

# **WEST VIRGINIA LEGISLATURE**

## **2020 REGULAR SESSION**

**Introduced**

### **House Bill 4641**

BY DELEGATES HOUSEHOLDER, BARRETT, COWLES,  
KUMP, BIBBY, HARDY, ESPINOSA, HANSHAW (MR.  
SPEAKER), GRAVES AND S. BROWN

[Introduced January 31, 2020; Referred to the  
Committee on Finance]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,  
 2 designated §5B-1-9, relating to the West Virginia Department of Commerce; establishing  
 3 authority for creation of tourism development districts; specifying legislative findings and  
 4 purpose; specifying legislative intent; specifying additional powers and duties of the  
 5 development office; specifying activity that qualifies for the designation; specifying criteria  
 6 for evaluation and approval of districts; requiring development office approval as a tourism  
 7 development project or a tourism development expansion project pursuant to the Tourism  
 8 Development Act as a condition precedent to obtaining designation; specifying procedures  
 9 for evaluation and approval of districts; establishing minimum total project costs as a  
 10 condition precedent to obtaining designation; specifying the maximum number of  
 11 allowable districts; setting time period for termination of districts; excepting designated  
 12 districts from specified local ordinances and regulations; requiring payment of enumerated  
 13 local taxes; requiring compliance with statutes governing alcohol beverage control;  
 14 establishing district right to municipal police protection; specifying obligation of compliance  
 15 with state building code; providing for inspection oversight by West Virginia development  
 16 office; requiring Department of Transportation support of districts, including acquisition  
 17 and/or development of highways, roads, thorough-fares and sidewalks; providing for  
 18 continuation of tourism districts in event of nonrenewal of Tourism Development Act;  
 19 authorizing promulgation of rules; and severability provision.

*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 may assist qualifying tourism development projects and  
 2 tourism development expansion projects by approved companies pursuant to §5B-2E-1 et seq.  
 3 of this code which are located in, or partially in, municipalities with a population of 2000 or less.

4 effective as of the effective date of the most recent census, as specified in §8-1-4 of this code  
5 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  
13 of public services provided by the state and local government; and that tourism development  
14 districts are of paramount importance to the state and its economy and for the state's contribution  
15 to the 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 preempts:

20 (1) The right of certain municipalities, whether by ordinance, resolution, administrative act  
21 or otherwise, from enacting, adopting, implementing or enforcing ordinances, regulations or rules  
22 which limit, in anyway, 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) The right of certain municipalities to impose or enforce local laws and ordinances  
26 concerning the creation or regulation of any tourism development district and any tourism  
27 development project 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, pursuant

30 to §5B-2E-1 et seq. of this code, to be an approved company and which has entered into an  
31 agreement with the Development Office pursuant to §5B-2E-6 of this code to provide the  
32 approved company with a credit against the West Virginia consumers sales and service tax  
33 imposed by §11-15-1 et seq. of this code may apply to the development office for designation of  
34 a tourism development district encompassing the area where the tourism development project or  
35 the tourism development expansion project is to be acquired, constructed, equipped, developed,  
36 expanded and operated; provided, however, notwithstanding any provision of §11-15-1 et seq. of  
37 this code to the contrary, only tourism development projects and tourism development expansion  
38 projects with aggregate projected costs of construction, reconstruction, restoration, rehabilitation  
39 or upgrade, of not less than \$25 million shall be eligible for designation as a tourism development  
40 district.

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

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

46 (2) The applicant shall own or control all real property within the proposed tourism  
47 development district and shall provide evidence of such ownership or control in the application to  
48 the Development Office;

49 (A) The proposed district shall be entirely, or partially, within the corporate limits of a  
50 municipality which has a population of 2000 or less as of the effective date of the most recent  
51 census, as specified in §8-1-4 of this code;

52 (B) All costs for the application shall be borne by the applicant;

53 (C) The application submitted by the applicant to the development office pursuant to §5B-  
54 2E-1 et seq., of this code may be considered by the development office to be sufficient to meet  
55 some or all of the requirements of this section;

56 (f) The decision of the development office to designate a tourism development district shall  
57 be final.

