

# WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Engrossed

Committee Substitute

for

**Senate Bill 657**

SENATORS RUCKER, BLAIR, SMITH, TRUMP, CLINE,

SYPOLT, AND ROBERTS, *original sponsors*

[Originating in the Committee on Government

Organization; reported on February 6, 2020]



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 authorizing the Department of Commerce to assist  
3 qualifying tourism development projects and tourism development expansion projects in  
4 the creation of tourism development districts by approved companies; preempting rights  
5 of certain municipalities; limiting certain rights of a municipality's home rule powers;  
6 establishing requirements of application for and designation of tourism development  
7 districts; providing that decision of development office regarding establishment of tourist  
8 development district is final; restricting number of such districts; providing for termination  
9 of tourism development districts; exempting districts and projects within them from certain  
10 municipal regulation and requirements; establishing that projects within tourism  
11 development districts are required to pay various taxes and comply with certain state laws,  
12 state building code, and inspection standards of development office; requiring Department  
13 of Transportation to participate in tourism development projects; providing that failure to  
14 continue the Tourism Development Act does not affect the provisions of this section and  
15 created tourism development districts; requiring rulemaking and promulgation of  
16 emergency rules; and providing severability.

*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 2,000 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 prohibits:

20           (1) Certain municipalities, whether by ordinance, resolution, administrative act, or  
21 otherwise, from enacting, adopting, implementing, or enforcing ordinances, regulations, or rules  
22 which limit, in any way, 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) Certain municipalities from imposing or enforcing local laws and ordinances concerning  
26 the creation or regulation of any tourism development district and any tourism development  
27 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 approved

32 company with a credit against the West Virginia consumers sales and service tax imposed by  
33 §11-15-1 et seq. of this code may apply to the development office for designation of a tourism  
34 development district encompassing the area where the tourism development project or the  
35 tourism development expansion project is to be acquired, constructed, equipped, developed,  
36 expanded, and operated: *Provided*, That notwithstanding any provision of §11-15-1 et seq. of this  
37 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 upgrading 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  
45 tourism development district; and

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 (f) The proposed district shall be entirely or partially within the corporate limits of a  
50 municipality which has a population of 2,000 or less as of the effective date of the most recent  
51 census, as specified in §8-1-4 of this code.

52 (g) All costs for the application shall be borne by the applicant.

53 (h) 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 (i) The decision of the development office to designate a tourism development district shall  
57 be final.

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

61 (k) 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 tourism development district if the development office determines that the tourism development  
65 project or tourism development expansion project has been abandoned or ceased operations for  
66 five consecutive years.

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

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

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

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

77 (4) Municipal license requirements;

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

80 (6) The implementation of any tax, fee, or charge by the municipality, except as specifically  
81 provided in this section; or

82 (7) Any requirement under state law for the consent or approval of the municipality in which  
83 the tourism development district is entirely or partially located of any state or county action

84 pursuant to this code, specifically including, but not limited to, §7-11B-1 et seq. of this code, for  
85 formal consent of the governing body of a municipality for county or state action regarding the  
86 establishment of tax increment financing development or redevelopment districts or the approval  
87 of tax increment financing development or redevelopment plans.

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

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

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

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

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

101 (5) Pay all municipal service fees enacted pursuant to §8-13-13 of this code, including, but  
102 not limited to, fire, police, sanitation, or city service fees;

103 (6) Pay all municipal utility rates, fees, and charges for utilities used or consumed during  
104 construction and operation of premises within the tourism development district, including, but not  
105 limited to, water, sewer, stormwater, and garbage and recycling collection: *Provided*, That (i) The  
106 rates, fees, and charges for such services shall be based on the cost of providing such service  
107 and the municipality shall enter into a contract for each such service with the developer and any  
108 contracts for water service or sewer service with the municipality shall be subject to review and  
109 approval by the Public Service Commission of West Virginia; and (ii) the developer shall only be

110 required to pay any capacity improvement fee or impact fee to the extent that capital additions,  
111 betterments, and improvements must be designed, acquired, constructed, and equipped by the  
112 municipality to provide such service to the project and any such capacity improvement fee or  
113 impact fee for water or sewer service shall be subject to review and approval by the Public Service  
114 Commission of West Virginia:

115 (7) Comply with state laws, regulations, and licensure requirements concerning state  
116 control of alcoholic liquors pursuant to chapter 60 of this code;

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

119 (9) Be designed, acquired, constructed, and equipped pursuant to the State Building Code  
120 in accordance with §8-12-13 of this code and corresponding State Rule 87 CSR 4; and

121 (10) Provide for inspection of the design, acquisition, construction, and equipping, and any  
122 subsequent expansion of the tourism development project or the tourism development expansion  
123 project pursuant to standards approved by the West Virginia Development Office.

124 (n) The West Virginia Department of Transportation may take actions necessary in support  
125 of the development of any tourism development project or tourism development expansion project  
126 in a tourism development district specifically, including, but not limited to, the development or  
127 improvement of such highways, roads, thoroughfares, and sidewalks within the municipality in  
128 which the tourism development district is partially or entirely located.

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



134 (p) The development office shall propose rules for legislative approval in accordance with  
135 §29A-3-1 et seq. of this code to implement this section, and the rules shall include, but not be  
136 limited to:

137 (1) The application and timeline process;

138 (2) A nonbinding review of the existing planning and zoning ordinances of any municipality  
139 in which the tourism development district is located;

140 (3) Notice provisions;

141 (4) The method and timeline for receiving statements of support or opposition from any  
142 municipality within or partially within the tourism development district;

143 (5) Additional application consideration criteria; and

144 (6) Application fees sufficient to cover the costs of consideration of an application.

145 (q) The development office shall promulgate emergency rules pursuant to §29A-3-15 of  
146 this code by July 1, 2020, to facilitate the initial implementation of this section.

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