

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 4184**

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

5
6 (Originating in the House Committee on Finance.)

7
8 [February 20, 2014]

9
10 A BILL to repeal §5B-2E-11 of the Code of West Virginia, 1931, as
11 amended; and to amend and reenact §5B-2E-3, §5B-2E-4, §5B-2E-
12 5, §5B-2E-7 and §5B-2E-7a of said code, all relating generally
13 to the West Virginia Tourism Development Act; modifying or
14 eliminating certain definitions; removing termination
15 provisions; removing requirement for engagement of a
16 consulting firm to review proposed projects; imposing
17 application filing fee; eliminating limitation on total amount
18 of tourism development expansion project tax credits for all
19 approved companies each calendar year; providing increased tax
20 credit amounts for projects located on or adjacent to state
21 and federal recreational property; and making technical
22 corrections.

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

24 That §5B-2E-11 of the Code of West Virginia, 1931, as amended,

1 be repealed; and that §5B-2E-3, §5B-2E-4, §5B-2E-5, §5B-2E-7 and
2 §5B-2E-7a of said code be amended and reenacted, all to read as
3 follows:

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

5 **§5B-2E-3. Definitions.**

6 As used in this article, unless the context clearly indicates
7 otherwise:

8 (1) "Agreement" means a tourism development agreement entered
9 into, pursuant to section six of this article, between the
10 development office and an approved company with respect to a
11 project.

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

15 (3) "Approved costs" means:

16 (a) *Included costs*:

17 (i) Obligations incurred for labor and to vendors,
18 contractors, subcontractors, builders, suppliers, delivery persons
19 and material persons in connection with the acquisition,
20 construction, equipping or installation of a project;

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

23 (iii) The cost of contract bonds and of insurance of all kinds
24 that may be required or necessary during the course of the

1 acquisition, construction, equipping, or installation of a project
2 which is not paid by the vendor, supplier, delivery person,
3 contractor or otherwise provided;

4 (iv) All costs of architectural and engineering services,
5 including, but not limited to: Estimates, plans and specifications,
6 preliminary investigations and supervision of construction,
7 installation, as well as for the performance of all the duties
8 required by or consequent to the acquisition, construction,
9 equipping or installation of a project;

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

13 (vi) All costs required for the installation of utilities,
14 including, but not limited to: Water, sewer, sewer treatment, gas,
15 electricity, communications and off-site construction of utility
16 extensions to the boundaries of the real estate on which the
17 facilities are located, all of which are to be used to improve the
18 economic situation of the approved company in a manner that allows
19 the approved company to attract persons; and

20 (vii) All other costs comparable with those described in this
21 subdivision;

22 (b) *Excluded costs.* -- The term "approved costs" does not
23 include any portion of the cost required to be paid for the
24 acquisition, construction, equipping or installation of a project

1 that is financed with governmental incentives, grants or bonds or
2 for which the eligible taxpayer elects to qualify for other tax
3 credits, including, but not limited to, those provided by article
4 thirteen-q, chapter eleven of this code. The exclusion of certain
5 costs of a project under this paragraph (b) does not automatically
6 disqualify the remainder of the costs of the project.

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

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

15 (6) "Crafts and products center" means a facility primarily
16 devoted to the display, promotion and sale of West Virginia
17 products and at which a minimum of eighty percent of the sales
18 occurring at the facility are of West Virginia arts, crafts or
19 agricultural products.

20 (7) "Eligible company" means any corporation, limited
21 liability company, partnership, limited liability partnership, sole
22 proprietorship, business trust, joint venture or any other entity
23 operating or intending to operate a project, whether owned or
24 leased, within the state that meets the standards required by the

1 development office. An eligible company may operate or intend to
2 operate directly or indirectly through a lessee.

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

8 (9) "Entertainment destination center" means a facility
9 containing a minimum of two hundred thousand square feet of
10 building space adjacent or complementary to an existing tourism
11 attraction, an approved project, or a major convention facility and
12 which provides a variety of entertainment and leisure options that
13 contain at least one major theme restaurant and at least three
14 additional entertainment venues, including, but not limited to,
15 live entertainment, multiplex theaters, large-format theaters,
16 motion simulators, family entertainment centers, concert halls,
17 virtual reality or other interactive games, museums, exhibitions or
18 other cultural and leisure time activities. Entertainment and food
19 and drink options shall occupy a minimum of sixty percent of total
20 gross area, as defined in the application, available for lease and
21 other retail stores shall occupy no more than forty percent of the
22 total gross area available for lease.

23 (10) "Final approval" means the action taken by the executive
24 director of the development office qualifying the eligible company

1 to receive the tax credits provided in this article.

2 (11) ~~"Preliminary approval" means the action taken by the~~
3 ~~executive director of the development office conditioning final~~
4 ~~approval.~~

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

8 ~~(13)~~ "State agency" means any state administrative body,
9 agency, department, division, board, commission or institution
10 exercising any function of the state that is not a municipal
11 corporation or political subdivision.