58 (1) The total number of approved tourism development districts may not exceed five.  
59 When the total number of designated tourism development districts equals five, no further  
60 designations may be approved by the development office; and

61 (2) Each tourism development district shall terminate by operation of law 99 years from  
62 the date approved by the development office, unless a shorter time period for termination is  
63 agreed to by the applicant and the development office. The development office may terminate a  
64 development after the 20th anniversary of the date of approval of the district by the development  
65 office if the development office determines that the tourism development project or tourism  
66 development expansion project has been abandoned or ceased operations for five consecutive  
67 years.

68 (g) In accordance with subsection (b) of this section, and notwithstanding any provision of  
69 this code to the contrary or any municipality's home rule powers with respect to ordinances and  
70 ordinance procedures, designated tourism development districts, and the tourism development  
71 projects and/or tourism development expansion projects therein, may not be subject to the  
72 following:

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

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

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

78 (4) Municipal license requirements;

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

81 (6) The implementation of any tax, fee or charge by the municipality, except as specifically

82 provided in this section.

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

89 (h) Notwithstanding the creation of the tourism development district, the owner, operator,  
90 or manager, as applicable, and all concessions and licensees thereof, of the tourism development  
91 project or tourism development expansion project located therein shall:

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

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

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

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

102 (5) Comply with state laws, regulations, and licensure requirements concerning the State  
103 Control of Alcoholic Liquors pursuant to chapter 60 of this code;

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

106 (7) Be designed, acquired, constructed and equipped pursuant to the State Building Code  
107 in accordance with §8-12-13 of this code and corresponding state rules 87 CSR 4, title 87; and

108 (8) Provide for inspection of the design, acquisition, construction and equipping, and any  
109 subsequent expansion, of the tourism development project or the tourism development expansion  
110 project pursuant to the standards approved by the West Virginia Development Office.

111 (i) The West Virginia Department of Transportation shall take all actions necessary in  
112 support of the development of any tourism development project or tourism development  
113 expansion project in a tourism development district specifically including, but not limited to, the  
114 acquisition of such highways, roads, thorough-fares and sidewalks from the municipality in which  
115 the tourism development district is partially or entirely located, and the further development of  
116 such highways, roads, thorough-fares and sidewalks.

117 (j) Failure of the Legislature to renew the Tourism Development Act, §5B-2E-1 et seq. of  
118 this code, may not, in any way, modify or alter the designation and vested rights of any tourism  
119 development district created prior to the failure of the Legislature to renew the Tourism  
120 Development Act and any such tourism development district shall continue to exist beyond the  
121 termination of the Tourism Development Act.

122 (k) The Development Office shall propose rules for legislative approval in accordance with  
123 §29A-3-1 et seq. of this code to implement this section and the rules shall include, but not be  
124 limited to, the application and time line process, notice provisions, additional application  
125 consideration criteria and application fees sufficient to cover the costs of consideration of an  
126 application. The Development Office shall promulgate emergency rules pursuant to §29A-3-15 of  
127 this code by October 1, 2020, to facilitate the initial implementation of this section.

128 (l) Pursuant to §2-2-10 of this code, if any provision of this section or the application thereof  
129 to any person or circumstance is held unconstitutional or invalid, the unconstitutionality or  
130 invalidity shall not affect other provisions or applications of this section, and to this end the  
131 provisions of this section are declared to be severable.

NOTE: The purpose of this bill is to allow for designation of tourism development districts.

The bill provides for the creation of districts in conjunction with qualifying tourism development projects and tourism development expansion projects in municipalities with less than 2000 residents in West Virginia, including providing for development office control and oversight of such districts.

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