

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 5548

By Delegate Criss, Espinosa, Fehrenbacher,

Ridenour, and Hite

[Introduced February 9, 2024; Referred to the

Committee on Finance]

1 A BILL to amend and reenact §5B-1-9 of the Code of West Virginia, 1931, as amended, relating to
2 modifying requirements imposed on any owner, operator, or manager, as applicable, and
3 all concessions and licensees thereof, within a tourism development project or tourism
4 development expansion project within a tourism development project; conforming
5 provisions to existing law redesignating name of public office; and removing redundant
6 provisions relating to severability.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. DEPARTMENT OF COMMERCE.

§5B-1-9. Authority to assist qualifying tourism development projects and tourism development expansion projects; legislative findings.

1 (a) The Department of Commerce Economic Development may assist qualifying tourism
2 development projects and tourism development expansion projects by approved companies
3 pursuant to §5B-2E-1 *et seq.* of this code which are located in, or partially in, municipalities with a
4 population of 2,000 or less, effective as of the effective date of the most recent census, as
5 specified in §8-1-4 of this code relating to the creation of tourism development districts.

6 (b) The Legislature finds and declares that the general welfare and material well-being of
7 the citizens of the state depend, in large measure, upon the development and expansion of
8 tourism in the state, and that, beyond the creation and expansion of tourism development projects
9 and tourism development expansion projects, it is in the best interest of the state to induce and
10 assist in tourism development in small municipalities through the creation of tourism development
11 districts, in order to advance the public purposes of relieving unemployment by preserving and
12 creating jobs, and preserving and creating new and greater sources of revenues for the support of
13 public services provided by the state and local government; and that tourism development districts
14 are of paramount importance to the state and its economy and for the state's contribution to the
15 national economy.

16 It is the intent of the Legislature to occupy the whole field of the creation and regulation of
17 tourism development districts. The stated purpose of this section is to promote uniform and
18 consistent application of the act within the state.

19 (c) This section prohibits:

20 (1) Certain municipalities, whether by ordinance, resolution, administrative act, or
21 otherwise, from enacting, adopting, implementing, or enforcing ordinances, regulations, or rules
22 which limit, in any way, the creation of, and acquisition, construction, equipping, development,
23 expansion, and operation of any tourism development project or tourism development expansion
24 project in a tourism development district; and

25 (2) Certain municipalities from imposing or enforcing local laws and ordinances concerning
26 the creation or regulation of any tourism development district and any tourism development project
27 or tourism development expansion project therein.

28 (d) Any developer or owner of a tourism development project or tourism development
29 expansion project which has been determined by the ~~West Virginia Development Office~~
30 Department of Economic Development or its predecessor, pursuant to §5B-2E-1 *et seq.* of this
31 code, to be an approved company and which has entered into an agreement with the ~~development~~
32 ~~office~~ Department of Economic Development or its predecessor pursuant to §5B-2E-6 of this code
33 to provide the approved company with a credit against the West Virginia consumers sales and
34 service tax imposed by §11-15-1 *et seq.* of this code may apply to the ~~development office~~
35 Department of Economic Development for designation of a tourism development district
36 encompassing the area where the tourism development project or the tourism development
37 expansion project is to be acquired, constructed, equipped, developed, expanded, and operated:
38 *Provided*, That notwithstanding any provision of §5B-2E-5(c)(2) of this code to the contrary, only
39 tourism development projects and tourism development expansion projects with aggregate
40 projected costs of construction, reconstruction, restoration, rehabilitation, or upgrading of not less
41 than \$25 million shall be eligible for designation as a tourism development district.

42 (e) Applicants for the creation of a tourism development district shall demonstrate that the
43 district, when designated, will create significant economic development activity:

44 (1) Applicants shall submit a development plan that provides specific details on proposed
45 financial investment, direct and indirect jobs to be created, and the viability of the proposed
46 tourism development district; and

47 (2) The applicant shall own, control, or have the right of use to all real property within the
48 proposed tourism development district and shall provide evidence of such ownership, control, or
49 right of use in the application to the ~~development office~~ Department of Economic Development.

