

1 **Senate Bill No. 587**

2 (By Senators Kessler (Acting President), Unger, Browning and
3 Stollings)

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5 [Introduced February 21, 2011; referred to the Committee on
6 Economic Development; and then to the Committee on Finance.]

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11 A BILL to amend and reenact §5B-2E-5 of the Code of West Virginia,
12 1931, as amended; and to amend said code by adding thereto two
13 new sections, designated §5B-2E-7b and §5B-2E-7c, all relating
14 generally to the West Virginia Tourism Development Act; and
15 adding a small-scale tourism development component and an
16 ancillary project component.

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

18 That §5B-2E-5 of the Code of West Virginia, 1931, as amended,
19 be amended and reenacted; and that said code be amended by adding
20 thereto two new sections, designated §5B-2E-7b and §5B-2E-7c, all
21 to read as follows:

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

23 **§5B-2E-5. Project application; evaluation standards; consulting**
24 **services; preliminary and final approval of projects.**

1 (a) Each eligible company that seeks to qualify a project for
2 the tourism development project tax credit provided by section
3 seven of this article, ~~or for~~ the tourism development expansion
4 project tax credit provided by section seven-a of this article, the
5 small scale tourism development project tax credit provided by
6 section seven-b of this article or the ancillary tourism facilities
7 development project tax credit provided by section seven-c of this
8 article, as applicable, ~~must~~ shall file a written application for
9 approval of the project with the development office.

10 (b) With respect to each eligible company making an
11 application to the development office for a tourism development
12 project tax credit, ~~or~~ a tourism development expansion project tax
13 credit, a small scale tourism development project tax credit or an
14 ancillary tourism facilities development project tax credit, the
15 development office shall make inquiries and request documentation,
16 including a completed application, from the applicant that shall
17 include: A description and location of the project; capital and
18 other anticipated expenditures for the project and the sources of
19 funding therefor; the anticipated employment and wages to be paid
20 at the project; business plans that indicate the average number of
21 days in a year in which the project will be in operation and open
22 to the public; and the anticipated revenues and expenses generated
23 by the project. The Executive Director of the development office
24 shall act to grant or not to grant any preliminary approval of an

1 application within forty-five days following its receipt or receipt
2 of additional information requested by the Development Office,
3 whichever is later.

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

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

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

19 (2) Will have approved costs in excess of ~~one million dollars~~
20 \$2.5 million, except that a small scale tourism development project
21 must have approved costs in excess of \$250,000 but not in excess of
22 \$2.5 million and that an ancillary tourism facilities development
23 project must have approved costs in excess of \$100,000 but not in
24 excess of \$1 million;

1 (3) Will have a significant and positive economic impact on
2 the state considering, among other factors, the extent to which the
3 project will compete directly with or complement existing tourism
4 attractions in the state and the amount by which increased tax
5 revenues from the project will exceed the credit given to the
6 approved company;

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

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

12 (e) The applicant for credit under section seven or seven-a of
13 this article shall pay to the development office, prior to the
14 engagement of the services of a competent consulting firm or firms
15 pursuant to the provisions of subsection (d) of this section, for
16 the cost of the consulting report or reports and shall cooperate
17 with the consulting firm or firms to provide all of the data that
18 the consultant considers necessary or convenient to make its
19 determination under subsection (d) of this section. An applicant
20 for credit under section seven-b of this article shall pay to the
21 development office a fee of \$1,000 per application. An applicant
22 for credit under section seven-c of this article shall pay to the
23 Development Office a fee of \$500 per application. The fee shall be
24 used by that office to reimburse costs of the small business

1 development center, a division of the development office, to review
2 the application and make a recommendation to the Executive Director
3 of the Development Office under subsection (d) of this section.

4 (f) The Executive Director of the Development Office, within
5 sixty days following receipt of the consultant's final, written
6 report or reports, shall review, in light of the consultant's
7 report or reports, the reasonableness of the project's budget and
8 timetable for completion and, in addition to the criteria for final
9 approval set forth in subsection (d) of this section, the following
10 criteria:

11 (1) The quality of the proposed project and how it addresses
12 economic problems in the area in which the project will be located;

13 (2) Whether there is substantial and credible evidence that
14 the project is likely to be started and completed in a timely
15 fashion;

16 (3) Whether the project will, directly or indirectly, improve
17 the opportunities in the area where the project will be located for
18 the successful establishment or expansion of other industrial or
19 commercial businesses;

20 (4) Whether the project will, directly or indirectly, assist
21 in the creation of additional employment opportunities in the area
22 where the project will be located;

23 (5) Whether the project helps to diversify the local economy;

24 (6) Whether the project is consistent with the goals of this

1 article;

2 (7) Whether the project is economically and fiscally sound
3 using recognized business standards of finance and accounting; and

4 (8) The ability of the eligible company to carry out the
5 project.

