

1 §5B-2E-7c and §5B-2E-7d, 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 projects.**

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

14 (b) With respect to each eligible company making an
15 application to the development office for a tourism development
16 project tax credit, ~~or~~ a tourism development expansion project tax
17 credit, a small scale tourism development project tax credit or an
18 ancillary tourism facilities development project tax credit, the
19 development office shall make inquiries and request documentation,
20 including a completed application, from the applicant that shall
21 include: A description and location of the project; capital and
22 other anticipated expenditures for the project and the sources of
23 funding therefor; the anticipated employment and wages to be paid
24 at the project; business plans that indicate the average number of

1 days in a year in which the project will be in operation and open
2 to the public; and the anticipated revenues and expenses generated
3 by the project. The Executive Director of the Development Office
4 shall act to grant or not to grant any preliminary approval of an
5 application within forty-five days following its receipt or receipt
6 of additional information requested by the development office,
7 whichever is later.

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

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

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

23 (2) Will have approved costs in excess of ~~one million dollars~~
24 \$2.5 million, except that a small scale tourism development project

1 must have approved costs in excess of \$250,000 but not in excess of
2 \$2.5 million and that an ancillary tourism facilities development
3 project must have approved costs in excess of \$100,000 but not in
4 excess of \$1 million;

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

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

14 (5) Will provide additional employment opportunities in the
15 state.

16 (e) The applicant for credit under section seven or seven-a of
17 this article shall pay to the development office, prior to the
18 engagement of the services of a competent consulting firm or firms
19 pursuant to the provisions of subsection (d) of this section, for
20 the cost of the consulting report or reports and shall cooperate
21 with the consulting firm or firms to provide all of the data that
22 the consultant considers necessary or convenient to make its
23 determination under subsection (d) of this section. An applicant
24 for credit under section seven-b of this article shall pay to the

1 development office a fee of \$1,000 per application. An applicant
2 for credit under section seven-d of this article shall pay to the
3 development office a fee of \$500 per application. The fee shall be
4 used by that office to reimburse costs of the small business
5 development center, a division of the development office, to review
6 the application and make a recommendation to the Executive Director
7 of the Development Office under subsection (d) of this section.

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

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

17 (2) Whether there is substantial and credible evidence that
18 the project is likely to be started and completed in a timely
19 fashion;

20 (3) Whether the project will, directly or indirectly, improve
21 the opportunities in the area where the project will be located for
22 the successful establishment or expansion of other industrial or
23 commercial businesses;

24 (4) Whether the project will, directly or indirectly, assist

1 in the creation of additional employment opportunities in the area
2 where the project will be located;

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

4 (6) Whether the project is consistent with the goals of this
5 article;

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

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

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

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

21 **§5B-2E-7a. Amount of credit allowed for tourism development**
22 **expansion project; approved projects.**

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

1 fifteen, chapter eleven of this code and collected by the approved
2 company on sales generated by or arising from the operations of the
3 tourism development expansion project: *Provided*, That the tourism
4 development expansion project tax credit allowed under this section
5 is separate and distinct from any credit allowed for a tourism
6 development project in accordance with the provisions of section
7 seven of this article: *Provided, however*, That if the consumers
8 sales and service tax collected by the approved company is not
9 solely attributable to sales resulting from the operation of the
10 tourism development expansion project, the credit shall only be
11 applied against that portion of the consumers sales and service tax
12 collected in excess of the base tax revenue amount. The amount of
13 this credit is determined and applied as provided in this article.

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

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

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

1 monthly consumers sales and service tax returns will be permitted.

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

10 (f) The total amount of tourism development expansion project
11 tax credits for all approved companies pursuant to this section may
12 not exceed \$1,500,000 each calendar year: Provided, That this cap
13 shall be eliminated for calendar years beginning on or after
14 January 1, 2013, for project applications approved by the
15 development office after June 30, 2012.

16 **§5B-2E-7b. Amount of credit allowed for small scale tourism**
17 **development project; approved projects.**

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

1 application, consists of no more than thirty guest rooms,
2 notwithstanding any other provision in this article to the
3 contrary.

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

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

24 (d) The amount of credit allowable must be taken over a

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

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

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

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

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

20 **§5B-2E-7c. Computation and allowance of credit for multi phase,**
21 **multi year projects; sales tax presumption.**

22 (a) When an approved project, whether an original project or
23 an expansion project, will be completed in two or more phases over
24 a period of forty-eight months or less, with such period computed

1 beginning with the month in which construction first began, and the
2 phases have separate completion dates and separate dates on which
3 they will be open to the public, the baseline consumers sales and
4 service tax collections for that approved destination tourism
5 development project shall be the taxes collected during the twelve
6 month period immediately preceding the month in which the first
7 phase of the approved project is open to the public. The amount of
8 the credit, allowed by this article shall be twenty-five percent of
9 the cost of the first phase applied in equal installments over a
10 ten-year period, and shall be applied against the additional
11 consumers sales and service taxes collected over the baseline
12 collections during the ten-year period that begins on the first day
13 of the calendar month in which the first phase of the project is
14 first open to the public. When each subsequent phase of the
15 approved project is completed and is opened to the public,
16 twenty-five percent of the cost of that phase of the project shall
17 constitute the amount of credit that may be claimed over a ten-year
18 period that begins on the first day of the calendar month in which
19 that phase is open to the public. In determining the amount of
20 sales tax that the project may retain, the baseline sales tax
21 collections applicable to the first phase of the project shall be
22 used for all phases of the approved project.

