

1 **H. B. 2096**

2
3 (By Delegate Guthrie)

4 [Introduced January 12, 2011; referred to the
5 Committee on Political Subdivisions then the Judiciary.]

6 **FISCAL**
7 **NOTE**

8
9
10 A BILL to amend the Code of West Virginia, 1931, as amended, by
11 adding thereto a new article, designated §5B-2H-1, §5B-2H-2,
12 §5B-2H-3, §5B-2H-4, §5B-2H-5, §5B-2H-6 and §5B-2H-7; to amend
13 and reenact §8-13-6 of said code; to amend said code by adding
14 thereto a new article, designated §11-6L-1, §11-6L-2 and §11-
15 6L-3; and to amend said code by adding thereto a new section,
16 designated §11-21-12j, all relating to arts, entertainment and
17 enterprise districts, definitions; scope; application by
18 political subdivisions to designate an arts, entertainment and
19 enterprise district; designation by the Secretary of Commerce
20 of an arts, entertainment and enterprise district; expansion;
21 tax status; rules to be promulgated by the Secretary of
22 Commerce; exemption from admission or amusement tax; property
23 tax credit allowed for buildings located within an arts,
24 entertainment and enterprise district; and allowing an

1 additional modification reducing federal adjusted gross income
2 for any income derived within an arts, entertainment and
3 enterprise district by a qualifying residing artist.

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

5 That the Code of West Virginia, 1931, as amended, be amended
6 by adding thereto a new article, designated §5B-2H-1, §5B-2H-2,
7 §5B-2H-3, §5B-2H-4, §5B-2H-5, §5B-2H-6 and §5B-2H-7; to amend and
8 reenact §8-13-6 of said code; to amend said code by adding thereto
9 a new article, designated §11-6L-1, §11-6L-2 and §11-6L-3; and to
10 amend said code by adding thereto a new section, designated §11-21-
11 12j, all to read as follows:

12 **CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.**

13 **ARTICLE 2H. ARTS, ENTERTAINMENT AND ENTERPRISE DISTRICTS.**

14 **§5B-2H-1. Definitions.**

15 (a) In this article the following words have the meanings
16 indicated.

17 (b) "Artistic work" means an original and creative work that:

18 (1) Is created, written, composed or executed; and

19 (2) Falls into one of the following categories:

20 (A) A book or other writing;

21 (B) A play or performance of a play;

22 (C) A musical composition or the performance of a musical
23 composition;

- 1 (D) A painting or other picture;
2 (E) A sculpture;
3 (F) Traditional or fine crafts;
4 (G) The creation of a film or the acting within a film;
5 (H) The creation of a dance or the performance of a dance;
6 (I) The creation of original jewelry, clothing or clothing
7 design;
8 (J) The creation of original technology design or advancement;
9 or
10 (K) Any other product generated as a result of work listed in
11 paragraphs (A) through (J) of this subdivision.
12 (c) "Arts, entertainment and enterprise district" means a
13 developed district of public and private uses that:
14 (1) Is distinguished by physical, technology and cultural
15 resources that play a vital role in the life and development of the
16 community and contribute to the public through interpretive,
17 commercial, education and recreational uses; and
18 (2) Ranges in size from a portion of a political subdivision
19 to a regional district with a special coherence.
20 (d) "Arts, entertainment and enterprise" means a for-profit or
21 not-for-profit entity dedicated to visual, performing arts and
22 technology.
23 (e) "Political subdivision" means a county or municipal
24 corporation.

1 (f) "Qualifying residing artist or entrepreneur" means an
2 individual who:

3 (1) Owns or rents residential real property in the county
4 where the arts, entertainment and enterprise district is located;

5 (2) Conducts a business in the art, entertainment and
6 enterprise district; and

7 (3) Derives income from the sale or performance within the
8 art, entertainment and enterprise district of an artistic or
9 technology for commercial use work that the individual created,
10 wrote, composed or executed, either alone or with others in the
11 arts, entertainment and enterprise district.

12 **§5B-2H-2. Scope.**

13 This article does not apply to tailoring services, clothing
14 alteration or jewelry repair.

15 **§5B-2H-3. Application.**

16 (a) The following political subdivisions may apply to the
17 Secretary of Commerce to designate an arts, entertainment and
18 enterprise district:

19 (1) A political subdivision for an area within that political
20 subdivision;

21 (2) With the prior consent of the municipal corporation,
22 county, on its own behalf or on behalf of a municipal corporation,
23 for an area in the municipal corporation; or

24 (3) Two or more political subdivisions jointly for an area

1 astride their common boundaries.

2 (b) The application shall:

3 (1) Be in the form and manner and contain the information that
4 the Secretary of Commerce requires by rule;

5 (2) Contain sufficient information to allow the Secretary of
6 Commerce to determine if the proposed district qualifies under
7 subsection (c), section one of this article and subsection (a),
8 section four of this article; and

9 (3) Be submitted for a political subdivision by its chief
10 elected officer or, if none, its governing body.

11 **§5B-2H-4. Designation.**

12 (a)(1) Within sixty days after a submission date, the
13 Secretary of Commerce may designate one or more arts, entertainment
14 and enterprise districts from among the areas in the applications
15 timely submitted.

16 (2) A county may not receive more than one arts, entertainment
17 and enterprise district designation in a calendar year.

18 (b) The designation of the Secretary of Commerce is final.

19 (c) At any time, a political subdivision may reapply to the
20 Secretary of Commerce to designate as an arts, entertainment and
21 enterprise district an area that is not so designated.

22 **§5B-2H-5. Expansion.**

23 A political subdivision may apply to the Secretary of Commerce
24 to expand an existing arts, entertainment and enterprise district

1 in the same manner as the political subdivision would apply to
2 designate a new arts, entertainment and enterprise district. State
3 funds shall be made available to designated political subdivisions
4 for recruitment to designated arts, entertainment and enterprise
5 districts from within and outside of the state.