12 ~~(14)~~ "Tourism attraction" means a cultural or historical
13 site, a recreation or entertainment facility, an area of natural
14 phenomenon or scenic beauty, a West Virginia crafts and products
15 center or an entertainment destination center. A project or tourism
16 attraction does not include any of the following:

17 (A) Lodging facility, unless:

18 (i) The facility constitutes a portion of a project and
19 represents less than fifty percent of the total approved cost of
20 the project, or the facility is to be located on recreational
21 property owned or leased by the state or federal government and the
22 facility has received prior approval from the appropriate state or
23 federal agency;

24 (ii) The facility involves the restoration or rehabilitation

1 of a structure that is listed individually in the national register
2 of historic places or is located in a national register historic
3 district and certified by the state historic preservation officer
4 as contributing to the historic significance of the district and
5 the rehabilitation or restoration project has been approved in
6 advance by the state historic preservation officer; or

7 (iii) The facility involves the construction, reconstruction,
8 restoration, rehabilitation or upgrade of a full-service lodging
9 facility or the reconstruction, restoration, rehabilitation or
10 upgrade of an existing structure into a full-service lodging
11 facility having not less than five hundred guest rooms, with
12 construction, reconstruction, restoration, rehabilitation or
13 upgrade costs exceeding ten million dollars;

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

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

22 (~~15~~14) "Tourism development project" means the acquisition,
23 including the acquisition of real estate by a leasehold interest
24 with a minimum term of ten years, construction and equipping of a

1 tourism attraction; the construction and installation of
2 improvements to facilities necessary or desirable for the
3 acquisition, construction, installation of a tourism attraction,
4 including, but not limited to, surveys, installation of utilities,
5 which may include water, sewer, sewage treatment, gas, electricity,
6 communications and similar facilities; and off-site construction of
7 utility extensions to the boundaries of the real estate on which
8 the facilities are located, all of which are to be used to improve
9 the economic situation of the approved company in a manner that
10 allows the approved company to attract persons, but does not
11 include a project that will be substantially owned, managed or
12 controlled by an eligible company with an existing project located
13 within a ten mile radius, or by a person or persons related by a
14 family relationship, including spouses, parents, children or
15 siblings, to an owner of an eligible company with an existing
16 project located within a ten mile radius.

17 (~~1615~~) "Tourism development expansion project" means the
18 acquisition, including the acquisition of real estate by a
19 leasehold interest with a minimum term of ten years; the
20 construction and installation of improvements to facilities
21 necessary or desirable for the expansion of an existing tourism
22 attraction including, but not limited to, surveys, installation of
23 utilities, which may include water, sewer, sewage treatment, gas,
24 electricity, communications and similar facilities; and off-site

1 construction of utility extension to the boundaries of real estate
2 on which the facilities are located, all of which are to be used to
3 improve the economic situation of the approved company in a manner
4 that allows the approved company to attract persons.

5 (~~17~~16) "Tourism development project tax credit" means the
6 tourism development project tax credit allowed by section seven of
7 this article.

8 (~~18~~17) "Tourism development expansion project tax credit"
9 means the tourism development expansion project tax credit allowed
10 by section seven-a of this article.

11 **§5B-2E-4. Additional powers and duties of the development office.**

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

15 (1) Make ~~preliminary and final~~ approvals of all applications
16 for projects and enter into agreements pertaining to projects with
17 approved companies;

18 (2) Employ fiscal consultants, attorneys, appraisers and other
19 agents as the executive director of the development office finds
20 necessary or convenient for the preparation and administration of
21 agreements and documents necessary or incidental to any project;
22 and

23 (3) Impose and collect fees and charges in connection with any
24 transaction.

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

4 **§5B-2E-5. Project application; evaluation standards; consulting**
5 **services; ~~preliminary and final~~ approval of**
6 **projects.**

7 (a) Each eligible company that seeks to qualify a project for
8 the tourism development project tax credit provided by section
9 seven of this article, or for the tourism development expansion
10 project tax credit provided by section seven-a of this article, as
11 applicable, must file a written application for approval of the
12 project with the Development Office.

13 (b) With respect to each eligible company making an
14 application to the Development Office for a tourism development
15 project tax credit or a tourism development expansion project tax
16 credit, the Development Office shall make inquiries and request
17 documentation, including a completed application, from the
18 applicant that shall include: A description and location of the
19 project; capital and other anticipated expenditures for the project
20 and the sources of funding therefor; the anticipated employment and
21 wages to be paid at the project; business plans that indicate the
22 average number of days in a year in which the project will be in
23 operation and open to the public; and the anticipated revenues and
24 expenses generated by the project. ~~The executive director of the~~

1 ~~Development Office shall act to grant or not to grant any~~
2 ~~preliminary approval of an application within forty-five days~~
3 ~~following its receipt or receipt of additional information~~
4 ~~requested by the Development Office, whichever is later.~~