23 (b) For purposes of this article, it shall be presumed that
24 the owners or lessees of the project collect and remit consumers

1 sales and service taxes on a calendar year basis, with the annual
2 return for the calendar year filed at the end of January following
3 the close of the sales tax year as required by section twenty-one,
4 article fifteen, chapter eleven of this code.

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

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

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

24 (2) "County ancillary tourism facilities development plan"

1 means a comprehensive ancillary tourism facilities development plan
2 developed by the local economic development organization designated
3 as the lead entity for economic development by the county
4 commission of the county in which the ancillary tourism facilities
5 development project will be located, as revised, amended or
6 supplemented, from time to time, by the local development
7 organization. Any such plan or plans shall be based on studies of
8 governmental, social, economic, environmental and physical
9 conditions and trends and shall aim at the coordinated development
10 of ancillary tourism facilities in the county in order to promote
11 the general health, welfare, convenience and prosperity of its
12 people through the encouragement and development of tourism
13 facilities that support existing tourism attractions by attracting
14 individuals who are not residents of the state into a geographical
15 area in which travel was not planned or will extend the stay of
16 travelers who are not residents of the state in an area in which
17 travel has been planned. The plan or plans, or parts thereof,
18 shall be prepared by persons appropriately qualified under state
19 statutes dealing with the applicable profession or occupation. The
20 plan or plans shall be submitted for review and approval by the
21 Secretary of Commerce prior to adoption by the local economic
22 development organization designated as the lead entity for economic
23 development activities by the county commission of the county in
24 which the ancillary tourism facilities development project will be

1 located.

2 (b) In addition to the requirements set forth in section five
3 of this article, an ancillary tourism facilities development
4 project shall demonstrate in its application the ability to either
5 attract individuals who are not residents of the state into a
6 geographical area in which travel was not planned or will extend
7 the stay of travelers who are not residents of the state in an area
8 in which travel has been planned.

9 (c) 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 ancillary tourism facilities development project. A project that
14 qualifies for the credit allowed by this section may not claim any
15 credit under section seven, seven-a or seven-b of this article.
16 The amount of this credit is determined and applied as provided in
17 this article.

18 (d) The maximum amount of credit allowable in this article is
19 equal to twenty-five percent of the approved company's approved
20 costs as provided in the agreement: *Provided*, That if the
21 ancillary tourism facilities development project site is located
22 within the permit area or an adjacent area of a surface mining
23 operation, as these terms are defined in section three, article
24 three, chapter twenty-two of this code, from which all coal has

1 been or will be extracted prior to the commencement of the tourism
2 development project, the maximum amount of credit allowable is
3 equal to thirty-five percent of the approved company's approved
4 costs as provided in the agreement: *Provided, however,* That if the
5 ancillary tourism facilities development project involves the
6 restoration or rehabilitation of a structure that is listed
7 individually in the National Register of Historic Places or is
8 located in a National Register Historic District and certified by
9 the State Historic Preservation Officer as contributing to the
10 historic significance of the district and the rehabilitation or
11 restoration project has been approved in advance by the State
12 Historic Preservation Officer, the maximum amount of credit
13 allowable is equal to fifty percent of the approved company's
14 approved costs as provided in the agreement.

15 (e) The amount of credit allowable must be taken over a ten-
16 year period, at the rate of one tenth of the amount thereof per
17 taxable year, beginning with the taxable year in which the project
18 is opened to the public, unless the approved company elects to
19 delay the beginning of the ten-year period until the next
20 succeeding taxable year. This election shall be made in the first
21 consumers sales and service tax return filed by the approved
22 company following the date the project is opened to the public.
23 Once made, the election cannot be revoked.

24 (f) The amount determined under subsection (d) of this section

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

16 (g) If any credit remains after application of subsection (f)
17 of this section, the amount of credit is carried forward to each
18 ensuing tax year until used or until the expiration of the third
19 taxable year subsequent to the end of the initial ten-year credit
20 application period. If any unused credit remains after the
21 thirteenth year, that amount is forfeited. No carryback to a prior
22 taxable year is allowed for the amount of any unused portion of any
23 annual credit allowance.

24 (h) The total amount of ancillary tourism facilities

1 development project tax credits for all approved companies pursuant
2 to this section may not exceed \$500,000 each calendar year.

3 (i) The company approved to claim the ancillary tourism
4 facilities development project tax credit allowed by this section
5 shall be subject to the forfeiture of unused tax credit provisions
6 and the recapture tax provision of section eight of this article.
7 Additionally, the approved company shall be required to submit to
8 the development office the information required by section eight of
9 this article and shall be allowed to transfer the credit allowed by
10 this section to a successor business subject to the rules provided
11 in section eight of this article.

NOTE: The purpose of this bill is to amend the Tourism Development Act by adding a small scale tourism development component and credit to the Act; by removing the cap on the amount of annual credit that may be awarded for destination tourism expansion projects approved after June 30, 2012; by providing a rule for determining the amount of allowable credit when an approved project is a multi-year, multi-phase project, including a presumption that consumers sales and service tax is collected on calendar year basis; and by adding an ancillary tourism facilities development component and credit.

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

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