

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 3210

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FLEISCHAUER AND MARTIN

[Introduced March 16, 2021; Referred to the
Committee on Political Subdivisions then Government
Organization then the Judiciary]

1 A BILL to amend and reenact §5B-1-9 of the Code of West Virginia, 1931, as amended, relating
 2 to providing authority to the county commission to hold a referendum to approve tourism
 3 development projects; requiring developer to have sought a building permit for the project
 4 at least 5 years prior; and providing that amendments to the section are prospective.

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: Provided, That no assistance may be
 6 given until the county commission has conducted and certified the results of a referendum
 7 showing a majority of voters approve of the tourism development project. Such referendum may
 8 be conducted, at the discretion of the county commission, in any of the following geographic
 9 areas:

10 (1) The Class IV municipality in which the tourism district would be established.

11 (2) The magisterial district or districts in which the tourism districts would be established,
 12 and any additional magisterial districts the county commission determines to be affected.

13 (3) Countywide.

14 Provided, further: That any developer seeking assistance under this section must have
 15 applied for a building permit on the project at last five years prior to the date of application for
 16 assistance.

17 (b) The Legislature finds and declares that the general welfare and material well-being of
 18 the citizens of the state depend, in large measure, upon the development and expansion of

19 tourism in the state, and that, beyond the creation and expansion of tourism development projects
20 and tourism development expansion projects, it is in the best interest of the state to induce and
21 assist in tourism development in small municipalities through the creation of tourism development
22 districts, in order to advance the public purposes of relieving unemployment by preserving and
23 creating jobs, and preserving and creating new and greater sources of revenues for the support
24 of public services provided by the state and local government; and that tourism development
25 districts are of paramount importance to the state and its economy and for the state's contribution
26 to the national economy.

27 It is the intent of the Legislature to occupy the whole field of the creation and regulation of
28 tourism development districts. The stated purpose of this section is to promote uniform and
29 consistent application of the act within the state.

30 (c) This section prohibits:

31 (1) Certain municipalities, whether by ordinance, resolution, administrative act, or
32 otherwise, from enacting, adopting, implementing, or enforcing ordinances, regulations, or rules
33 which limit, in any way, the creation of, and acquisition, construction, equipping, development,
34 expansion, and operation of any tourism development project or tourism development expansion
35 project in a tourism development district; and

36 (2) Certain municipalities from imposing or enforcing local laws and ordinances concerning
37 the creation or regulation of any tourism development district and any tourism development
38 project or tourism development expansion project therein.

39 (d) Any developer or owner of a tourism development project or tourism development
40 expansion project which has been determined by the West Virginia Development Office, pursuant
41 to §5B-2E-1 *et seq.* of this code, to be an approved company and which has entered into an
42 agreement with the development office pursuant to §5B-2E-6 of this code to provide the approved
43 company with a credit against the West Virginia consumers sales and service tax imposed by
44 §11-15-1 *et seq.* of this code may apply to the development office for designation of a tourism

45 development district encompassing the area where the tourism development project or the
46 tourism development expansion project is to be acquired, constructed, equipped, developed,
47 expanded, and operated: *Provided*, That notwithstanding any provision of §5B-2E-5(c)(2) of this
48 code to the contrary, only tourism development projects and tourism development expansion
49 projects with aggregate projected costs of construction, reconstruction, restoration, rehabilitation,
50 or upgrading of not less than \$25 million shall be eligible for designation as a tourism development
51 district.

52 (e) Applicants for the creation of a tourism development district shall demonstrate that the
53 district, when designated, will create significant economic development activity:

54 (1) Applicants shall submit a development plan that provides specific details on proposed
55 financial investment, direct and indirect jobs to be created, and the viability of the proposed
56 tourism development district; and

57 (2) The applicant shall own, control, or have the right of use to all real property within the
58 proposed tourism development district and shall provide evidence of such ownership, control, or
59 right of use in the application to the development office.

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

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

64 (h) The application submitted by the applicant to the development office pursuant to §5B-
65 2E-1 *et seq.* of this code may be considered by the development office to be sufficient to meet
66 some of the requirements of this section.

