

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 4905

By Delegates Howell, W. Clark, Campbell, Willis,
Thorne, E. Pritt, Dittman, Ferrell, Hornbuckle,
Fehrenbacher, and Hornby

[Introduced January 18, 2024; Referred to the
Committee on Economic Development and Tourism
then Finance]

**FISCAL
NOTE**

1 A BILL to amend and reenact §8A-7-3 of the Code of West Virginia, 1931, as amended, and to add
 2 thereto a new article, designated §11-13PP-1, §11-13PP-2, §11-13PP-3, §11-13PP-4, §11-
 3 13PP-5, §11-13PP-6, §11-13PP-7, §11-13PP-8, §11-13PP-9, §11-13PP-10, and §11-
 4 13PP-11, all relating to the Tourism and Commercial Opportunity Zone Tax and Tax Credit
 5 Act; providing for a short title; providing legislative findings and purpose; creating a new
 6 species and class of property directed by law; creating definitions; establishing the Tourism
 7 and Commercial Opportunity Zone tax and tax credit; providing for restrictions on
 8 investment; providing for a penalty; providing for disclosure of tax credits; providing for tax
 9 and tax credit review and accountability; creating rulemaking authority; and providing an
 10 effective date.

Be it enacted by the Legislature of West Virginia:

CHAPTER 8A. LAND USE PLANNING.

ARTICLE 7. ZONING ORDINANCE.

§8A-7-3. Zoning -- Generally.

1 (a) A zoning ordinance may cover a county's entire jurisdiction or parts of its jurisdiction:
 2 Provided, That any Tourism and Commercial Opportunity Zone created pursuant to the authority of
 3 §11-13PP-1 et seq. of this code shall take precedence over and supersede any local or county
 4 land use ordinance in conflict with such Tourism and Commercial Opportunity Zone.

5 (b) The different zones created in a zoning ordinance by a governing body do not have to
 6 cover or include the same territory, and may overlap.

7 (c) Overlay districts and special design districts may have specific additional development
 8 standards for each permitted, accessory and conditional use.

9 (d) Each zone will be subject to the same rules, regulations, standards and designations
 10 throughout the zone, unless specific provisions are made by the governing body in the zoning
 11 ordinance. (e) Essential utilities and equipment are a permitted use in any zoning district.

12 (f) Several areas of a municipality or county may be classified in a zone even though the
13 areas are not contiguous.

14 (g) The boundaries of each zone and the designated classifications must be shown on a
15 zoning district map. The boundaries may only be changed after appropriate public hearing and
16 zoning district map changes are adopted by the governing body.

17 (h) A governing body shall certify the original zoning district map. Subsequent versions of
18 the zoning district map shall be certified and clearly identified with an effective date.

19 (i) All certified zoning district maps must be filed with the clerk of the applicable governing
20 body, the applicable planning commission and the office of the clerk of the applicable county
21 commission.

CHAPTER 11. TAXATION.

ARTICLE 13PP. TOURISM AND COMMERCIAL OPPORTUNITY ZONE TAX AND TAX

CREDIT.

§11-13PP-1. Short Title.

1 This article may be cited as the "Tourism and Commercial Opportunity Zone Tax and Tax
2 Credit."

§11-13PP-2. Legislative finding and purpose.

1 The Legislature finds the encouragement of investment into commercial development of
2 businesses in this state is in the public interest and promotes economic growth and development
3 for the people of this state. With major businesses announcing their intended opening in West
4 Virginia, attracting secondary commercial businesses is in the best interest of the growing
5 economy in West Virginia, and attracting these businesses will revitalize areas of the state that will
6 necessarily come along with new industrial development. In order to encourage investment in
7 business development in this state and thereby increase employment and economic
8 development, and aggregate tax revenue from economic growth there is hereby provided a

9 Tourism and Commercial Opportunity Zone tax and tax credit.

§11-13PP-3.

Definitions.

1 As used in this article, the following terms have the meanings ascribed to them in this
2 section, unless the context in which the term is used clearly requires another meaning or a specific
3 different definition is provided:

4 (1) "Tourism and Commercial Opportunity Zones" are those locations designated by a
5 selection panel of the Secretaries of Economic Development, Tourism, and Commerce or their
6 designees, with approval of county commission or municipal authorities, upon which designation,
7 the area designated and any qualified investment within it shall become a separate species and
8 class of property subject to taxation in proportion to its value as set forth in this article.

