

1 **H. B. 4184**

2  
3 (By Mr. Speaker, (Mr. Miley) and Delegate Armstead)

4 [By Request of the Executive]

5 [Introduced January 15, 2014 ; referred to the  
6 Committee on Small Business, Entrepreneurship and  
7 Economic Development then Finance.]

8  
9  
10 A BILL to repeal §5B-2E-11 of the Code of West Virginia, 1931, as  
11 amended; and to amend and reenact §5B-2E-5, §5B-2E-7 and §5B-  
12 2E-7a of said code, all relating to the West Virginia Tourism  
13 Development Act; removing termination provisions; removing  
14 requirement for engagement of a consulting firm to review  
15 proposed projects; increasing the limitation on the total  
16 amount of tourism development expansion project tax credits  
17 for all approved companies each calendar year; and providing  
18 for increased tax credit amounts for projects located on state  
19 and federal recreational property.

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

21 That §5B-2E-11 of the Code of West Virginia, 1931, as amended,  
22 be repealed; and that §5B-2E-5, §5B-2E-7 and §5B-2E-7a of said code  
23 be amended and reenacted, all to read as follows:

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

1 **§5B-2E-5. Project application; evaluation standards; consulting**  
2 **services; ~~preliminary and final~~ approval of**  
3 **projects.**

4 (a) Each eligible company that seeks to qualify a project for  
5 the tourism development project tax credit provided by section  
6 seven of this article, or for the tourism development expansion  
7 project tax credit provided by section seven-a of this article, as  
8 applicable, must file a written application for approval of the  
9 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, the Development Office shall make inquiries and request  
14 documentation, including a completed application, from the  
15 applicant that shall include: A description and location of the  
16 project; capital and other anticipated expenditures for the project  
17 and the sources of funding therefor; the anticipated employment and  
18 wages to be paid at the project; business plans that indicate the  
19 average number of days in a year in which the project will be in  
20 operation and open to the public; and the anticipated revenues and  
21 expenses generated by the project. ~~The executive director of the~~  
22 ~~Development Office shall act to grant or not to grant any~~  
23 ~~preliminary approval of an application within forty-five days~~  
24 ~~following its receipt or receipt of additional information~~

1 ~~requested by the Development Office, whichever is later.~~

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

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

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

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

18 ~~(3) Will have a significant and positive economic impact on~~  
19 ~~the state considering, among other factors, the extent to which the~~  
20 ~~project will compete directly with or complement existing tourism~~  
21 ~~attractions in the state and the amount by which increased tax~~  
22 ~~revenues from the project will exceed the credit given to the~~  
23 ~~approved company;~~

24 ~~(4) Will produce sufficient revenues and public demand to be~~

1 ~~operating and open to the public for a minimum of one hundred days~~  
2 ~~per year; and~~

3 ~~(5) Will provide additional employment opportunities in the~~  
4 ~~state.~~

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

12 ~~(f) The executive director of the Development Office, within~~  
13 ~~sixty days following receipt of the consultant's final, written~~  
14 ~~report or reports, shall review, in light of the consultant's~~  
15 ~~report or reports, the reasonableness of the project's budget and~~  
16 ~~timetable for completion and, in addition to the criteria for final~~  
17 ~~approval set forth in subsection (d) of this section, the following~~  
18 ~~criteria:~~

19 (c) The executive director of the Development Office, within  
20 sixty days following receipt of an application or receipt of any  
21 additional information requested by the Development Office  
22 respecting the application, whichever is later, shall act to grant  
23 or not to grant approval of the application, based on the following  
24 criteria:

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

3       (2) The project will have approved costs in excess of  
4 \$1,000,000;

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

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

14       (5) The project will provide additional employment  
15 opportunities in the state;

16       ~~(1)~~ (6) The quality of the proposed project and how it  
17 addresses economic problems in the area in which the project will  
18 be located;

19       ~~(2)~~ (7) Whether there is substantial and credible evidence  
20 that the project is likely to be started and completed in a timely  
21 fashion;

22       ~~(3)~~ (8) Whether the project will, directly or indirectly,  
23 improve the opportunities in the area where the project will be  
24 located for the successful establishment or expansion of other

1 industrial or commercial businesses;

2       ~~(4)~~ (9) Whether the project will, directly or indirectly,  
3 assist in the creation of additional employment opportunities in  
4 the area where the project will be located;

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

7       ~~(6)~~ (11) Whether the project is consistent with the goals of  
8 this article;

9       ~~(7)~~ (12) Whether the project is economically and fiscally  
10 sound using recognized business standards of finance and  
11 accounting; and

12       ~~(8)~~ (13) The ability of the eligible company to carry out the  
13 project.

