

1 **ENROLLED**

2 **COMMITTEE SUBSTITUTE**

3 **FOR**

4 **H. B. 4184**

5 (By Mr. Speaker (Mr. Miley) and Delegate Armstead)

6
7 [Passed March 8, 2014; in effect ninety days from passage.]
8
9

10 AN ACT to amend and reenact §5B-2E-3, §5B-2E-4, §5B-2E-5, §5B-2E-7,
11 §5B-2E-7a, §5B-2E-8 and §5B-2E-11 of the Code of West
12 Virginia, 1931, as amended, and to amend said code by adding
13 thereto a new section, designated §5B-2E-7b, all relating
14 generally to the West Virginia Tourism Development Act;
15 providing, modifying or eliminating certain definitions;
16 removing requirement for engagement of a consulting firm to
17 review proposed projects; imposing application filing fee;
18 providing additional criteria for evaluation of applications;
19 eliminating limitation on total amount of tourism development
20 expansion project tax credits for all approved companies each
21 calendar year; providing increased tax credit amounts for
22 projects located on or adjacent to state and federal
23 recreational property; establishing tax credit for qualified
24 professional services destination facilities under certain

1 circumstances; specifying benefits upon application and
2 review; providing certain limitations on benefits; authorizing
3 rulemaking by the Tax Commissioner; providing for recapture;
4 extending the deadline for project applications; and making
5 technical corrections.

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

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

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

13 **§5B-2E-3. Definitions.**

14 As used in this article, unless the context clearly indicates
15 otherwise:

16 (1) "Agreement" means a tourism development agreement entered
17 into, pursuant to section six of this article, between the
18 development office and an approved company with respect to a
19 project.

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

23 (3) "Approved costs" means:

24 (a) *Included costs:*

1 (i) Obligations incurred for labor and to vendors,
2 contractors, subcontractors, builders, suppliers, delivery persons
3 and material persons in connection with the acquisition,
4 construction, equipping or installation of a project;

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

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

12 (iv) All costs of architectural and engineering services,
13 including, but not limited to: Estimates, plans and specifications,
14 preliminary investigations and supervision of construction,
15 installation, as well as for the performance of all the duties
16 required by or consequent to the acquisition, construction,
17 equipping or installation of a project;

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

21 (vi) All costs required for the installation of utilities,
22 including, but not limited to: Water, sewer, sewer treatment, gas,
23 electricity, communications and off-site construction of utility
24 extensions to the boundaries of the real estate on which the

1 facilities are located, all of which are to be used to improve the
2 economic situation of the approved company in a manner that allows
3 the approved company to attract persons; and

4 (vii) All other costs comparable with those described in this
5 subdivision;

6 (b) *Excluded costs.* -- The term "approved costs" does not
7 include any portion of the cost required to be paid for the
8 acquisition, construction, equipping or installation of a project
9 that is financed with governmental incentives, grants or bonds or
10 for which the eligible taxpayer elects to qualify for other tax
11 credits, including, but not limited to, those provided by article
12 thirteen-q, chapter eleven of this code. The exclusion of certain
13 costs of a project under this paragraph (b) does not automatically
14 disqualify the remainder of the costs of the project.

15 (4) "Base tax revenue amount" means the average monthly amount
16 of consumer sales and service tax collected by an approved company,
17 based on the twelve-month period ending immediately prior to the
18 opening of a new tourism development project for business or a
19 tourism development expansion project, as certified by the State
20 Tax Commissioner.

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

23 (6) "Crafts and products center" means a facility primarily
24 devoted to the display, promotion and sale of West Virginia

1 products and at which a minimum of eighty percent of the sales
2 occurring at the facility are of West Virginia arts, crafts or
3 agricultural products.

4 (7) "Eligible company" means any corporation, limited
5 liability company, partnership, limited liability partnership, sole
6 proprietorship, business trust, joint venture or any other entity
7 operating or intending to operate a project, whether owned or
8 leased, within the state that meets the standards required by the
9 development office. An eligible company may operate or intend to
10 operate directly or indirectly through a lessee.

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

16 (9) "Entertainment destination center" means a facility
17 containing a minimum of two hundred thousand square feet of
18 building space adjacent or complementary to an existing tourism
19 attraction, an approved project, or a major convention facility and
20 which provides a variety of entertainment and leisure options that
21 contain at least one major theme restaurant and at least three
22 additional entertainment venues, including, but not limited to,
23 live entertainment, multiplex theaters, large-format theaters,
24 motion simulators, family entertainment centers, concert halls,

1 virtual reality or other interactive games, museums, exhibitions or
2 other cultural and leisure time activities. Entertainment and food
3 and drink options shall occupy a minimum of sixty percent of total
4 gross area, as defined in the application, available for lease and
5 other retail stores shall occupy no more than forty percent of the
6 total gross area available for lease.

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

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

13 (12) "Qualified professional services destination facility"
14 means a facility with a minimum qualified investment, as defined in
15 this article, of not less than \$80 million physically located in
16 this state and adjacent or complementary to a historic resort
17 hotel, which primarily furnishes and provides personal or
18 professional services, or both types of services, to individuals
19 who primarily are residents of another state or foreign county.

20 (13) "State agency" means any state administrative body,
21 agency, department, division, board, commission or institution
22 exercising any function of the state that is not a municipal
23 corporation or political subdivision.