9 (2) "Tourism and Commercial Opportunity Zones acreage" means the product of the total
10 population of a county, divided by 1,000 and then multiplied by a factor of 30. The land may be
11 used for the purpose of commercial development/improvement in that designated area of acreage
12 per county. (E.g., an area containing 26,000 people would be calculated as $26,000 \div 1,000 = 26 \times$
13 $30 = 780$ and thus would have the equivalent amount of 780 acres eligible to be defined as a
14 Tourism and Commercial Opportunity Zone in the county.) Acreage may be subdivided into non-
15 contiguous subsets of acreage in order to facilitate develop if such acreage subdivisions are
16 approved by the selection panel of the Secretaries of Economic Development, Tourism, and
17 Commerce or their designees.

18 (2) "Eligible taxpayer" means a person that has received certification from the Department
19 of Economic Development that a portion of the Tourism and Commercial Opportunity Zone tax and
20 tax credit has been allocated to it, that is subject to the tax otherwise imposed by this chapter, and
21 that has made a qualified investment into a Tourism and Commercial Opportunity Zone for the
22 purpose of bringing businesses into a Tourism and Commercial Opportunity Zone.

23 (3) "Person" includes any natural person, corporation, limited liability company, or
24 partnership.

25 (4) "Qualified investment" means an investment to develop within a Tourism and
26 Commercial Opportunity Zone of an amount equivalent to or greater than \$250,000 for a period of
27 10 years - or, for the life of the financing of the development project, whichever is shorter:

28 (A) A qualified investment within a Tourism and Commercial Opportunity Zone may be a
29 capital addition equivalent to or greater than \$250,000 made to existing real property already
30 present in the Tourism and Commercial Opportunity Zone as set forth in this article.

31 (B) Any qualified investment capital addition to existing real property of any existing
32 tourism or commercial facility, for the construction, installation, or erection of improvements or
33 additions to existing property shall qualify for the Tourism and Commercial Opportunity Zone tax
34 and tax credit, but only to the extent of the taxpayer's qualified investment in the improvements or
35 additions: *Provided*, That the state tax rate of the real and personal property for any existing
36 tourism or commercial facility shall remain unchanged and may not drop below the existing as of
37 the date of the qualified investment capital addition. The purpose of this proviso is to ensure no
38 adverse fiscal impact to existing tax revenues.

39 (5) "State tax rate" is the division of taxation into four classes by the state constitution,
40 defined as the following:

41 Class 1: Intangible personal property and certain personal property employed exclusively
42 in agriculture.

43 Class 2: Owner-occupied residential property used exclusively for residential purposes
44 and all farmland used for agricultural purposes by its owner or bona fide tenant.

45 Class 3: All real and personal property situated outside a municipality that is not taxed in
46 Class 1 or Class 2.

47 Class 4: All property situated inside a municipality that is not taxed in Class 1 or Class 2.

48 (6) "Tourism and Commercial Opportunity Zone Tax " means the Tourism and Commercial
49 Opportunity Zone tax authorized by this article. Any qualified investment within any Tourism and
50 Commercial Opportunity Zone shall be taxed in proportion to its value at a rate equivalent with the

51 state Class 2 property rate for the period set forth in this article.

52 (7) "Tourism and Commercial Opportunity Zone Tax credit" means the dollar value of the
53 sales tax that is collected by the qualified investment establishment and remitted to the state after
54 development which amount shall qualify as an offset tax credit from the state for the equivalent
55 amount of corporate and/or personal income tax, as applicable, that the qualified investment
56 establishment would have had to pay for that development, as designated to the Tax Division, as
57 allocated by the Secretary of Economic Development.

58 (8) "Taxable year" means the tax year of the eligible taxpayer.

§11-13PP-4. Effect of County or Municipal Authority Rejection of Tourism and Commercial

Opportunity Zone Designation.

1 County commissions or municipal authorities may reject a Tourism and Commercial
2 Opportunity Zone designation approved by the selection panel of the Secretaries of Economic
3 Development, Tourism, and Commerce or their designees, but if they so reject, the county
4 commission and/or municipality so rejecting shall be ineligible for consideration for Tourism and
5 Commercial Opportunity Zone designations for a period of five (5) years following the date of
6 rejection.

§11-13PP-5. Tourism and Commercial Opportunity Zone tax and tax credit.