67 (i) The decision of the development office to designate a tourism development district shall
68 be final.

69 ~~(j) The total number of approved tourism development districts may not exceed five. When~~
70 ~~the total number of designated tourism development districts equals five, no further designations~~

71 ~~may be approved by the development office~~

72 ~~(k)~~ (j) Each tourism development district shall terminate by operation of law 99 years from
73 the date approved by the development office, unless a shorter time period for termination is
74 agreed to by the applicant and the development office. The development office may terminate a
75 tourism development district if the development office determines that the tourism development
76 project or tourism development expansion project has been abandoned or ceased operations for
77 five consecutive years.

78 ~~(j)~~ (k) In accordance with subsections (b) and (c) of this section, and notwithstanding any
79 provision of this code to the contrary, or any municipality's home rule powers with respect to
80 ordinances and ordinance procedures, including any authority pursuant to the Municipal Home
81 Rule Program under §8-1-5a of this code, designated tourism development districts, and the
82 tourism development projects or tourism development expansion projects therein, may not be
83 subject to the following:

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

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

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

89 (4) Municipal license requirements;

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

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

94 (7) Any requirement under state law for the consent or approval of the municipality in which
95 the tourism development district is entirely or partially located of any state or county action
96 pursuant to this code, specifically including, but not limited to, §7-11B-1 *et seq.* of this code, for

97 formal consent of the governing body of a municipality for county or state action regarding the
98 establishment of tax increment financing development or redevelopment districts or the approval
99 of tax increment financing development or redevelopment plans.

100 ~~(m)~~(l) Notwithstanding the creation of the tourism development district, the owner,
101 operator, or manager, as applicable, and all concessions and licensees thereof, of the tourism
102 development project or tourism development expansion project located therein shall:

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

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

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

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

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

115 (6) Pay all municipal utility rates, fees, and charges for utilities used or consumed during
116 construction and operation of premises within the tourism development district, including, but not
117 limited to, water, sewer, stormwater, and garbage and recycling collection: *Provided*, That (i) The
118 rates, fees, and charges for such services shall be based on the cost of providing such service
119 and the municipality shall enter into a contract for each such service with the developer and any
120 contracts for water service or sewer service with the municipality shall be subject to review and
121 approval by the Public Service Commission of West Virginia; and (ii) the developer shall only be
122 required to pay any capacity improvement fee or impact fee to the extent that capital additions,

123 betterments, and improvements must be designed, acquired, constructed, and equipped by the
124 municipality to provide such service to the project and any such capacity improvement fee or
125 impact fee for water or sewer service shall be subject to review and approval by the Public Service
126 Commission of West Virginia;

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

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

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

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

138 ~~(n)~~ (m) The West Virginia Department of Transportation may take actions necessary in
139 support of the development of any tourism development project or tourism development
140 expansion project in a tourism development district specifically, including, but not limited to, the
141 development or improvement of such highways, roads, thoroughfares, and sidewalks within the
142 municipality in which the tourism development district is partially or entirely located.

143 (n) The Department of Commerce shall request and receive the approval of the State
144 Historic Preservation Office on decisions regarding historic preservation within the tourism
145 development district.

146 (o) Failure of the Legislature to renew the Tourism Development Act, §5B-2E-1 *et seq.* of
147 this code, may not, in any way, modify or alter the designation and vested rights of any tourism
148 development district created prior to the failure of the Legislature to renew the Tourism

149 Development Act and any such tourism development district shall continue to exist beyond the
150 termination of the Tourism Development Act.

151 (p) The development office shall propose rules for legislative approval in accordance with
152 §29A-3-1 *et seq.* of this code to implement this section, and the rules shall include, but not be
153 limited to:

154 (1) The application and timeline process;

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

157 (3) Notice provisions;

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

160 (5) Additional application consideration criteria; and

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

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

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

168 (s) The amendments made to this section during the 2021 Regular Session of the
169 Legislature shall be prospective and shall not affect any tourism development project previously
170 approved for assistance under this section.

NOTE: The purpose of this bill is to give the county commission the authority to hold a referendum to determine if voters approve of tourism development projects in their county or magisterial district.

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