50 (f) The proposed district shall be entirely or partially within the corporate limits of a
51 municipality which has a population of 2,000 or less as of the effective date of the most recent
52 census, as specified in §8-1-4 of this code.

53 (g) All costs for the application shall be borne by the applicant.

54 (h) The application submitted by the applicant to the ~~development office~~ Department of
55 Economic Development pursuant to §5B-2E-1 *et seq.* of this code may be considered by the
56 ~~development office~~ Department of Economic Development to be sufficient to meet some of the
57 requirements of this section.

58 (i) The decision of the ~~development office~~ Department of Economic Development to
59 designate a tourism development district shall be final.

60 (j) The total number of approved tourism development districts may not exceed five. When
61 the total number of designated tourism development districts equals five, no further designations
62 may be approved by the ~~development office~~ Department of Economic Development.

63 (k) Each tourism development district shall terminate by operation of law 99 years from the
64 date approved by the ~~development office~~ Department of Economic Development, unless a shorter
65 time period for termination is agreed to by the applicant and the ~~development office~~ Department of
66 Economic Development. The ~~development office~~ Department of Economic Development may
67 terminate a tourism development district if the ~~development office~~ Department of Economic

68 Development determines that the tourism development project or tourism development expansion
69 project has been abandoned or ceased operations for five consecutive years.

70 (l) In accordance with subsections (b) and (c) of this section, and notwithstanding any
71 provision of this code to the contrary, or any municipality's home rule powers with respect to
72 ordinances and ordinance procedures, including any authority pursuant to the Municipal Home
73 Rule Program under §8-1-5a of this code, designated tourism development districts, and the
74 tourism development projects or tourism development expansion projects therein, may not be
75 subject to the following:

76 (1) Municipal zoning, historic preservation, horticultural, noise, viewshed, lighting,
77 development, or land use ordinances, restrictions, limitations, or approvals;

78 (2) Municipal regulation of the sale of alcoholic liquor, nonintoxicating beer, or wine for
79 consumption within the tourism development district;

80 (3) Municipal building permitting, inspection, or code enforcement;

81 (4) Municipal license requirements;

82 (5) The legal jurisdiction of the municipality in which the tourism development district is
83 entirely or partially located, except as specifically provided in this article;

84 (6) The implementation of any tax, fee, or charge by the municipality, except as specifically
85 provided in this section; or

86 (7) Any requirement under state law for the consent or approval of the municipality in which
87 the tourism development district is entirely or partially located of any state or county action
88 pursuant to this code, specifically including, but not limited to, §7-11B-1 *et seq.* of this code, for
89 formal consent of the governing body of a municipality for county or state action regarding the
90 establishment of tax increment financing development or redevelopment districts or the approval
91 of tax increment financing development or redevelopment plans.

92 (m) Notwithstanding the creation of the tourism development district, the owner, operator,
93 or manager, as applicable, and all concessions and licensees thereof, of the tourism development
94 project or tourism development expansion project located therein shall:

95 (1) Pay business and occupation tax, if applicable, pursuant to §8-13-5 of this code, to the
96 municipality in the same manner as any other business or commercial venture located within the
97 municipality;

98 (2) Collect and remit municipal sales and service tax and municipal use tax, if applicable,
99 pursuant to §8-1-5a, §8-13C-4, and §8-13C-5 of this code, to the municipality in the same manner
100 as any other business or commercial venture located within the municipality;

101 (3) Pay ad valorem real and personal property tax pursuant to the same millage rates as
102 any other business or commercial venture located within the municipality;

103 (4) Collect and remit hotel occupancy tax, if applicable, to the municipality or county in
104 accordance with §7-18-1 of this code;

105 (5) Pay all municipal service fees enacted pursuant to §8-13-13 of this code, including, but
106 not limited to, fire, police, sanitation, or city service fees;