1 (a) *Separate Species and Class Tax allowed.* -- There shall be allowed to each eligible
2 taxpayer in a Tourism and Commercial Opportunity Zone that creates or maintains a qualified
3 investment as business development in West Virginia a tax rate for the taxable year in which the
4 investment was made and for a period of 10 years or for the life of the financing of the project,
5 whichever is shorter, shall be taxed in proportion to its value at a rate equivalent of the state Class
6 2 property rate for the period set forth in this article: *Provided*, That at the conclusion of the 10 year
7 or life of financing period, the tract upon which the qualified investment was made shall cease to
8 be considered as included in the Tourism and Commercial Opportunity Zone and shall cease to
9 have the separate species and class of property designation under law: *Provided, however*, That

10 for existing Class 3 or 4 property within any Tourism and Commercial Opportunity Zone, only new
11 expansion or addition investments meeting the \$250,000 or greater threshold shall qualify for the
12 new tax rate, and any existing footprint and assessment of Class 3 or 4 property within any
13 Tourism and Commercial Opportunity Zone shall continue to be assessed at the Class 3 or 4 rate,
14 as applicable. The purpose of this proviso is to ensure that existing county or municipal tax
15 revenues are not adversely impacted.

16 (b) Sales tax credit allowed. -- There shall be allowed to each eligible taxpayer in a Tourism
17 and Commercial Opportunity Zone that creates or maintains a qualified investment as a business
18 development in West Virginia, a qualified tax credit for the amount of the sales tax that is collected
19 by the qualified investment establishment and remitted to the state after development which may
20 be taken by the taxpayer as an offset tax credit from the state for the equivalent amount of income
21 tax that the qualified investment establishment would have had to pay for that development, as
22 designated to the Tax Division by the Secretary of Economic Development: *Provided*, That for
23 existing Class 3 or 4 property within any Tourism and Commercial Opportunity Zone which has
24 had new expansion or addition investments meeting the \$250,000 or greater threshold, only sales
25 revenue generated above that generated in the last tax year prior to the qualified investment
26 expansion or addition shall be eligible for the sales tax credit. The purpose of this proviso is to
27 ensure no adverse fiscal impact to existing tax revenues.

28 (1) No more than \$1 million of the sales tax credits allowed under this section shall be
29 allocated by the Secretary of the Department of Economic Development during any fiscal year.
30 The Department of Economic Development shall allocate the tax credits in the order the
31 applications therefor are received.

32 (2) The sales tax credit may be taken by the individual taxpayer, or the corporate taxpayer,
33 of the qualified investment, as applicable.

34 (A) If the eligible taxpayer is a limited liability company, an electing small business
35 corporation (as defined in section 1361 of the United States Internal Revenue Code of 1986, as

36 amended), or a partnership, any unused sales tax credit remaining after application of the tax
37 credit to corporate net income taxes, is allowed as a tax credit against the taxes imposed by §11-
38 21-1 et seq. of this code on owners of the eligible taxpayer.

39 (B) Electing small business corporations (as defined above), limited liability companies,
40 and partnerships shall allocate the tax credit allowed by this article among their members in the
41 same manner as profits and losses are allocated for the taxable year.

42 (3) Unused sales tax credit carry forward. -- If the sales tax credit allowed under this article
43 in any taxable year exceeds the sum of the taxes enumerated in this section for that taxable year,
44 the eligible taxpayer or owners of eligible taxpayers described in this section may apply the excess
45 as a tax credit against those taxes, in the order and manner stated in this section, for succeeding
46 taxable years until the earlier of the following:

47 (A) The full amount of the excess tax credit is used; or

48 (B) The expiration of the fifteenth taxable year after the taxable year in which the qualified
49 investment was made: *Provided*, That upon the expiration of the tenth taxable year after the
50 taxable year in which the investment was made, no further accrual of sales tax credit may be
51 claimed, but any unused residual credit balance accrued as of the tenth year, may continue to be
52 claimed until the full amount is used or the expiration of the fifteenth taxable year post qualified
53 investment. The tax credit remaining thereafter is forfeited.

54 (4) No tax credit is allowed or may be applied under this article until the taxpayer seeking to
55 claim the tax credit has:

56 (A) Filed with the Department of Economic Development a written application for the tax
57 credit;

58 (B) Filed with the Department of Economic Development the research and development
59 program or project certification issued pursuant to §11-13R-6 of this code for the Tourism and
60 Commercial Opportunity Zone company that will benefit from the investment;

61 (C) Filed with the Department of Economic Development the certificate of incorporation for

62 the Tourism and Commercial Opportunity Zone company that will benefit from the investment; and

63 (D) Received from the Department of Economic Development a written certification of the
64 amount of tax credit to be allocated to the eligible taxpayer.

§11-13PP-6. Restrictions on investment.

1 (a) No Tourism and Commercial Opportunity Zone development or qualified investment
2 may be made in a TIF district.

