

1 be amended and reenacted, all to read as follows:

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

3 **§5B-2E-5. Project application; evaluation standards; consulting**
4 **~~services; preliminary and final~~ approval of**
5 **projects.**

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

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

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

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

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

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

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

22 ~~(3) Will have a significant and positive economic impact on~~

1 ~~the state considering, among other factors, the extent to which the~~
2 ~~project will compete directly with or complement existing tourism~~
3 ~~attractions in the state and the amount by which increased tax~~
4 ~~revenues from the project will exceed the credit given to the~~
5 ~~approved company;~~

6 ~~(4) Will produce sufficient revenues and public demand to be~~
7 ~~operating and open to the public for a minimum of one hundred days~~
8 ~~per year; and~~

9 ~~(5) Will provide additional employment opportunities in the~~
10 ~~state.~~

11 ~~(e) The applicant shall pay to the Development Office, prior~~
12 ~~to the engagement of the services of a competent consulting firm or~~
13 ~~firms pursuant to the provisions of subsection (d) of this section,~~
14 ~~for the cost of the consulting report or reports and shall~~
15 ~~cooperate with the consulting firm or firms to provide all of the~~
16 ~~data that the consultant considers necessary or convenient to make~~
17 ~~its determination under subsection (d) of this section.~~

18 ~~(f) The executive director of the Development Office, within~~
19 ~~sixty days following receipt of the consultant's final, written~~
20 ~~report or reports, shall review, in light of the consultant's~~
21 ~~report or reports, the reasonableness of the project's budget and~~
22 ~~timetable for completion and, in addition to the criteria for final~~

1 ~~approval set forth in subsection (d) of this section, the following~~
2 ~~criteria:~~

3 (c) The executive director of the Development Office, within
4 sixty days following receipt of an application or receipt of any
5 additional information requested by the Development Office
6 respecting the application, whichever is later, shall act to grant
7 or not to grant approval of the application, based on the following
8 criteria:

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

11 (2) The project will have approved costs in excess of
12 \$1,000,000;

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

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

22 (5) The project will provide additional employment

1 opportunities in the state;

2 ~~(1)~~ (6) The quality of the proposed project and how it
3 addresses economic problems in the area in which the project will
4 be located;

5 ~~(2)~~ (7) Whether there is substantial and credible evidence
6 that the project is likely to be started and completed in a timely
7 fashion;

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

12 ~~(4)~~ (9) Whether the project will, directly or indirectly,
13 assist in the creation of additional employment opportunities in
14 the area where the project will be located;

15 ~~(5)~~ (10) Whether the project helps to diversify the local
16 economy;

17 ~~(6)~~ (11) Whether the project is consistent with the goals of
18 this article;

19 ~~(7)~~ (12) Whether the project is economically and fiscally
20 sound using recognized business standards of finance and
21 accounting; and

22 ~~(8)~~ (13) The ability of the eligible company to carry out the

1 project.

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

4 ~~(h)~~ (e) ~~The executive director of the Development Office may~~
5 ~~give its final approval to the applicant's application for a~~
6 ~~project and may grant to the applicant the status of an approved~~
7 ~~company. The executive director of the Development Office shall~~
8 ~~act to approve or not approve any application within sixty days~~
9 ~~following the receipt of the consultant's final, written report or~~
10 ~~reports or the receipt of any additional information requested by~~
11 ~~the Development Office, whichever is later. The decision by the~~
12 executive director of the Development Office is final.

13 **§5B-2E-7. Amount of credit allowed for tourism development**
14 **project; approved projects.**

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

1 against that portion of the consumers sales and service tax
2 collected in excess of the base tax revenue amount. The amount of
3 this credit is determined and applied as provided in this article.

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

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

1 ensuing tax year until used or until the expiration of the third
2 taxable year subsequent to the end of the initial ten-year credit
3 application period. If any unused credit remains after the
4 thirteenth year, that amount is forfeited. No carryback to a prior
5 taxable year is allowed for the amount of any unused portion of any
6 annual credit allowance.

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

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

1 this credit is determined and applied as provided in this article.

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

16 (c) The amount of credit allowable must be taken over a ten-
17 year period, at the rate of one tenth of the amount thereof per
18 taxable year, beginning with the taxable year in which the project
19 is opened to the public, unless the approved company elects to
20 delay the beginning of the ten-year period until the next
21 succeeding taxable year. This election shall be made in the first
22 consumers sales and service tax return filed by the approved

1 company following the date the project is opened to the public.
2 Once made, the election cannot be revoked.

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

19 (e) If any credit remains after application of subsection (d)
20 of this section, the amount of credit is carried forward to each
21 ensuing tax year until used or until the expiration of the third
22 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 (f) The total amount of tourism development expansion project
6 tax credits for all approved companies pursuant to this section may
7 not exceed ~~one million five hundred thousand dollars~~ \$2,500,000
8 each calendar year.

NOTE: The purpose of this bill is to extend the West Virginia
Tourism Development Act program permanently, remove the requirement
for engagement of a consulting firm to review proposed projects,
increase the limitation on the total amount of tourism development
expansion project tax credits for all approved companies each
calendar year, and provide for increased tax credit amounts for
project located on state and federal recreational property.

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