6 (g) The development office may establish other criteria for
7 consideration when approving the applications.

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

17 **§5B-2E-7b. Amount of credit allowed for small scale tourism**
18 **development project; approved projects.**

19 (a) As used in this article, "small scale tourism development
20 project" means a tourism development project as defined in section
21 three of this article where the cost of the project will exceed
22 \$250,000 but will not exceed \$2.5 million, except that a small scale
23 tourism development project may include the construction,
24 reconstruction or rehabilitation or expansion of a lodging facility

1 where the project, as specifically set forth and defined in the
2 application, consists of no more than thirty guest rooms,
3 notwithstanding any other provision in this article to the contrary.

4 (b) Approved companies are allowed a credit against the West
5 Virginia consumers sales and service tax imposed by article fifteen,
6 chapter eleven of this code and collected by the approved company on
7 sales generated by or arising from the operations of the small scale
8 tourism development project. A project that qualifies for the
9 credit allowed by this section may not claim any credit under
10 section seven or seven-a of this article. The amount of this credit
11 is determined and applied as provided in this article.

12 (c) The maximum amount of credit allowable in this article is
13 equal to twenty-five percent of the approved company's approved
14 costs as provided in the agreement: *Provided*, That if the small
15 scale tourism development project site is located within the permit
16 area or an adjacent area of a surface mining operation, as these
17 terms are defined in section three, article three, chapter twenty-
18 two of this code, from which all coal has been or will be extracted
19 prior to the commencement of the tourism development project, the
20 maximum amount of credit allowable is equal to thirty-five percent
21 of the approved company's approved costs as provided in the
22 agreement.

23 (d) The amount of credit allowable must be taken over a ten-
24 year period, at the rate of one tenth of the amount thereof per

1 taxable year, beginning with the taxable year in which the project
2 is opened to the public, unless the approved company elects to delay
3 the beginning of the ten-year period until the next succeeding
4 taxable year. This election shall be made in the first consumers
5 sales and service tax return filed by the approved company following
6 the date the project is opened to the public. Once made, the
7 election cannot be revoked.

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

24 (f) If any credit remains after application of subsection (e)

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

8 (g) The total amount of small scale tourism development project
9 tax credits for all approved companies pursuant to this section may
10 not exceed \$1.5 million each calendar year.

11 (h) The company approved to claim the small scale tourism
12 development project credit allowed by this section shall be subject
13 to the forfeiture of unused tax credit provisions and the recapture
14 tax provision of section eight of this article. Additionally, the
15 approved company shall be required to submit to the development
16 office the information required by section eight of this article and
17 shall be allowed to transfer the credit allowed by this section to
18 a successor business subject to the rules provided in section eight
19 of this article.

20 **§5B-2E-7c. Amount of credit allowed for ancillary tourism**
21 **facilities development project; approved projects.**

22 (a) The following words and terms used in this section shall
23 have the meanings ascribed in this section:

24 (1) "Ancillary tourism facilities development project" means

1 the acquisition, including the acquisition of real estate by a
2 leasehold interest with a minimum of ten years, construction,
3 expansion and/or equipping of a new or existing facility located at
4 or near an existing tourism attraction that exists for the sole
5 purpose of providing recreational, entertainment or lodging for use
6 by tourists, as specifically set forth and defined in the
7 application, where the cost of the project will exceed \$100,000 but
8 will not exceed \$1 million: *Provided*, That an ancillary tourism
9 facilities development project does not include the construction,
10 reconstruction, rehabilitation or expansion of a lodging facility
11 with more than thirty guest rooms, notwithstanding any other
12 provision in this article to the contrary. All ancillary tourism
13 facilities development projects shall be in accordance with the
14 applicable county ancillary tourism facilities development plan.

15 (2) "County ancillary tourism facilities development plan"
16 means a comprehensive ancillary tourism facilities development plan
17 developed by the local economic development organization designated
18 as the lead entity for economic development by the county commission
19 of the county in which the ancillary tourism facilities development
20 project will be located, as revised, amended or supplemented, from
21 time to time, by the local development organization. Any such plan
22 or plans shall be based on studies of governmental, social,
23 economic, environmental and physical conditions and trends and shall
24 aim at the coordinated development of ancillary tourism facilities

1 in the county in order to promote the general health, welfare,
2 convenience and prosperity of its people through the encouragement
3 and development of tourism facilities that support existing tourism
4 attractions by attracting individuals who are not residents of the
5 state into a geographical area in which travel was not planned or
6 will extend the stay of travelers who are not residents of the state
7 in an area in which travel has been planned. The plan or plans, or
8 parts thereof, shall be prepared by persons appropriately qualified
9 under state statutes dealing with the applicable profession or
10 occupation. The plan or plans shall be submitted for review and
11 approval by the Secretary of Commerce prior to adoption by the local
12 economic development organization designated as the lead entity for
13 economic development activities by the county commission of the
14 county in which the ancillary tourism facilities development project
15 will be located.