3 (b) No Tourism and Commercial Opportunity Zone development or investment may be
4 made in a Tourism and Commercial Opportunity Zone development company that is the alter ego
5 of the eligible taxpayer.

6 (c) The eligible taxpayer shall maintain its Tourism and Commercial Opportunity Zone
7 development or investment for a minimum period of 10 years or the life of the loan whichever
8 period is shorter: *Provided*, That an eligible taxpayer receiving repayment or return of a Tourism
9 and Commercial Opportunity Zone development or investment (exclusive of interest, dividends, or
10 other earnings on the investment) shall, within three calendar months from the date of repayment
11 or return, reinvest the repaid or returned amount of the initial investment in another Tourism and
12 Commercial Opportunity Zone development company for a period of time at least equal to the
13 remainder of the initial 10 year term and continue to be taxed and claim the tax credits as set forth
14 in this article up to the amount of the reinvestment for the remainder of the ten year period or life of
15 the loan, whichever period is shorter.

16 (d) If an eligible taxpayer sells the property subject to the qualified investment to a bona
17 fide purchaser for value, the Tourism and Commercial Opportunity Zone Tax and Tax Credit for
18 such property shall pass to the bona fide purchaser for value, but shall be limited to solely to the
19 seller’s 10 year term, or the remainder of the seller’s 10 year term, regardless of the period of any
20 financing for the purchase acquired by the bona fide purchaser for value.

§11-13PP-7. Penalty.

1 An eligible taxpayer that fails to maintain a Tourism and Commercial Opportunity Zone

2 development qualified investment for the required period of time stated in section six of this article
 3 shall pay to the State Tax Commissioner a penalty equal to all of the tax credits asserted under this
 4 article by the eligible taxpayer with interest, calculated at the rate set forth in §11-10-17a of this
 5 code, from the date the tax credits were certified as allocated to the eligible taxpayer. The Tax
 6 Commissioner shall give notice to the eligible taxpayer of any penalties imposed under this
 7 section. The penalty shall be assessed and collected in the same manner as tax. The Tax
 8 Commissioner shall deposit any amounts received under this subsection in the General Revenue
 9 Fund.

§11-13PP-8. Disclosure of tax credits.

1 Notwithstanding any provision in this code to the contrary, the Tax Commissioner shall
 2 annually publish in the state register the name and address of every eligible taxpayer and the
 3 amount of any tax credit asserted under this article.

§11-13PP-9. Tax credit review and accountability.

1 (a) Beginning on February 1, 2026, and on February 1 every third year thereafter, the Tax
 2 Commissioner shall submit to the Governor, the President of the Senate, and the Speaker of the
 3 House of Delegates a tax credit review and accountability report evaluating the cost effectiveness
 4 of the tax and tax credit allowed under this article during the most recent three-year period for
 5 which information is available: *Provided*, That the requirement to file the credit review and
 6 accountability report terminates June 30, 2032, unless the termination of entitlement to the tax
 7 credit as stated in section ten of this article terminates. The criteria to be evaluated includes, but is
 8 not limited to, for each year of the three-year period:

- 9 (1) The numbers of eligible taxpayers claiming the tax credit;
- 10 (2) The net number, type, and duration of new jobs created by all Tourism and Commercial
 11 Opportunity Zone companies in which taxpayers claiming the credit made investment in and the
 12 wages and benefits paid by such companies;
- 13 (3) The cost of the tax credit;

14 (4) The cost of the tax credit per new job created; and
 15 (5) Comparison of employment trends for the industry and for taxpayers within the industry
 16 that claim the tax credit.

17 (b) Eligible taxpayers claiming the tax credit shall provide any information required by the
 18 Tax Commissioner for the purpose of preparing the report: *Provided*, That such information shall
 19 be subject to the confidentiality and disclosure provisions of §11-10-5d and §11-10-5s of this code.

§11-13PP-10. Rules.

1 The Tax Division and the Department of Economic Development may promulgate rules in
 2 accordance with §29A-3-1 *et seq.* of this code to carry out the policy and purposes of this article,
 3 to provide any necessary clarification of the provisions of this article and to efficiently provide for
 4 the general administration of this article.

§11-13PP-11. Effective date.

1 The provisions of this article will become effective on July 1, 2024, and apply only to
 2 qualified investment/improvement made on or after that date.

NOTE: The purpose of this bill is to establish the Tourism and Commercial Opportunity Zone Tax and Tax Credit Act in order to encourage investment in business development in this state and thereby increase employment and economic development, with concomitant increased aggregate tax revenue arising from economic growth.

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