third  
15 taxable year subsequent to the end of the initial ten-year credit  
16 application period. If any unused credit remains after the  
17 thirteenth year, that amount is forfeited. No carryback to a prior  
18 taxable year is allowed for the amount of any unused portion of any  
19 annual credit allowance.

20 (g) The total amount of small scale tourism development project  
21 tax credits for all approved companies pursuant to this section may  
22 not exceed \$1.5 million each calendar year.

23 (h) The company approved to claim the small scale tourism  
24 development project credit allowed by this section shall be subject  
25 to the forfeiture of unused tax credit provisions and the recapture  
26 tax provision of section eight of this article. Additionally, the



1 approved company shall be required to submit to the development  
2 office the information required by section eight of this article and  
3 shall be allowed to transfer the credit allowed by this section to  
4 a successor business subject to the rules provided in section eight  
5 of this article.

6 **§5B-2E-7c. Amount of credit allowed for ancillary tourism**  
7 **facilities development project; approved projects.**

8 (a) The following words and terms used in this section shall  
9 have the meanings ascribed in this section:

10 (1) "Ancillary tourism facilities development project" means  
11 the acquisition, including the acquisition of real estate by a  
12 leasehold interest with a minimum of ten years, construction,  
13 expansion and/or equipping of a new or existing facility located at  
14 or near an existing tourism attraction that exists for the sole  
15 purpose of providing recreational, entertainment or lodging for use  
16 by tourists, as specifically set forth and defined in the  
17 application, where the cost of the project will exceed \$100,000 but  
18 will not exceed \$1 million: *Provided*, That an ancillary tourism  
19 facilities development project does not include the construction,  
20 reconstruction, rehabilitation or expansion of a lodging facility  
21 with more than thirty guest rooms, notwithstanding any other  
22 provision in this article to the contrary. All ancillary tourism  
23 facilities development projects shall be in accordance with the  
24 applicable county ancillary tourism facilities development plan.

25 (2) "County ancillary tourism facilities development plan"  
26 means a comprehensive ancillary tourism facilities development plan

1 developed by the local economic development organization designated  
2 as the lead entity for economic development by the county commission  
3 of the county in which the ancillary tourism facilities development  
4 project will be located, as revised, amended or supplemented, from  
5 time to time, by the local development organization. Any such plan  
6 or plans shall be based on studies of governmental, social,  
7 economic, environmental and physical conditions and trends and shall  
8 aim at the coordinated development of ancillary tourism facilities  
9 in the county in order to promote the general health, welfare,  
10 convenience and prosperity of its people through the encouragement  
11 and development of tourism facilities that support existing tourism  
12 attractions by attracting individuals who are not residents of the  
13 state into a geographical area in which travel was not planned or  
14 will extend the stay of travelers who are not residents of the state  
15 in an area in which travel has been planned. The plan or plans, or  
16 parts thereof, shall be prepared by persons appropriately qualified  
17 under state statutes dealing with the applicable profession or  
18 occupation. The plan or plans shall be submitted for review and  
19 approval by the Secretary of Commerce prior to adoption by the local  
20 economic development organization designated as the lead entity for  
21 economic development activities by the county commission of the  
22 county in which the ancillary tourism facilities development project  
23 will be located.

24 (b) In addition to the requirements set forth in section five  
25 of this article, an ancillary tourism facilities development project  
26 shall demonstrate in its application the ability to either attract

1 individuals who are not residents of the state into a geographical  
2 area in which travel was not planned or will extend the stay of  
3 travelers who are not residents of the state in an area in which  
4 travel has been planned.

5 (c) Approved companies are allowed a credit against the West  
6 Virginia consumers sales and service tax imposed by article fifteen,  
7 chapter eleven of this code and collected by the approved company  
8 on sales generated by or arising from the operations of the  
9 ancillary tourism facilities development project. A project that  
10 qualifies for the credit allowed by this section may not claim any  
11 credit under section seven, seven-a or seven-b of this article. The  
12 amount of this credit is determined and applied as provided in this  
13 article.

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

1 National Register of Historic Places or is located in a National  
2 Register Historic District and certified by the State Historic  
3 Preservation Officer as contributing to the historic significance  
4 of the district and the rehabilitation or restoration project has  
5 been approved in advance by the State Historic Preservation Officer,  
6 the maximum amount of credit allowable is equal to fifty percent of  
7 the approved company's approved costs as provided in the agreement.

8 (e) The amount of credit allowable must be taken over a ten-  
9 year period, at the rate of one tenth of the amount thereof per  
10 taxable year, beginning with the taxable year in which the project  
11 is opened to the public, unless the approved company elects to delay  
12 the beginning of the ten-year period until the next succeeding  
13 taxable year. This election shall be made in the first consumers  
14 sales and service tax return filed by the approved company following  
15 the date the project is opened to the public. Once made, the  
16 election cannot be revoked.

17 (f) The amount determined under subsection (d) of this section  
18 is allowed as a credit against the consumers sales and service tax  
19 collected by the approved company on sales from the operation of the  
20 ancillary tourism facilities development project. The amount  
21 determined under said subsection may be used as a credit against  
22 taxes required to be remitted on the approved company's monthly  
23 consumers sales and service tax returns that are filed pursuant to  
24 section sixteen, article fifteen, chapter eleven of this code. The  
25 approved company shall claim the credit by reducing the amount of  
26 consumers sales and service tax required to be remitted with its

1 monthly consumers sales and service tax returns by the amount of its  
2 aggregate annual credit allowance until such time as the full  
3 current year annual credit allowance has been claimed. Once the  
4 total credit claimed for the tax year equals the approved company's  
5 aggregate annual credit allowance, no further reductions to its  
6 monthly consumers sales and service tax returns will be permitted.

7 (g) If any credit remains after application of subsection (f)  
8 of this section, the amount of credit is carried forward to each  
9 ensuing tax year until used or until the expiration of the third  
10 taxable year subsequent to the end of the initial ten-year credit  
11 application period. If any unused credit remains after the  
12 thirteenth year, that amount is forfeited. No carryback to a prior  
13 taxable year is allowed for the amount of any unused portion of any  
14 annual credit allowance.

15 (h) The total amount of ancillary tourism facilities  
16 development project tax credits for all approved companies pursuant  
17 to this section may not exceed \$500,000 each calendar year.

18 (i) The company approved to claim the ancillary tourism  
19 facilities development project tax credit allowed by this section  
20 shall be subject to the forfeiture of unused tax credit provisions  
21 and the recapture tax provision of section eight of this article.  
22 Additionally, the approved company shall be required to submit to  
23 the Development Office the information required by section eight of  
24 this article and shall be allowed to transfer the credit allowed by  
25 this section to a successor business subject to the rules provided  
26 in section eight of this article.

NOTE: The purpose of this bill is to add a small scale tourism development component and an ancillary tourism facilities development component to the West Virginia Tourism Development Act.

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

§5B-2E-7b and §5B-2E-7c are new; therefore, strike-throughs and underscoring have been omitted.