24 (14) "Tourism attraction" means a cultural or historical site,

1 a recreation or entertainment facility, an area of natural
2 phenomenon or scenic beauty, a West Virginia crafts and products
3 center, or an entertainment destination center or a qualified
4 professional services destination facility. A project or tourism
5 attraction does not include any of the following:

6 (A) Lodging facility, unless:

7 (i) The facility constitutes a portion of a project and
8 represents less than fifty percent of the total approved cost of
9 the project, or the facility is to be located on recreational
10 property owned or leased by the state or federal government and the
11 facility has received prior approval from the appropriate state or
12 federal agency;

13 (ii) The facility involves the restoration or rehabilitation
14 of a structure that is listed individually in the national register
15 of historic places or is located in a national register historic
16 district and certified by the state historic preservation officer
17 as contributing to the historic significance of the district and
18 the rehabilitation or restoration project has been approved in
19 advance by the state historic preservation officer; or

20 (iii) The facility involves the construction, reconstruction,
21 restoration, rehabilitation or upgrade of a full-service lodging
22 facility or the reconstruction, restoration, rehabilitation or
23 upgrade of an existing structure into a full-service lodging
24 facility having not less than five hundred guest rooms, with

1 construction, reconstruction, restoration, rehabilitation or
2 upgrade costs exceeding ten million dollars;

3 (B) A facility that is primarily devoted to the retail sale of
4 goods, other than an entertainment destination center, a West
5 Virginia crafts and products center or a project where the sale of
6 goods is a secondary and subordinate component of the project; and

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

11 (15) "Tourism development project" means the acquisition,
12 including the acquisition of real estate by a leasehold interest
13 with a minimum term of ten years, construction and equipping of a
14 tourism attraction; the construction and installation of
15 improvements to facilities necessary or desirable for the
16 acquisition, construction, installation of a tourism attraction,
17 including, but not limited to, surveys, installation of utilities,
18 which may include water, sewer, sewage treatment, gas, electricity,
19 communications and similar facilities; and off-site construction of
20 utility extensions to the boundaries of the real estate on which
21 the facilities are located, all of which are to be used to improve
22 the economic situation of the approved company in a manner that
23 allows the approved company to attract persons, but does not
24 include a project that will be substantially owned, managed or

1 controlled by an eligible company with an existing project located
2 within a ten mile radius, or by a person or persons related by a
3 family relationship, including spouses, parents, children or
4 siblings, to an owner of an eligible company with an existing
5 project located within a ten mile radius.

6 (16) "Tourism development expansion project" means the
7 acquisition, including the acquisition of real estate by a
8 leasehold interest with a minimum term of ten years; the
9 construction and installation of improvements to facilities
10 necessary or desirable for the expansion of an existing tourism
11 attraction including, but not limited to, surveys, installation of
12 utilities, which may include water, sewer, sewage treatment, gas,
13 electricity, communications and similar facilities; and off-site
14 construction of utility extension to the boundaries of real estate
15 on which the facilities are located, all of which are to be used to
16 improve the economic situation of the approved company in a manner
17 that allows the approved company to attract persons.

18 (17) "Tourism development project tax credit" means the
19 tourism development project tax credit allowed by section seven of
20 this article.

21 (18) "Tourism development expansion project tax credit" means
22 the tourism development expansion project tax credit allowed by
23 section seven-a of this article.

24 **§5B-2E-4. Additional powers and duties of the development office.**

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

4 (1) Make approval of all applications for projects and enter
5 into agreements pertaining to projects with approved companies;

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

11 (3) Impose and collect fees and charges in connection with any
12 transaction.

13 (4) Impose and collect from the applicant a non-refundable
14 application fee in the amount of \$10,000 to be paid to the
15 Development Office when the application is filed.

16 **§5B-2E-5. Project application; evaluation standards; approval of**
17 **projects.**

18 (a) Each eligible company that seeks to qualify a project for
19 the tourism development project tax credit provided by section
20 seven of this article, or for the tourism development expansion
21 project tax credit provided by section seven-a of this article, as
22 applicable, must file a written application for approval of the
23 project with the Development Office.

1 (b) With respect to each eligible company making an
2 application to the Development Office for a tourism development
3 project tax credit or a tourism development expansion project tax
4 credit, the Development Office shall make inquiries and request
5 documentation, including a completed application, from the
6 applicant that shall include: A description and location of the
7 project; capital and other anticipated expenditures for the project
8 and the sources of funding therefor; the anticipated employment and
9 wages to be paid at the project; business plans that indicate the
10 average number of days in a year in which the project will be in
11 operation and open to the public; and the anticipated revenues and
12 expenses generated by the project.

13 (c) On and after the effective date of this section as amended
14 in 2014, the executive director of the Development Office, within
15 sixty days following receipt of an application or receipt of any
16 additional information requested by the Development Office
17 respecting the application, whichever is later, shall act to grant
18 or not to grant approval of the application, based on the following
19 criteria:

20 (1) The project will attract at least twenty-five percent of
21 its visitors from outside of this state;

22 (2) The project will have approved costs in excess of
23 \$1,000,000;

1 (3) The project will have a significant and positive economic
2 impact on the state considering, among other factors, the extent to
3 which the project will compete directly with or complement existing
4 tourism attractions in the state and the amount by which increased
5 tax revenues from the project will exceed the credit given to the
6 approved company;

7 (4) The project will produce sufficient revenues and public
8 demand to be operating and open to the public for a minimum of one
9 hundred days per year;

10 (5) The project will provide additional employment
11 opportunities in the state;

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

14 (7) Whether there is substantial and credible evidence that
15 the project is likely to be started and completed in a timely
16 fashion;

17 (8) Whether the project will, directly or indirectly, improve
18 the opportunities in the area where the project will be located for
19 the successful establishment or expansion of other industrial or
20 commercial businesses;

21 (9) Whether the project will, directly or indirectly, assist
22 in the creation of additional employment opportunities in the area
23 where the project will be located;

24 (10) Whether the project helps to diversify the local economy;

1 (11) Whether the project is consistent with the goals of this
2 article;

3 (12) Whether the project is economically and fiscally sound
4 using recognized business standards of finance and accounting; and

5 (13) The ability of the eligible company to carry out the
6 project.

