

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 3370

By Delegates Howell and Storch

[Introduced February 10, 2023; Referred to the
Committee on Economic Development and Tourism
then Finance]

FISCAL
NOTE

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §5B-2N-1, §5B-2N-2, §5B-2N-3, and §5B-2N-4, all relating to the creation of a
 3 loan program to be administered by the West Virginia Department of Economic
 4 Development for certain properties and developments on U.S. Army Corps of Engineers
 5 land, state parks and resorts, and hybrid tourism destinations, wherein the state will co-
 6 sign on loans between public and private partnerships; providing for legislative findings
 7 and purpose; providing for definitions; establishing the loan program and providing that
 8 funding will only be given in the case of default; providing for guidelines and approval by
 9 the West Virginia Department of Economic Development, the West Virginia Department of
 10 Commerce, and the West Virginia Department of Tourism before a project may be
 11 approved for funding; providing for a reporting requirement; and providing for an effective
 12 date.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 2N. LOAN PROGRAM FOR FUTURE DEVELOPMENT ON U.S. ARMY
 CORPS OF ENGINEER LAND, STATE PARKS AND RESORTS, AND HYBRID
 TOURISM DESTINATIONS.**

§5B-2N-1. Legislative findings and purpose.

1 (a) The Legislature finds that certain areas of the state currently have existing
 2 developments, including, but not limited to, developments in West Virginia State Parks and resorts
 3 that are constructed on U.S. Army Corps of Engineers land, wherein such properties and
 4 developments have no collateral for loans.

5 (b) Because of this, the expansion of tourism and development projects in these areas is
 6 restricted or handcuffed. Through the enactment of this article, the state will guarantee a loan, in
 7 the case of default by a public or private partnership ("eligible entity"), in an amount up to \$5 million
 8 from the West Virginia Department of Economic Development to be used exclusively for further

9 development on these properties to encourage economic development and tourism. The state
10 shall act as a co-signer to a bank loan and will only pay upon default by an eligible public or private
11 entity.

12 (c) Funding, in the case of a default by a public or private entity, shall be provided from the
13 new business incentive program (otherwise known as the "closing fund" or "deal closing fund")
14 that is administered by the West Virginia Department of Economic Development. If the closing
15 fund does not have enough money to cover a default, funding shall come from another fund
16 designated by the West Virginia Department of Economic Development. The West Virginia
17 Department of Economic Development, the West Virginia Department of Commerce, and the
18 West Virginia Department of Tourism will have oversight of loan applications, and the secretaries
19 of these departments must sign on for a loan to be approved.

20 (d) Projects approved through this loan program will have their new development backed
21 as collateral by the state, and this will ensure no cash flow issues will occur with these entities, and
22 will also ensure continued business and tourism coming into the State of West Virginia.

§5B-2N-2.

Definitions.

1 (a) *General.* — When used in this article, or in the administration of this article, terms
2 defined in this section have the meanings ascribed to them by this section unless a different
3 meaning is clearly required by the context in which the term is used.

4 (b) *Terms defined.* — As used in this article, unless the context clearly indicates otherwise:

5 (1) "Agreement" means a project agreement entered into pursuant to this article, between
6 the Department of Economic Development, the Department of Commerce, the Department of
7 Tourism, and an approved company or group of multiple party project participants with respect to a
8 project.

9 (2) "Approved company" or "eligible entity" means any public or private property or
10 developments on U.S. Army Corps of Engineers land, state parks and resorts, and hybrid tourism
11 destinations who otherwise have no collateral for the development of new projects.

12 (3) "Approved costs" means costs included, as stated herein, and not excluded pursuant to
13 the provisions of this definition, or this article, or any other provision of this code.

14 (4) "Closing fund" or "deal closing fund" means the fund within the West Virginia
15 Department of Economic Development established under the provisions of §5B-2-1 et seq. of this
16 code.

17 (5) "Department of Economic Development" means the West Virginia Department of
18 Economic Development established under the provisions of §5B-2-1 et seq. of this code.