6 **§5B-2H-6. Tax status.**

7 (a) In an arts, entertainment and enterprise district:

8 (1) Each qualifying artist is eligible for the income tax
9 reduction modification under section twelve-i, article twenty-one,
10 chapter eleven of this code;

11 (2) The property tax credit under article six-j, chapter
12 eleven of this code applies; and

13 (3) The exemption from the admissions or amusement tax under
14 section six, article thirteen, chapter eight of this code applies.

15 (b) (1) On or before July 1 preceding the effective date of its
16 establishment, the Secretary of Commerce shall notify the Tax
17 Commissioner that an arts, entertainment and enterprise district is
18 established.

19 (2) The reduction under section twelve-i, article twenty-one,
20 chapter eleven of this code applies to each taxable year beginning
21 after December 31 of the year in which the Secretary of Commerce
22 provides the notice required by subdivision (1) of this subsection.

23 (c) Private and trust owned buildings situated in arts,
24 entertainment and enterprise districts shall be entitled to low-

1 interest loans and grants when plans are presented to
2 municipalities or political subdivisions for conversion of
3 buildings to meet residential and retail use within two years of
4 the district designation, as provided in subsection (b) of this
5 section. These plans may include, but not be limited to:
6 affordable condominiums, rental units and retail space. Private
7 and trust owned building owners failing to submit such plans shall
8 be taxed at the highest possible property tax rate available to a
9 municipality or political subdivision.

10 **§5B-2H-7. Rules.**

11 The Secretary of Commerce shall promulgate rules pursuant to
12 the provisions of article three, chapter twenty-nine-a of this
13 code, pertaining to application procedures and criteria to
14 designate arts, entertainment and enterprise districts.

15 **CHAPTER 8. MUNICIPAL CORPORATIONS.**

16 **ARTICLE 13. TAXATION AND FINANCE.**

17 **§8-13-6. Amusement tax.**

18 (a) Every municipality ~~shall have~~ has plenary power and
19 authority to levy and collect an admission or amusement tax upon
20 any public amusement or entertainment conducted within the
21 corporate limits thereof for private profit or gain. The tax shall
22 be levied upon the purchaser and added to and collected by the
23 seller with the price of admission, or other charge for the

1 amusement or entertainment. The tax shall not exceed two percent
 2 of the admission price or charge, but a tax of one cent may be
 3 levied and collected in any case.

4 (b) Any ordinance imposing ~~such~~ the tax shall contain
 5 reasonable rules ~~and regulations~~ governing the collection thereof
 6 by the seller and the method of his or her payment and accounting
 7 therefor to the municipality.

8 (c) A municipality may exempt from the admission or amusement
 9 tax gross receipts from any admissions or amusement charge levied
 10 by an arts, entertainment and enterprise or qualifying residing
 11 artist in an arts, entertainment and enterprise district, as
 12 provided in article two-h, chapter five-b of this code.

13 **CHAPTER 11. TAXATION.**

14 **ARTICLE 6L. ARTS, ENTERTAINMENT AND ENTERPRISE DISTRICT TAX**

15 **CREDIT.**

16 **§11-6L-1. Definitions.**

17 In this article, "arts, entertainment and enterprise
 18 district," "arts and entertainment enterprise" and "qualifying
 19 residing artist" have the meanings stated in section one, article
 20 two-h, chapter five-b of this code.

21 **§11-6L-2. Tax credit allowed.**

22 The governing body of a county or municipal corporation may
 23 grant, by law, a property tax credit against the county or

1 municipal corporation property tax imposed on a manufacturing,
2 commercial or industrial building that:

3 (1) Is located within an arts, entertainment and enterprise
4 district; and

5 (2) Is wholly or partially constructed or renovated to be
6 capable for use by a qualifying residing artist or an arts and
7 entertainment enterprise.

8 **§11-6L-3. Duration of availability of credit.**

9 A tax credit granted under this section may not be granted for
10 more than ten years.

11 **ARTICLE 21. PERSONAL INCOME TAX.**

12 **§11-21-12j. Additional modification reducing federal adjusted**
13 **gross income.**

14 (a) As used in this section, "artistic work," "arts,
15 entertainment and enterprise district," and "qualifying residing
16 artist" have the meanings stated in section one, article two-h,
17 chapter five-b of this code.

18 (b) In addition to the amounts authorized to be subtracted
19 from federal adjusted gross income pursuant to subsection (c),
20 section twelve of this article, any income derived within an arts,
21 entertainment and enterprise district by a qualifying residing
22 artist from the publication, production or sale of an artistic work
23 that the artist created, wrote, composed or executed in the arts,

1 entertainment and enterprise district.

2 (c) For the purpose of determining whether income is derived
3 within an arts, entertainment and enterprise district for the
4 purposes of this subsection, a qualifying artist shall allocate
5 receipts and expenses as the Tax Commissioner may require.

NOTE: The purpose of this bill is to allow for the creation of arts, entertainment and enterprise districts within municipalities or political subdivisions. The bill provides definitions. The bill provides for the application process to be followed by the political subdivisions, as determined the Secretary of Commerce. The bill further provides that the Secretary of Commerce may designate arts, entertainment and enterprise districts from among the applicants. The bill further provides for tax breaks for qualifying artists, property tax credits, and exemptions from the admissions or amusement tax.

§5B-2H-1 through §5B-2H-7 are new; therefore, it has been completely underscored.

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

§11-6L-1 through §11-6L-3 are new; therefore, it has been completely underscored.

§11-21-12j is new; therefore, it has been completely underscored.