7 (d) The Development Office may establish other criteria for
8 consideration when approving the applications.

9 (e) The decision by the executive director of the Development
10 Office is final.

11 (f) This section as amended and reenacted in 2014 shall apply
12 to applications under review by the director of the development
13 office prior to the effective date of this section as well as to
14 applications filed on and after the effective date of this section
15 as amended and reenacted in 2014.

16 **§5B-2E-7. Amount of credit allowed for tourism development**
17 **project; approved projects.**

18 (a) Approved companies are allowed a credit against the West
19 Virginia consumers sales and service tax imposed by article
20 fifteen, chapter eleven of this code and collected by the approved
21 company on sales generated by or arising from the operations of the
22 tourism development project: *Provided*, That if the consumers sales
23 and service tax collected by the approved company is not solely
24 attributable to sales resulting from the operation of the new

1 tourism development project, the credit shall only be applied
2 against that portion of the consumers sales and service tax
3 collected in excess of the base tax revenue amount. The amount of
4 this credit is determined and applied as provided in this article.

5 (b) The maximum amount of credit allowable in this article is
6 equal to twenty-five percent of the approved company's approved
7 costs as provided in the agreement: *Provided, That,* if the tourism
8 development project site is located within the permit area or an
9 adjacent area of a surface mining operation, as these terms are
10 defined in section three, article three, chapter twenty-two of this
11 code, from which all coal has been or will be extracted prior to
12 the commencement of the tourism development project, or the tourism
13 development project site is located on or adjacent to recreational
14 property owned or leased by the state or federal government and
15 when the project is located on property owned or leased by the
16 state or federal government, the project has received prior
17 approval from the appropriate state or federal agency, the maximum
18 amount of credit allowable is equal to thirty-five percent of the
19 approved company's approved costs as provided in the agreement.

20 (c) The amount of credit allowable must be taken over a ten-
21 year period, at the rate of one tenth of the amount thereof per
22 taxable year, beginning with the taxable year in which the project
23 is opened to the public, unless the approved company elects to
24 delay the beginning of the ten-year period until the next

1 succeeding taxable year. This election shall be made in the first
2 consumers sales and service tax return filed by the approved
3 company following the date the project is opened to the public.
4 Once made, the election cannot be revoked.

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

21 (e) If any credit remains after application of subsection (d)
22 of this section, the amount of credit is carried forward to each
23 ensuing tax year until used or until the expiration of the third
24 taxable year subsequent to the end of the initial ten-year credit

1 application period. If any unused credit remains after the
2 thirteenth year, that amount is forfeited. No carryback to a prior
3 taxable year is allowed for the amount of any unused portion of any
4 annual credit allowance.

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

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

22 (b) The maximum amount of credit allowable in this article is
23 equal to twenty-five percent of the approved company's approved
24 costs as provided in the agreement: *Provided*, That, if the tourism

1 development expansion project site is located within the permit
2 area or an adjacent area of a surface mining operation, as these
3 terms are defined in section three, article three, chapter twenty-
4 two of this code, from which all coal has been or will be extracted
5 prior to the commencement of the tourism development project, or
6 the tourism development project site is located on or adjacent to
7 recreational property owned or leased by the state or federal
8 government and when the project is located on property owned or
9 leased by the state or federal government, the project has received
10 prior approval from the appropriate state or federal agency, the
11 maximum amount of credit allowable is equal to thirty-five percent
12 of the approved company's approved costs as provided in the
13 agreement.

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

23 (d) The amount determined under subsection (b) of this section
24 is allowed as a credit against the consumers sales and service tax

1 collected by the approved company on sales from the operation of
2 the tourism development expansion project. The amount determined
3 under said subsection may be used as a credit against taxes
4 required to be remitted on the approved company's monthly consumers
5 sales and service tax returns that are filed pursuant to section
6 sixteen, article fifteen, chapter eleven of this code. The
7 approved company shall claim the credit by reducing the amount of
8 consumers sales and service tax required to be remitted with its
9 monthly consumers sales and service tax returns by the amount of
10 its aggregate annual credit allowance until such time as the full
11 current year annual credit allowance has been claimed. Once the
12 total credit claimed for the tax year equals the approved company's
13 aggregate annual credit allowance no further reductions to its
14 monthly consumers sales and service tax returns will be permitted.

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

23 **§5B-2E-7b. Credit against taxes.**

1 (a) *General.* - When a qualified professional services
2 destination facility is located at or adjacent to an existing
3 historic resort hotel with at least five hundred rooms and the
4 qualified professional services destination facility eligible for
5 credit under this section is primarily engaged in furnishing
6 services that are not subject to the tax imposed by article
7 fifteen, chapter eleven of this code, then in lieu of the credits
8 that otherwise would be allowable under section seven or seven-a of
9 this article, the eligible company that complies with the
10 requirements of this section may claim the credit provided in this
11 section: *Provided,* That the maximum amount of credit allowable
12 under this section is equal to twenty-five percent of the eligible
13 company's qualified investment, as defined in this section.

14 (b) *Definitions.* - The following words and phrases when used
15 in this section have the meanings given to them in this subsection
16 unless the context in which used clearly indicates that a different
17 meaning was intended by the Legislature.

18 (1) "Agreement" means an agreement entered into under
19 subsection (g) of this section.

20 (2) "Compensation" means wages, salaries, commissions and any
21 other form of remuneration paid to employees for personal services.