19 (6) "Development" means any new development being pursued by a public or private
20 partnership on U.S. Army Corps of Engineers land, on West Virginia State Parks and resorts land,
21 or on hybrid tourism destination, such as rail trails, for the purpose of increasing tourism and
22 economic development in these areas.

23 (7) "Eligible company" means any corporation, limited liability company, partnership,
24 limited liability partnership, sole proprietorship, business trust, joint venture, or any other entity
25 operating or intending to operate a certified project, whether owned or leased, within the state that
26 meets the standards required by the Department of Economic Development for certification under
27 this article. An eligible company may operate, or intend to operate, directly or indirectly through a
28 lessee. The Department of Economic Development may certify multiple party projects comprised
29 of more than one eligible company, as provided in this article.

30 (8) "Natural person" or "individual" means a human being.

31 (9) "Other fund" means another fund to be designated by the West Virginia Department of
32 Economic Development if the closing fund does not have enough money to cover a default by an
33 eligible public or private entity.

34 (10) "Partner" includes a partner in a partnership, and a member in a syndicate, group,
35 pool, joint venture, or organization.

36 (11) "Partnership" means and includes a syndicate, group, pool, joint venture, or other
37 unincorporated organization through or by means of which any business, financial operation, or

38 venture is carried on and which is not a trust or estate, a corporation, or a sole proprietorship. This
39 definition encompasses both public and private partnerships.

40 (12) "Person" means and includes any natural person, corporation, limited liability
41 company, flow-through entity, or partnership.

§5B-2N-3. Application for state to co-sign on loan to fund public and private partnership
tourism and development projects through Department of Economic Development
closing fund; money paid only in case of default; requirements.

1 (a) Public and private partnerships ("eligible entities") in this state who have assets that
2 cannot be used as collateral may request that the state co-sign on their loan to build or develop on
3 U.S. Army Corps of Engineers land, West Virginia State Parks and Resorts, and hybrid tourism
4 properties when such new developments relate to tourism and economic development at these
5 existing sites.

6 (b) The loan shall only be available to any currently existing entities where the state has
7 entered a private or public partnership with U.S. Army Corps of Engineers land, West Virginia
8 State Parks and Resorts, and hybrid tourism properties, and where these public or private
9 partnerships have existing assets that cannot be used as collateral.

10 (c) In the case of default by an eligible entity, funding shall be provided from the closing
11 fund within the West Virginia Department of Economic Development. If the closing fund does not
12 have enough to cover the amount of the default, money shall be taken from another fund to be
13 designated by the West Virginia Department of Economic Development.

14 (d) Upon approval, the state shall act as a co-signer on an existing loan for a eligible entity
15 in an amount of up to \$5 million for eligible properties and developments on U.S. Army Corps of
16 Engineers land, state parks and resorts, and hybrid tourism destinations who otherwise have no
17 collateral for the development of new projects, but who wish to continue development on these
18 properties to increase tourism and economic development.

19 (e) Secretaries of the West Virginia Department of Economic Development, the West

20 Virginia Department of Commerce, and the West Virginia Department of Tourism shall all approve
21 the request for a loan by an eligible entity before such a loan may be approved.

22 (f) The West Virginia Department of Economic Development shall develop an application
23 for the loan program wherein eligible entities may apply online or in writing through the
24 Department.

25 (g) The West Virginia Department of Economic Development shall maintain a list of
26 approved projects utilizing this loan and shall submit this list to the Joint Committee on
27 Government and Finance in the form of an annual report for legislative review.

§5B-2N-4. **Effective** **date.**

1 This article shall become effective July 1, 2023.

NOTE: The purpose of this bill is to create a loan program to be administered by the West Virginia Department of Economic Development for certain properties and developments on U.S. Army Corps of Engineers land, state parks and resorts, and hybrid tourism destinations in the case of default by an eligible entity. The bill provides for legislative findings and a purpose. The bill provides for definitions. The bill establishes the loan program wherein the state will co-sign on existing loans between public and private partnerships and a bank. The bill provides for guidelines and approval by the West Virginia Department of Economic Development, the West Virginia Department of Commerce, and the West Virginia Department of Tourism before a project may be approved for funding. Finally, the bill provides for an effective date.

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