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

12 ~~(d) After preliminary approval by the executive director of~~
13 ~~the Development Office, the Development Office shall engage the~~
14 ~~services of a competent consulting firm or firms to analyze the~~
15 ~~data made available by the applicant and to collect and analyze~~
16 ~~additional information necessary to determine that, in the~~
17 ~~independent judgment of the consultant, the project:~~

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

20 ~~(2) Will have approved costs in excess of one million dollars;~~

21 ~~(3) Will have a significant and positive economic impact on~~
22 ~~the state considering, among other factors, the extent to which the~~
23 ~~project will compete directly with or complement existing tourism~~
24 ~~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 shall pay to the Development Office, prior~~
9 ~~to the engagement of the services of a competent consulting firm or~~
10 ~~firms pursuant to the provisions of subsection (d) of this section,~~
11 ~~for the cost of the consulting report or reports and shall~~
12 ~~cooperate with the consulting firm or firms to provide all of the~~
13 ~~data that the consultant considers necessary or convenient to make~~
14 ~~its determination under subsection (d) of this section.~~

15 ~~(f) The executive director of the Development Office, within~~
16 ~~sixty days following receipt of the consultant's final, written~~
17 ~~report or reports, shall review, in light of the consultant's~~
18 ~~report or reports, the reasonableness of the project's budget and~~
19 ~~timetable for completion and, in addition to the criteria for final~~
20 ~~approval set forth in subsection (d) of this section, the following~~
21 ~~criteria:~~

22 (c) On and after the effective date of this section as amended
23 in 2014, the executive director of the Development Office, within
24 sixty days following receipt of an application or receipt of any

1 additional information requested by the Development Office
2 respecting the application, whichever is later, shall act to grant
3 or not to grant approval of the application, based on the following
4 criteria:

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

7 (2) The project will have approved costs in excess of
8 \$1,000,000;

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

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

18 (5) The project will provide additional employment
19 opportunities in the state;

20 ~~(1)~~ (6) The quality of the proposed project and how it
21 addresses economic problems in the area in which the project will
22 be located;

23 ~~(2)~~ (7) Whether there is substantial and credible evidence
24 that the project is likely to be started and completed in a timely

1 fashion;

2 ~~(3)~~ (8) Whether the project will, directly or indirectly,
3 improve the opportunities in the area where the project will be
4 located for the successful establishment or expansion of other
5 industrial or commercial businesses;

6 ~~(4)~~ (9) Whether the project will, directly or indirectly,
7 assist in the creation of additional employment opportunities in
8 the area where the project will be located;

9 ~~(5)~~ (10) Whether the project helps to diversify the local
10 economy;

11 ~~(6)~~ (11) Whether the project is consistent with the goals of
12 this article;

13 ~~(7)~~ (12) Whether the project is economically and fiscally
14 sound using recognized business standards of finance and
15 accounting; and

16 ~~(8)~~ (13) The ability of the eligible company to carry out the
17 project.

18 ~~(g)~~ (d) The Development Office may establish other criteria
19 for consideration when approving the applications.

20 ~~(h)~~ (e) ~~The executive director of the Development Office may~~
21 ~~give its final approval to the applicant's application for a~~
22 ~~project and may grant to the applicant the status of an approved~~
23 ~~company. The executive director of the Development Office shall~~
24 ~~act to approve or not approve any application within sixty days~~

1 ~~following the receipt of the consultant's final, written report or~~
2 ~~reports or the receipt of any additional information requested by~~
3 ~~the Development Office, whichever is later.~~ The decision by the
4 executive director of the Development Office is final.

5 (f) This section as amended and reenacted in 2014 shall apply
6 to applications under review by the director of the development
7 office prior to the effective date of this section as well as to
8 applications filed on and after the effective date of this section
9 as amended and reenacted in 2014.

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

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

23 (b) The maximum amount of credit allowable in this article is
24 equal to twenty-five percent of the approved company's approved

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

13 (c) 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
17 delay the beginning of the ten-year period until the next
18 succeeding taxable year. This election shall be made in the first
19 consumers sales and service tax return filed by the approved
20 company following the date the project is opened to the public.
21 Once made, the election cannot be revoked.

22 (d) The amount determined under subsection (b) 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

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

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

22 **§5B-2E-7a. Amount of credit allowed for tourism development**
23 **expansion project; approved projects.**

24 (a) Approved companies are allowed a credit against the West

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

15 (b) The maximum amount of credit allowable in this article is
16 equal to twenty-five percent of the approved company's approved
17 costs as provided in the agreement: *Provided*, That, 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, or
23 the tourism development project site is located on or adjacent to
24 recreational property owned or leased by the state or federal

1 government and the project has received prior approval from the
2 appropriate state or federal agency, the maximum amount of credit
3 allowable is equal to thirty-five percent of the approved company's
4 approved costs as provided in the agreement.

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

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

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

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

14 ~~(f) The total amount of tourism development expansion project~~
15 ~~tax credits for all approved companies pursuant to this section may~~
16 ~~not exceed one million five hundred thousand dollars each calendar~~
17 ~~year.~~