

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Enrolled

Committee Substitute

for

Senate Bill 657

SENATORS RUCKER, BLAIR, SMITH, TRUMP, CLINE,

SYPOLT, AND ROBERTS, *original sponsors*

[Passed February 25, 2020; in effect 90 days from passage]

1 AN ACT 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; prohibiting certain
5 municipalities from restricting tourism development projects and tourism development
6 expansion projects in a tourism development district and from imposing or enforcing
7 ordinances concerning such districts and tourism development projects and tourism
8 development expansion projects therein; limiting certain rights of a municipality's home
9 rule powers; establishing requirements of application for and designation of tourism
10 development districts; providing that decision of development office regarding
11 establishment of tourist development district is final; restricting number of such districts;
12 providing for termination of tourism development districts; exempting districts and projects
13 within them from certain municipal regulation and requirements; establishing that projects
14 within tourism development districts are required to pay various taxes and fees and comply
15 with certain state laws, State Building Code, and inspection standards of development
16 office; allowing Department of Transportation to participate in tourism development
17 projects; providing that failure to continue the Tourism Development Act does not affect
18 the provisions of this section and created tourism development districts; requiring
19 rulemaking and promulgation of 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 §5B-2E-5(c)(2) 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, control, or have the right of use to all real property within the
47 proposed tourism development district and shall provide evidence of such ownership, control, or
48 right of use in the application to 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 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 subsections (b) and (c) of this section, and notwithstanding any
68 provision of this code to the contrary, or any municipality's home rule powers with respect to
69 ordinances and ordinance procedures, including any authority pursuant to the Municipal Home
70 Rule Program under §8-1-5a of this code, designated tourism development districts, and the
71 tourism development projects or tourism development expansion projects therein, may not be
72 subject to the following:

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

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

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

78 (4) Municipal license requirements;

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

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

83 (7) Any requirement under state law for the consent or approval of the municipality in which
84 the tourism development district is entirely or partially located of any state or county action
85 pursuant to this code, specifically including, but not limited to, §7-11B-1 *et seq.* of this code, for
86 formal consent of the governing body of a municipality for county or state action regarding the
87 establishment of tax increment financing development or redevelopment districts or the approval
88 of tax increment financing development or redevelopment plans.

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

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

95 (2) Collect and remit municipal sales and service tax and municipal use tax, if applicable,
96 pursuant to §8-1-5a, §8-13C-4, and §8-13C-5 of this code, to the municipality in the same manner
97 as any other business or commercial venture located within the municipality;

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

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

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

104 (6) Pay all municipal utility rates, fees, and charges for utilities used or consumed during
105 construction and operation of premises within the tourism development district, including, but not
106 limited to, water, sewer, stormwater, and garbage and recycling collection: *Provided*, That (i) The

107 rates, fees, and charges for such services shall be based on the cost of providing such service
108 and the municipality shall enter into a contract for each such service with the developer and any
109 contracts for water service or sewer service with the municipality shall be subject to review and
110 approval by the Public Service Commission of West Virginia; and (ii) the developer shall only be
111 required to pay any capacity improvement fee or impact fee to the extent that capital additions,
112 betterments, and improvements must be designed, acquired, constructed, and equipped by the
113 municipality to provide such service to the project and any such capacity improvement fee or
114 impact fee for water or sewer service shall be subject to review and approval by the Public Service
115 Commission of West Virginia;

116 (7) Comply with state laws, regulations, and licensure requirements concerning state
117 control of alcoholic liquors pursuant to chapter 60 of this code and control of nonintoxicating beer
118 pursuant to §11-16-1 *et seq.* of this code;

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

121 (9) Design, acquire, construct, and equip the tourism development project or the tourism
122 development expansion project pursuant to the State Building Code in accordance with §8-12-13
123 of this code and corresponding State Rule 87 CSR 4; and

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

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

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

137 (p) The development office shall propose rules for legislative approval in accordance with
138 §29A-3-1 *et seq.* of this code to implement this section, and the rules shall include, but not be
139 limited to:

140 (1) The application and timeline process;

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

143 (3) Notice provisions;

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

146 (5) Additional application consideration criteria; and

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

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

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

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman, Senate Committee

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Chairman, House Committee

Originated in the Senate.

In effect 90 days from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

The within this the.....
Day of, 2020.

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Governor