22 (3) "Cost-of-living adjustment" for any calendar year is the
23 percentage, if any, by which the consumer price index for the
24 preceding calendar year exceeds the consumer price index for the

1 calendar year 2015.

2 (4) "Consumer price index" for any calendar year means the
3 average of the federal consumer price index as of the close of the
4 twelve-month period ending on August 31 of that calendar year.

5 (5) "Eligible company" for purposes of this section means any
6 corporation, limited liability company, partnership, limited
7 liability partnership, sole proprietorship, business trust, joint
8 venture or any other entity operating a qualified professional
9 services destination facility, whether owned or leased, within the
10 state that: (A) creates at least one hundred twenty-five new jobs
11 in this state within thirty-six months after the date the qualified
12 investment is placed into service or use, and maintains those jobs
13 for the entire ten year life of the tax credit specified in this
14 section, (B) makes available to its full-time employees health
15 insurance coverage and pays at least fifty percent of the premium
16 for the health insurance, (C) generates, within thirty-six months
17 after the date the qualified investment is placed into service or
18 use, not less than \$10 million of gross receipts upon which the
19 taxes imposed under article twenty-seven, chapter eleven of this
20 code are paid, and (D) meets the standards, limitations and
21 requirements of this section and of the development office. An
22 eligible company may operate or intend to operate directly or
23 indirectly through a lessee or a contract operator.

24 (6) "Federal consumer price index" means the most recent

1 consumer price index as of August 31 each year for all urban
2 consumers published by the United States Department of Labor.

3 (7) "Health insurance benefits" means employer-provided
4 coverage for medical expenses of the employee or the employee and
5 his or her family under a group accident or health plan, or
6 employer contributions to an Archer medical savings account, as
7 defined in Section 220 of the Internal Revenue Code of 1986, as
8 amended, or to a health savings account, as defined in Section 223
9 of the Internal Revenue Code, of the employee when the employer's
10 contribution to any such account is not less than fifty percent of
11 the maximum amount permitted for the year as employer-provided
12 coverage under Section 220 or 223 of the Internal Revenue Code,
13 whichever section is applicable.

14 (8) "Historic resort hotel" means a resort hotel registered
15 with the United States Department of the Interior on the effective
16 date of this amendment as a national historic landmark in its
17 National Registry of Historic Places having not fewer than five
18 hundred guest rooms.

19 (9) "New employee" means a person residing and domiciled in
20 this state hired by the taxpayer to fill a position or a job in
21 this state which previously did not exist in the taxpayer's
22 business enterprise in this state prior to the date the application
23 was filed under subsection (c) of this section. In no event may the
24 number of new employees exceed the total net increase in the

1 employer's employment in this state: *Provided*, That the Tax
2 Commissioner may require that the net increase in the taxpayer's
3 employment in this state be determined and certified for the
4 taxpayer's controlled group as defined in article twenty-four of
5 this chapter. In addition, a person is a "new employee" only if the
6 person's duties are on a regular, full-time and permanent basis:

7 (A) "Full-time employment" means employment for at least
8 eighty hours per month at a wage not less than the amount specified
9 in subdivision (1), subsection (d) of this section; and

10 (B) "Permanent employment" does not include employment that is
11 temporary or seasonal and therefore the wages, salaries and other
12 compensation paid to the temporary or seasonal employees will not
13 be considered for purposes of this section even if the compensation
14 paid to the temporary or seasonal employee equals or exceeds the
15 amount specified in paragraph (A) of this subdivision.

16 (10) "New job" means a job which did not exist in the business
17 of the taxpayer in this state prior to filing the application for
18 benefits under this section, and which is filled by a new employee.

19 (11) "Professional services" means only those services
20 provided directly by: a physician licensed to practice in this
21 State, a surgeon licensed to practice in this State, a dentist
22 licensed to practice in this State, a podiatrist licensed to
23 practice in this State, an osteopathic physician licensed to
24 practice in this State, a psychologist licensed to practice in this

1 State, an optometrist licensed to practice in this State, a
2 registered nurse licensed to practice in this State, a physician
3 assistant licensed to practice in this State, a licensed practical
4 nurse licensed to practice in this State, a dental hygienist
5 licensed to practice in this State, a social worker licensed to
6 practice in this State, or any other health care professional
7 licensed to practice in this State;

8 (12) "Qualified investment" means one-hundred percent of the
9 cost of property purchased or leased for the construction and
10 equipping of a qualified professional services destination facility
11 which is placed in service or use in this State by an eligible
12 company.

13 (A) The cost of property purchased for a qualified
14 professional services destination facility is determined under the
15 following rules:

16 (i) Cost does not include the value of property given in trade
17 or exchange for the property purchased for business expansion.

18 (ii) If property is damaged or destroyed by fire, flood, storm
19 or other casualty, or is stolen, then the cost of replacement
20 property does not include any insurance proceeds received in
21 compensation for the loss.

22 (iii) The cost of real property acquired by written lease for
23 a primary term of ten years or longer is one hundred percent of the
24 rent reserved for the primary term of the lease, not to exceed ten

1 years.

2 (iv) The cost of tangible personal property acquired by
3 written lease for a primary term of not less than four years.

4 (v) In the case of self-constructed property, the cost thereof
5 is the amount properly charged to the capital account for
6 depreciation in accordance with federal income tax law.

7 (vi) The cost of property used by the taxpayer out-of-state
8 and then brought into this State, is determined based on the
9 remaining useful life of the property at the time it is placed in
10 service or use in this State, and the cost is the original cost of
11 the property to the taxpayer less straight line depreciation
12 allowable for the tax years or portions thereof the taxpayer used
13 the property outside this State. In the case of leased tangible
14 personal property, cost is based on the period remaining in the
15 primary term of the lease after the property is brought into this
16 State for use in a new or expanded business facility of the
17 taxpayer, and is the rent reserved for the remaining period of the
18 primary term of the lease, not to exceed ten years, or the
19 remaining useful life of the property, determined as aforesaid,
20 whichever is less.

