

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 590**

4 (By Senators Browning and Green)

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6 [Originating in the Committee on Economic Development;
7 reported February 23, 2011.]

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11 A BILL to amend and reenact §5B-2E-7a of the Code of West Virginia,
12 1931, as amended; and to amend said code by adding thereto a
13 new section, designated §5B-2E-7b, all relating generally to
14 tourism development projects; removing annual credit cap for
15 expansion projects; providing rule for determining credit for
16 multiyear, multiphase projects; and providing consumers sales
17 and service tax presumption.

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

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

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

24 **§5B-2E-7a. Amount of credit allowed for tourism development**
25 **expansion project; approved projects.**

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

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

26 (c) The amount of credit allowable must be taken over a ten-

1 year period, at the rate of one tenth of the amount thereof per
2 taxable year, beginning with the taxable year in which the project
3 is opened to the public, unless the approved company elects to
4 delay the beginning of the ten-year period until the next
5 succeeding taxable year. This election shall be made in the first
6 consumers sales and service tax return filed by the approved
7 company following the date the project is opened to the public.
8 Once made, the election cannot be revoked.

9 (d) The amount determined under subsection (b) of this section
10 is allowed as a credit against the consumers sales and service tax
11 collected by the approved company on sales from the operation of
12 the tourism development expansion project. The amount determined
13 under said subsection may be used as a credit against taxes
14 required to be remitted on the approved company's monthly consumers
15 sales and service tax returns that are filed pursuant to section
16 sixteen, article fifteen, chapter eleven of this code. The
17 approved company shall claim the credit by reducing the amount of
18 consumers sales and service tax required to be remitted with its
19 monthly consumers sales and service tax returns by the amount of
20 its aggregate annual credit allowance until such time as the full
21 current year annual credit allowance has been claimed. Once the
22 total credit claimed for the tax year equals the approved company's
23 aggregate annual credit allowance no further reductions to its
24 monthly consumers sales and service tax returns will be permitted.

25 (e) If any credit remains after application of subsection (d)
26 of this section, the amount of credit is carried forward to each

1 ensuing tax year until used or until the expiration of the third
2 taxable year subsequent to the end of the initial ten-year credit
3 application period. If any unused credit remains after the
4 thirteenth year, that amount is forfeited. No carryback to a prior
5 taxable year is allowed for the amount of any unused portion of any
6 annual credit allowance.

7 (f) The total amount of tourism development expansion project
8 tax credits for all approved companies pursuant to this section may
9 not exceed \$1,500,000 each calendar year: Provided, That this cap
10 shall be eliminated for calendar years beginning on or after
11 January 1, 2012, for project applications approved by the
12 Development Office after June 30, 2011.

13 **§5B-2E-7b. Computation and allowance of credit for multiphase,**
14 **multiyear projects; sales tax presumption.**

15 (a) When an approved project, whether an original project or
16 an expansion project, will be completed in two or more phases over
17 a period of forty-eight months or less, with such period computed
18 beginning with the month in which construction first began, and the
19 phases have separate completion dates and separate dates on which
20 they will be open to the public, the baseline consumers sales and
21 service tax collections for that approved destination tourism
22 development project shall be the taxes collected during the twelve
23 month period immediately preceding the month in which the first
24 phase of the approved project is open to the public. The amount of
25 the credit, allowed by this article shall be twenty-five percent of
26 the cost of the first phase applied in equal installments over a

1 ten-year period, and shall be applied against the additional
2 consumers sales and service taxes collected over the baseline
3 collections during the ten-year period that begins on the first day
4 of the calendar month in which the first phase of the project is
5 first open to the public. When each subsequent phase of the
6 approved project is completed and is opened to the public, twenty
7 five percent of the cost of that phase of the project shall
8 constitute the amount of credit that may be claimed over a ten-year
9 period that begins on the first day of the calendar month in which
10 that phase is open to the public. In determining the amount of
11 sales tax that the project may retain, the baseline sales tax
12 collections applicable to the first phase of the project shall be
13 used for all phases of the approved project.

14 (b) For purposes of this article, it shall be presumed that
15 the owners or lessees of the project collect and remit consumers
16 sales and service taxes on a calendar year basis, with the annual
17 return for the calendar year filed at the end of January following
18 the close of the sales tax year as required by section twenty-one,
19 article fifteen, chapter eleven of this code.

NOTE: The purpose of this bill is to remove the cap on the amount of annual credit that may be awarded for destination tourism expansion projects approved after June 30, 2011. It provides a rule for determining amount of allowable credit when approved project is a multiyear, multiphase project; and provides a presumption that consumers sales and service tax is collected on calendar year basis.

Strike-throughs indicate language that would be stricken from

the present law, and underscoring indicates new language that would be added.

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