107 (6) Pay all municipal utility rates, fees, and charges for utilities used or consumed during
108 construction and operation of premises within the tourism development district, including, but not
109 limited to, water, sewer, stormwater, and garbage and recycling collection: *Provided*, That (i) The
110 rates, fees, and charges for such services shall be based on the cost of providing such service and
111 the municipality shall enter into a contract for each such service with the developer and any
112 contracts for water service or sewer service with the municipality shall be subject to review and
113 approval by the Public Service Commission of West Virginia; and (ii) the developer shall only be
114 required to pay any capacity improvement fee or impact fee to the extent that capital additions,
115 betterments, and improvements must be designed, acquired, constructed, and equipped by the
116 municipality to provide such service to the project and any such capacity improvement fee or

117 impact fee for water or sewer service shall be subject to review and approval by the Public Service
118 Commission of West Virginia;

119 (7) Comply with state laws, regulations, and licensure requirements concerning state
120 control of alcoholic liquors pursuant to Chapter 60 of this code and control of nonintoxicating beer
121 pursuant to §11-16-1 *et seq.* of this code;

122 (8) Be entitled to municipal police protection and municipal fire protection, if available, in
123 the same manner as any other business or commercial venture located within the municipality;

124 (9) Design, acquire, construct, and equip the tourism development project or the tourism
125 development expansion project pursuant to the ~~State Building Code in accordance with §8-12-13~~
126 ~~of this code and corresponding State Rule 87 CSR 4; and~~

127 ~~(10) Provide for inspection of the design, acquisition, construction, and equipping, and any~~
128 ~~subsequent expansion of the tourism development project or the tourism development expansion~~
129 ~~project pursuant to standards approved by the West Virginia Development Office Department of~~
130 ~~Economic Development, which shall be the standards utilized by any agency of the state when~~
131 ~~inspecting or permitting any portion of the tourism development project or the tourism~~
132 ~~development expansion project.~~

133 (n) The West Virginia Department of Transportation may take actions necessary in support
134 of the development of any tourism development project or tourism development expansion project
135 in a tourism development district specifically, including, but not limited to, the development or
136 improvement of such highways, roads, thoroughfares, and sidewalks within the municipality in
137 which the tourism development district is partially or entirely located.

138 (o) Failure of the Legislature to renew the Tourism Development Act, §5B-2E-1 *et seq.* of
139 this code, may not, in any way, modify or alter the designation and vested rights of any tourism
140 development district created prior to the failure of the Legislature to renew the Tourism
141 Development Act and any such tourism development district shall continue to exist beyond the
142 termination of the Tourism Development Act.

143 (p) The ~~development office~~ Department of Economic Development shall propose rules for
144 legislative approval in accordance with §29A-3-1 *et seq.* of this code to implement this section, and
145 the rules shall include, but not be limited to:

146 (1) The application and timeline process;

147 (2) A nonbinding review of the existing planning and zoning ordinances of any municipality
148 in which the tourism development district is located;

149 (3) Notice provisions;

150 (4) The method and timeline for receiving statements of support or opposition from any
151 municipality within or partially within the tourism development district;

152 (5) Additional application consideration criteria; and

153 (6) Application fees sufficient to cover the costs of consideration of an application.

154 (q) The ~~development office~~ Department of Economic Development shall promulgate
155 emergency rules pursuant to §29A-3-15 of this code by July 1, 2020, to facilitate the
156 implementation of this section.

157 ~~(r) Pursuant to §2-2-10 of this code, if any provision of this section or the application thereof~~
158 ~~to any person or circumstance is held unconstitutional or invalid, the unconstitutionality or~~
159 ~~invalidity shall not affect other provisions or applications of this section, and to this end the~~
160 ~~provisions of this section are declared to be severable.~~

NOTE: The purpose of this bill is to clarify that tourism development projects and tourism development expansion projects are only required to satisfy the standards approved by the West Virginia Department of Economic Development for the design, acquisition, construction, and equipping thereof.

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