21 (c) *Credit against taxes.* - The credit allowed by this section
22 shall be equal to twenty-five percent of the eligible company's
23 qualified investment in the qualified professional services
24 destination facility and shall be taken and applied as provided in

1 this subsection (c). Notwithstanding any other provision of this
2 article to the contrary, no taxpayer or group of taxpayers may gain
3 entitlement to more than \$37.5 million total aggregate tax credit
4 under this section and no taxpayer, or group of taxpayers, in the
5 aggregate may apply more than \$2.5 million of annual credit in any
6 tax year under this section, either in the form of a refund or
7 directly against a tax liability or in any combination thereof.
8 This limitation applies to initial tax credit attributable to
9 qualified investment in a qualified professional services
10 destination facility, and to qualified investment in a follow-up
11 project expansion, so that credit attributable additively and in
12 the aggregate to both may not be applied to exceed \$2.5 million
13 annual credit in any tax year.

14 (1) *Application of credit.* - The amount of credit allowable
15 under this subsection shall be taken over a ten-year period, at the
16 rate of one tenth of the amount thereof per taxable year, beginning
17 with the taxable year in which the eligible company places the
18 qualified professional services destination facility, or part
19 thereof, in service or use in this state, unless the eligible
20 company elected to delay the beginning of the ten-year period until
21 the next succeeding taxable year. This election shall be made in
22 the annual income tax return filed under chapter eleven of this
23 code for the taxable year in which the qualified professional
24 services destination facility is first placed into service or use

1 by the taxpayer. Once made, the election may not be revoked. The
2 annual credit allowance is taken in the manner prescribed in
3 subdivision (3) of this subsection (c): *Provided*, That if any
4 credit remains after the initial ten year credit application
5 period, the amount of remaining credit is carried forward to each
6 ensuing tax year until used or until the expiration of the fifth
7 taxable year subsequent to the end of the initial ten year credit
8 application period. If any unused credit remains after expiration
9 of the fifth taxable year subsequent to the end of the initial ten
10 year credit application period, the amount thereof is forfeited. No
11 carryback to a prior taxable year is allowed for the amount of any
12 unused portion of any annual credit allowance.

13 (2) *Placed in service or use.* - For purposes of the credit
14 allowed by this subsection (c), qualified investment or qualified
15 investment property is considered placed in service or use in the
16 earlier of the following taxable years:

17 (A) The taxable year in which, under the eligible company's
18 depreciation practice, the period for depreciation with respect to
19 the property begins; or

20 (B) The taxable year in which the property is placed in a
21 condition or state of readiness and availability for a specifically
22 assigned function.

23 (3) *Application of annual credit allowance.*

1 (A) *In general.*- The aggregate annual credit allowance for the
2 current taxable year is an amount equal to the one-tenth part
3 allowed under subdivision (1) of this subsection for qualified
4 investment placed into service or use.

5 (B) *Application of current year annual credit allowance.* - The
6 amount determined under this subsection (c) is allowed as a credit
7 against one hundred percent of the eligible company's state tax
8 liabilities applied as provided in paragraphs (C) and (D) of this
9 subdivision (3), and in that order:

10 (C) *Corporation net income taxes.* - The amount of allowable
11 tax credit for the year determined under paragraph (A) of this
12 subdivision (3) shall first be applied to reduce the taxes imposed
13 by article twenty-four, chapter eleven of this code, for the
14 taxable year determined before application of allowable credits
15 against tax.

16 (D) *Personal income taxes.* -

17 (i) If the eligible company is an electing small business
18 corporation, as defined in section 1361 of the United States
19 Internal Revenue Code of 1986, as amended, a partnership, a limited
20 liability company that is treated as a partnership for federal
21 income tax purposes or a sole proprietorship, then any unused
22 credit after application of paragraph (C) of this subdivision (3)
23 is allowed as a credit against the taxes imposed by article twenty-

1 one, chapter eleven of this code on the members, owners, partners
2 or interest holders in the eligible company.

3 (ii) Electing small business corporations, limited liability
4 companies, partnerships and other unincorporated organizations
5 shall allocate the credit allowed by this article among their
6 members in the same manner as profits and losses are allocated for
7 the taxable year.

8 (E) No credit is allowed under this subdivision (3) against
9 any employer withholding taxes imposed by article twenty-one,
10 chapter eleven of this code.

11 (F) The tax credits allowed under articles thirteen-j,
12 thirteen-q, thirteen-s, thirteen-r, thirteen-w, and thirteen-aa of
13 this code may not be applied to offset any tax against which the
14 tax credit allowed under this article is allowed or authorized. No
15 person, entity, company, or eligible company authorized or entitled
16 to any tax credit allowed under this section or any member of the
17 unitary group or any member of the controlled group of which the
18 taxpayer is a member, may gain entitlement to any other economic
19 development tax credit or economic development tax incentive which
20 relates to the investment or activity upon which the credit
21 authorized under this section is based.

22 (G) (i) In order to effectuate the purposes of this
23 subdivision (3), the Tax Commissioner may propose for promulgation
24 rules, including emergency rules, in accordance with article three,

1 chapter twenty-nine-a of this code.

2 (ii) The Tax Commissioner may apply any amount of the tax
3 credit otherwise available to a Taxpayer under this article, to pay
4 any delinquent West Virginia state tax liability of the taxpayer,
5 and interest and penalties as applicable.