16 (b) In addition to the requirements set forth in section five
17 of this article, an ancillary tourism facilities development project
18 shall demonstrate in its application the ability to either attract
19 individuals who are not residents of the state into a geographical
20 area in which travel was not planned or will extend the stay of
21 travelers who are not residents of the state in an area in which
22 travel has been planned.

23 (c) Approved companies are allowed a credit against the West
24 Virginia consumers sales and service tax imposed by article fifteen,

1 chapter eleven of this code and collected by the approved company
2 on sales generated by or arising from the operations of the
3 ancillary tourism facilities development project. A project that
4 qualifies for the credit allowed by this section may not claim any
5 credit under section seven, seven-a or seven-b of this article. The
6 amount of this credit is determined and applied as provided in this
7 article.

8 (d) The maximum amount of credit allowable in this article is
9 equal to twenty-five percent of the approved company's approved
10 costs as provided in the agreement: *Provided*, That if the ancillary
11 tourism facilities development project site is located within the
12 permit area or an adjacent area of a surface mining operation, as
13 these terms are defined in section three, article three, chapter
14 twenty two of this code, from which all coal has been or will be
15 extracted prior to the commencement of the tourism development
16 project, the maximum amount of credit allowable is equal to thirty-
17 five percent of the approved company's approved costs as provided
18 in the agreement: *Provided, however*, That if the ancillary tourism
19 facilities development project involves the restoration or
20 rehabilitation of a structure that is listed individually in the
21 National Register of Historic Places or is located in a National
22 Register Historic District and certified by the State Historic
23 Preservation Officer as contributing to the historic significance
24 of the district and the rehabilitation or restoration project has

1 been approved in advance by the State Historic Preservation Officer,
2 the maximum amount of credit allowable is equal to fifty percent of
3 the approved company's approved costs as provided in the agreement.

4 (e) The amount of credit allowable must be taken over a ten-
5 year period, at the rate of one tenth of the amount thereof per
6 taxable year, beginning with the taxable year in which the project
7 is opened to the public, unless the approved company elects to delay
8 the beginning of the ten-year period until the next succeeding
9 taxable year. This election shall be made in the first consumers
10 sales and service tax return filed by the approved company following
11 the date the project is opened to the public. Once made, the
12 election cannot be revoked.

13 (f) The amount determined under subsection (d) of this section
14 is allowed as a credit against the consumers sales and service tax
15 collected by the approved company on sales from the operation of the
16 ancillary tourism facilities development project. The amount
17 determined under said subsection may be used as a credit against
18 taxes required to be remitted on the approved company's monthly
19 consumers sales and service tax returns that are filed pursuant to
20 section sixteen, article fifteen, chapter eleven of this code. The
21 approved company shall claim the credit by reducing the amount of
22 consumers sales and service tax required to be remitted with its
23 monthly consumers sales and service tax returns by the amount of its
24 aggregate annual credit allowance until such time as the full

1 current year annual credit allowance has been claimed. Once the
2 total credit claimed for the tax year equals the approved company's
3 aggregate annual credit allowance, no further reductions to its
4 monthly consumers sales and service tax returns will be permitted.

5 (g) If any credit remains after application of subsection (f)
6 of this section, the amount of credit is carried forward to each
7 ensuing tax year until used or until the expiration of the third
8 taxable year subsequent to the end of the initial ten-year credit
9 application period. If any unused credit remains after the
10 thirteenth year, that amount is forfeited. No carryback to a prior
11 taxable year is allowed for the amount of any unused portion of any
12 annual credit allowance.

13 (h) The total amount of ancillary tourism facilities
14 development project tax credits for all approved companies pursuant
15 to this section may not exceed \$500,000 each calendar year.

16 (i) The company approved to claim the ancillary tourism
17 facilities development project tax credit allowed by this section
18 shall be subject to the forfeiture of unused tax credit provisions
19 and the recapture tax provision of section eight of this article.
20 Additionally, the approved company shall be required to submit to
21 the Development Office the information required by section eight of
22 this article and shall be allowed to transfer the credit allowed by
23 this section to a successor business subject to the rules provided
24 in section eight of this article.

NOTE: The purpose of this bill is to add a small scale tourism development component and an ancillary tourism facilities development component to the West Virginia Tourism Development Act.

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

§5B-2E-7b and §5B-2E-7c are new; therefore, strike-throughs and underscoring have been omitted.