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

16       ~~(h)~~ (e) ~~The executive director of the Development Office may~~  
17 ~~give its final approval to the applicant's application for a~~  
18 ~~project and may grant to the applicant the status of an approved~~  
19 ~~company. The executive director of the Development Office shall~~  
20 ~~act to approve or not approve any application within sixty days~~  
21 ~~following the receipt of the consultant's final, written report or~~  
22 ~~reports or the receipt of any additional information requested by~~  
23 ~~the Development Office, whichever is later. The decision by the~~  
24 executive director of the Development Office is final.

1 **§5B-2E-7. Amount of credit allowed for tourism development**  
2 **project; approved projects.**

3 (a) Approved companies are allowed a credit against the West  
4 Virginia consumers sales and service tax imposed by article  
5 fifteen, chapter eleven of this code and collected by the approved  
6 company on sales generated by or arising from the operations of the  
7 tourism development project: *Provided*, That if the consumers sales  
8 and service tax collected by the approved company is not solely  
9 attributable to sales resulting from the operation of the new  
10 tourism development project, the credit shall only be applied  
11 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 project site is located within the permit area or an  
18 adjacent area of a surface mining operation, as these terms are  
19 defined in section three, article three, chapter twenty-two of this  
20 code, from which all coal has been or will be extracted prior to  
21 the commencement of the tourism development project, or the tourism  
22 development project site is located on recreational property owned  
23 or leased by the state or federal government and the project has  
24 received prior approval from the appropriate state or federal

1 agency, the maximum amount of credit allowable is equal to thirty-  
2 five percent of the approved company's approved costs as provided  
3 in the agreement.

4 (c) 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  
8 delay the beginning of the ten-year period until the next  
9 succeeding taxable year. This election shall be made in the first  
10 consumers sales and service tax return filed by the approved  
11 company following the date the project is opened to the public.  
12 Once made, the election cannot be revoked.

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



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

5 (e) If any credit remains after application of subsection (d)  
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 **§5B-2E-7a. Amount of credit allowed for tourism development**  
14 **expansion 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 expansion project: *Provided*, That the tourism  
20 development expansion project tax credit allowed under this section  
21 is separate and distinct from any credit allowed for a tourism  
22 development project in accordance with the provisions of section  
23 seven of this article: *Provided, however*, That if the consumers  
24 sales and service tax collected by the approved company is not

1 solely attributable to sales resulting from the operation of the  
2 tourism development expansion project, the credit shall only be  
3 applied against that portion of the consumers sales and service tax  
4 collected in excess of the base tax revenue amount. The amount of  
5 this credit is determined and applied as provided in this article.

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

20 (c) The amount of credit allowable must be taken over a ten-  
21 year period, at the rate of one tenth of the amount thereof per  
22 taxable year, beginning with the taxable year in which the project  
23 is opened to the public, unless the approved company elects to  
24 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 expansion project. The amount determined  
9 under said subsection may be used as a credit against taxes  
10 required to be remitted on the approved company's monthly consumers  
11 sales and service tax returns that are filed pursuant to section  
12 sixteen, article fifteen, chapter eleven of this code. The  
13 approved company shall claim the credit by reducing the amount of  
14 consumers sales and service tax required to be remitted with its  
15 monthly consumers sales and service tax returns by the amount of  
16 its aggregate annual credit allowance until such time as the full  
17 current year annual credit allowance has been claimed. Once the  
18 total credit claimed for the tax year equals the approved company's  
19 aggregate annual credit allowance no further reductions to its  
20 monthly consumers 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  
23 ensuing tax year until used or until the expiration of the third  
24 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.