6 (iii) Any amount of the tax credit otherwise available to a
7 taxpayer under this article may be applied by the applicable
8 administering agency to pay any outstanding obligation to a
9 Workers' Compensation Fund, as defined in article two-c of chapter
10 twenty-three of this code, or any outstanding obligation under the
11 West Virginia Unemployment Compensation Act.

12 (iv) Any amount of the tax credit otherwise available to a
13 taxpayer under this article, may be applied by the applicable
14 administering agency to pay any delinquent or unpaid assessment,
15 fee, fine, civil penalty or monetary imposition imposed by the West
16 Virginia Division of Environmental Protection or the United States
17 Environmental Protection Agency, or any agency charged with
18 enforcing federal, state or local environmental or hazardous waste
19 regulations.

20 (H) *Unused credit, refundable credit.* - If any annual credit
21 remains after application of preceding paragraphs of this
22 subdivision (3), the amount thereof shall be refunded annually to
23 the eligible company, and distributed in accordance with the credit
24 distribution specified in this subdivision (3): *Provided*, That the

1 amount thereof may not exceed the limitation on annual tax credit
2 or the limitation on total aggregate tax credit specified in this
3 section.

4 (I) *Forfeiture of credit.* - If any credit remains after
5 expiration of the fifth taxable year subsequent to the end of the
6 initial ten year credit application period, such credit is
7 forfeited, and may not be used to offset any West Virginia tax
8 liability.

9 (d) *Compensation of employees filling new jobs.*

10 (1) The new jobs and new employee criteria which count toward
11 qualification of a taxpayer as an eligible company for purposes of
12 the tax credit allowed by this section shall be subject to the
13 following limitations and requirements. A job counts toward
14 qualification of a taxpayer as an eligible company if the job is a
15 new job, as defined in this section, held by a new employee, as
16 defined in this section, and the new job:

17 (A) Pays a median wage of at least \$37,000 annually. Beginning
18 January 1, 2015, and on January 1 of each year thereafter, the Tax
19 Commissioner shall prescribe an amount that shall apply in lieu of
20 the \$37,000 amount for new jobs filled during that calendar year.
21 This amount is prescribed by increasing the \$37,000 figure by the
22 cost-of-living adjustment for that calendar year. If any increase
23 under this subdivision is not a multiple of \$50, the increase shall
24 be rounded to the next lowest multiple of \$50;

1 (B) Provides health insurance. The employer may, in addition,
2 offer benefits including child care, retirement and other benefits;
3 and

4 (C) Is a full-time, permanent position, as those terms are
5 defined in this section.

6 (D) Jobs that pay less than the statewide average nonfarm
7 payroll wage, as determined annually by the West Virginia Bureau of
8 Employment Programs, or that pay that salary, but do not also
9 provide health benefits in addition to the salary, do not count
10 toward qualification of a taxpayer as an eligible company under
11 this section. Jobs that are less than full-time, permanent
12 positions do not count toward qualification of a taxpayer as an
13 eligible company under this section.

14 (E) The employer having obtained qualification as an eligible
15 company under this section for the year in which the new job is
16 filled is not required to raise wages of the employees currently
17 employed in the new jobs upon which the initial qualification as an
18 eligible company under this section was based by reason of the
19 cost-of-living adjustment for new jobs filled in subsequent years
20 provided the employer continues to provide healthcare.

21 (e) *Application and review.*

22 (1) *Application.* - An eligible company that meets the
23 requirements of this section may apply to the Development Office
24 for entitlement to the tax credit authorized under this section.

1 The application shall be on a form prescribed by the Development
2 Office and shall include all of the following:

3 (A) The name and address of the applicant;

4 (B) Documentation that the applicant is a eligible company;

5 (C) Documentation that the applicant meets the requirements of
6 this section;

7 (D) Documentation that the applicant does not owe any
8 delinquent taxes or any other amounts to the federal government,
9 this state or any political subdivision of this state;

10 (E) An affidavit that the applicant has not filed for or
11 publicly announced its intention to file for bankruptcy protection
12 and that the company will not seek bankruptcy protection within the
13 next six calendar months following the date of the application;

14 (F) A waiver of confidentiality under section five-d, article
15 ten, chapter eleven of this code for information provided in the
16 application; and

17 (G) Any other information required by the Development Office.

18 (f) *Credit allowable.*

19 (1) *Certified multiple year projects.*

20 (A) In general. - A multiple year qualified professional
21 services destination facility project certified by the West
22 Virginia Development Office is eligible for the credit allowable by
23 this article. A project eligible for certification under this
24 section is one where the qualified investment under this article

1 creates at least the required minimum number of new jobs but the
2 qualified investment is placed in service or use over a period of
3 up to three successive tax years: *Provided*, That the qualified
4 investment is made pursuant to a written business facility
5 development plan of the taxpayer providing for an integrated
6 project for investment at one or more new or expanded business
7 facilities, a copy of which must be attached to the taxpayer's
8 application for project certification and approved by the West
9 Virginia Development Office, and the qualified investment placed in
10 service or use during the first tax year would not have been made
11 without the expectation of making the qualified investment placed
12 in service or use during the next two succeeding tax years.

13 (B) Application for certification. - The application for
14 certification of a project under this section shall be filed with
15 and approved by the West Virginia Development Office prior to any
16 credit being claimed or allowed for the project's qualified
17 investment and new jobs created as a direct result of the qualified
18 investment. This application shall be approved in writing and
19 contain the information as the West Virginia Development Office may
20 require to determine whether the project should be certified as
21 eligible for credit under this article.

22 (C) Review. - Within thirty days of receipt of a complete
23 application, the Development Office, in conjunction with the Tax
24 Division of the Department of Revenue, shall review the application

1 and determine if the applicant is an eligible company and that the
2 requirements of this section have been met. Applications not
3 approved within the thirty days specified in this subdivision are
4 hereby deemed denied.

5 (D) *Approval.* - The Development Office may approve or deny the
6 application. Upon approval of an application, the Development
7 Office shall notify the applicant in writing and enter into an
8 agreement with the eligible company for benefits under this
9 section.

10 (2) *Certified follow-up project expansions.*

11 (A) An eligible company that intends to undertake a follow-up
12 project expansion, may apply to the West Virginia Development
13 Office for certification of a single, one-time, follow-up project
14 expansion, and entitlement to an additional tax credit under this
15 section in an amount which is the lesser of twenty-five percent of
16 qualified investment in the follow-up project expansion or \$12.5
17 million. No taxpayer, or group of taxpayers, in the aggregate may
18 apply more than \$2.5 million of annual credit in any tax year under
19 this section, either in the form of a refund or directly against a
20 tax liability or in any combination thereof. This limitation
21 applies to initial tax credit attributable to qualified investment
22 in a qualified professional services destination facility, and to
23 qualified investment in a follow-up project expansion, so that

1 credit attributable additively and in the aggregate to both may not
2 be applied to exceed \$2.5 million annual credit in any tax year.

3 (B) The requirements, limitations and qualifications
4 applicable to qualified professional services destination facility
5 projects under this section apply to follow-up project expansions,
6 except for those requirements, limitations and qualifications
7 expressly specified in this subdivision (2).

8 (C) Requirements for certification of a follow-up project
9 expansion are as follows:

10 (i) The eligible company, pursuant to certification and
11 authorization for entitlement to tax credit under subsection (1) of
12 this section (f), has placed qualified investment of not less than
13 \$80 million into service in a qualified professional services
14 destination facility within an initial period of not more than
15 three tax years;

16 (ii) The eligible company intends to place additional
17 qualified investment in service or use in the previously certified
18 qualified professional services destination facility project, or an
19 expansion or extension thereof. In no case shall a follow-up
20 project expansion be certified if the follow-up project expansion
21 property is not contiguous to, or within not more than one mile of,
22 the initial qualified professional services destination facility;

23 (iii) The eligible company proposes to place the qualified
24 investment in the follow-up project expansion in service or use in

1 the fourth tax year subsequent to the tax year in which qualified
2 investment was first placed into service or use in the initial
3 qualified professional services destination facility project, or
4 under a multiple year project certification, in the fourth, fifth
5 and sixth tax year subsequent to the tax year in which qualified
6 investment was first placed into service or use in the initial
7 qualified professional services destination facility project;

8 (iv) The follow-up project expansion must create and maintain
9 at least twenty-five net new jobs held by new employees, in
10 addition to the new jobs created by the initial qualified
11 professional services destination facility project. The loss of any
12 West Virginia job at the eligible company will be subtracted from
13 the count of new jobs attributable to the follow-up project
14 expansion;

15 (v) The West Virginia Development Office shall not issue more
16 than one certification for any follow-up project expansion; and

17 (vi) The West Virginia Development Office shall not issue
18 certification of a follow-up project expansion unless the applicant
19 provides convincing evidence to show that the follow-up project
20 expansion will result in jobs creation specified in this
21 subdivision, that such jobs will remain and be maintained in West
22 Virginia for at least ten years subsequent to the placement of
23 qualified investment into service or use in the follow-up project
24 expansion, that the follow-up project expansion will not operate to

1 the detriment of other West Virginia businesses or to the detriment
2 of the economy, public welfare or moral character of West Virginia
3 or its people.

4 (g) *Agreement.*

5 (1) The agreement between the eligible company and the
6 Development Office shall be entered into before any benefits may be
7 provided under this section.

8 (2) The agreement shall do all of the following:

9 (A) Specify the terms and conditions the eligible company must
10 comply with in order to receive benefits under this section, other
11 than those terms, limitations and conditions specified and mandated
12 by statute or regulation; and

13 (B) Require the Development Office to certify all of the
14 following to the Tax Division of the Department of Revenue each
15 taxable year an agreement under this section is in effect:

16 (i) That the eligible company is eligible to receive benefits
17 under this section;

18 (ii) The number of new jobs created by the company during each
19 taxable year;

20 (iii) The amount of gross wages, as determined for purposes of
21 Form W2, as filed with the Internal Revenue Service, being paid to
22 each individual employed in a new job;

23 (iv) The amount of an eligible company's qualified investment;

1 (v) The maximum amount of credit allowable to the eligible
2 company under this section; and

3 (vi) Any other information deemed necessary by the Development
4 Office.

5 (h) *Filing and contents.*

6 (1) *Filing.* - On or before the due date of the income tax
7 return for each tax year in which the agreement is in effect, an
8 eligible company shall file with the Tax Division of the Department
9 of Revenue a form prescribed by the Tax Commissioner.

10 (2) *Contents.* - The form specified under subdivision (1) of
11 this subsection (h) shall request the following information:

12 (A) The name and Employer Identification Number of the
13 eligible company;

14 (B) The effective date of the agreement;

15 (C) The reporting period end date;

16 (D) Information relating to each individual employed in a new
17 job as required by the Tax Commissioner;

18 (E) Aggregate gross receipts for the tax period and gross
19 receipts on which tax has been paid under article twenty-seven,
20 chapter eleven of this code for the tax period; and

21 (F) Any other information required by the Tax Commissioner.

22 (3) *Taking of credit.* - The taxpayer, participant or
23 participants claiming the credit for qualified investments in a

1 certified project shall annually file with their income tax returns
2 filed under chapter eleven of this code:

3 (A) Certification that the taxpayer's or participant's
4 qualified investment property continues to be used in the project
5 and if disposed of during the tax year, was not disposed of prior
6 to expiration of its useful life;

7 (B) Certification that the new jobs created by the project's
8 qualified investment continue to exist and are filled by persons
9 who are residents of this State; and

10 (C) Any other information the tax commissioner requires to
11 determine continuing eligibility to claim the annual credit
12 allowance for the project's qualified investment.

13 (4) *Confidentiality.*- The contents of the completed form shall
14 be subject to the confidentiality rules set forth in section five-
15 d, article ten, chapter eleven of this code: *Provided,* That
16 notwithstanding the provisions of section five-d, article ten,
17 chapter eleven of this code, or any other provision of this code,
18 tax returns, tax return information and such other information as
19 may be necessary to administer the tax credits and programs
20 authorized and specified by this article and in this section may be
21 exchanged between the Tax Commissioner and the West Virginia
22 Development Office without restriction.

23 **§5B-2E-8. Forfeiture of unused tax credits; credit recapture;**
24 **recapture tax imposed; information required to be submitted**

1 **annually to development office; transfer of tax credits to**
2 **successors.**

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

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

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

17 (3) The approved company or eligible company, as of the
18 beginning of each calendar year, has an outstanding obligation
19 under the West Virginia state tax and revenue laws; or

20 (4) Any company, approved company or eligible company, to
21 which entitlement to the tax credit authorized under section seven-
22 b of this article has been previously established, fails to meet
23 the requirements specified in section seven-b for an eligible
24 company and for a qualified professional services destination

1 facility, including, but not limited to, jobs maintenance, employee
2 wage and employee health benefits, aggregate gross receipts, and
3 gross receipts subject to the tax imposed under article twenty-
4 seven, chapter eleven of this code.

5 (5) Any company, approved company or eligible company, to
6 which entitlement to the tax credit authorized under section seven-
7 b of this article has been previously established:

8 (A) Is delinquent in payment of any assessment, fee, fine,
9 civil penalty or monetary imposition imposed by the West Virginia
10 Division of Environmental Protection or the United States
11 Environmental Protection Agency, or any agency charged with
12 enforcing federal, state or local environmental or hazardous waste
13 regulations,

14 (B) Is delinquent in compliance with any order, injunction,
15 compliance agreement, agreed order, court order, mandamus or other
16 enforcement or compliance instrumentality of the West Virginia
17 Division of Environmental Protection or United States Environmental
18 Protection Agency or any agency charged with enforcing federal,
19 state or local environmental or hazardous waste regulations.

20 (C) Is out of compliance or not compliant with any citation or
21 order issued by the West Virginia Division of Environmental
22 Protection or the United States Environmental Protection Agency, or
23 any agency charged with enforcing federal, state or local
24 environmental or hazardous waste regulations, requiring that a

1 condition be abated or corrected.

2 (b) In addition to the loss of credit allowed under this
3 article for the calendar year, a credit recapture tax is hereby
4 imposed on any approved company or successor eligible company that
5 forfeits the tourism development project tax credit or the tourism
6 development expansion project credit or the credit authorized under
7 section seven-b of this article, under the provisions of subsection
8 (a) of this section. The credit recapture tax shall apply and the
9 approved company, and successor eligible companies, and any other
10 person or entity that has received the tax credit allowed under
11 this article shall be liable for an amount of recapture tax equal
12 to all previously claimed tourism development project tax credit or
13 tourism development expansion project credit, or the tax credits
14 authorized under section seven-b of this article, and allowed by
15 this article, as applicable, plus interest and penalties applicable
16 in accordance with the Tax Procedure and Administration Act. The
17 recapture tax shall be calculated and paid pursuant to the filing,
18 with the tax commissioner of an amended return, and such other
19 forms, schedules and documents as the Tax Commissioner may require,
20 for the prior calendar year, or calendar years, for which credit
21 recapture is required, along with interest, as provided in section
22 seventeen, article ten, chapter eleven of this code: *Provided*, That
23 the approved company, eligible company, person or entity who
24 previously claimed the tourism development project tax credit, or

1 the tourism development expansion project credit, or the tax
2 credits allowed by section seven-b of this article, as applicable,
3 under this article and successor eligible companies, persons or
4 entities are jointly and severally liable for payment of any
5 recapture tax subsequently imposed under this section. For purposes
6 of this recapture tax, the statute of limitations otherwise
7 applicable under the Tax Procedure and Administration Act shall not
8 begin to run until the eighteenth year subsequent to the earlier
9 of: the year when qualified investment is first placed into service
10 or use, or the year when the application for the tax credit
11 authorized under this article was filed with the West Virginia
12 Development Office.

13 (c) Within forty-five days after the end of each calendar year
14 during the term of the agreement, the approved company shall supply
15 the development office with all reports and certifications the
16 development office requires demonstrating to the satisfaction of
17 the development office that the approved company is in compliance
18 with applicable provisions of law. Based upon a review of these
19 materials and other documents that are available, the development
20 office shall then certify to the Tax Commissioner that the approved
21 company is in compliance with this section.

22 (d) The tax credit allowed in this article is transferable,
23 subject to the written consent of the development office, to an

1 eligible successor company that continues to operate the approved
2 project.

3 **§5B-2E-11. Termination.**

4 The Development Office may not accept any new project
5 application after December 31, 2019, and all applications submitted
6 prior to January 1, 2020, that have not been previously approved or
7 not approved, shall be deemed not approved and shall be null and
8 void as of January 1, 2020.

9