

# **WEST VIRGINIA LEGISLATURE**

## **2026 REGULAR SESSION**

**Introduced**

### **Senate Bill 403**

BY SENATORS SMITH (MR. PRESIDENT) AND WOELFEL

(BY REQUEST OF THE EXECUTIVE)

[Introduced January 15, 2026; referred

to the Committee on Finance]



1 A BILL to amend and reenact §5B-2E-3 of the Code of West Virginia, 1931, as amended, relating  
2 to expanding the definition of "tourism attraction" to include lodging facility for purposes of  
3 the Tourism Development Act credit.

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

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

**§5B-2E-3. Definitions.**

1 As used in this article, unless the context clearly indicates otherwise:

2 (1) "Agreement" means a tourism development agreement entered into, pursuant to §5B-  
3 2E-6 of this code, between the department and an approved company with respect to a project.

4 (2) "Approved company" means any eligible company approved by the department  
5 pursuant to §5B-2E-5 of this code seeking to undertake a project.

6 (3) "Approved costs" means:

7 (a) Included costs:

8 (i) Obligations incurred for labor and to vendors, contractors, subcontractors, builders,  
9 suppliers, delivery persons, and material persons in connection with the acquisition, construction,  
10 equipping, or installation of a project;

11 (ii) The costs of acquiring real property or rights in real property and any costs incidental  
12 thereto;

13 (iii) The cost of contract bonds and of insurance of all kinds that may be required or  
14 necessary during the course of the acquisition, construction, equipping, or installation of a project  
15 which is not paid by the vendor, supplier, delivery person, contractor, or otherwise provided;

16 (iv) All costs of architectural and engineering services, including, but not limited to:  
17 Estimates, plans and specifications, preliminary investigations, and supervision of acquisition,  
18 construction, equipping and installation of a project, as well as for the performance of all the duties  
19 required by or consequent to the acquisition, construction, equipping, or installation of a project;

20 (v) All costs required to be paid under the terms of any contract for the acquisition,  
21 construction, equipping, or installation of a project;

22 (vi) All costs required for the installation of utilities, including, but not limited to: Water,  
23 sewer, sewer treatment, gas, electricity, communications and off-site construction of utility  
24 extensions to the boundaries of the real estate on which the facilities are located, all of which are  
25 to be used to improve the economic situation of the approved company in a manner that allows  
26 the approved company to attract persons; and

27 (vii) All other costs comparable with those described in this subdivision;

28 (b) *Excluded costs.* — The term "approved costs" does not include any portion of the cost  
29 required to be paid for the acquisition, construction, equipping or installation of a portion of a  
30 project that is financed with state grants or for which the eligible taxpayer elects to qualify for other  
31 state tax credits, including, but not limited to, those provided by §11-13Q-1 *et seq.* of this code.  
32 The exclusion of certain costs of a project under this paragraph does not disqualify the remainder  
33 of the costs of the project.

34 (4) "Base tax revenue amount" means the average monthly amount of consumer sales  
35 and service tax collected by an approved company, based on the twelve-month period ending  
36 immediately prior to the opening of a new tourism development project for business or a tourism  
37 development expansion project, as certified by the State Tax Commissioner.

38 (5) "Department" means the West Virginia Department of Economic Development as  
39 provided in §5B-2-1 *et seq.* of this code.

40 (6) "Crafts and products center" means a facility primarily devoted to the display,  
41 promotion and sale of West Virginia products and at which a minimum of 80 percent of the sales  
42 occurring at the facility are of West Virginia arts, crafts, or agricultural products.

43 (7) "Eligible company" means any corporation, limited liability company, partnership,  
44 limited liability partnership, sole proprietorship, business trust, joint venture or any other entity  
45 operating or intending to operate a project, whether owned or leased, within the state that meets

46 the standards required by the department. An eligible company may operate or intend to operate  
47 directly or indirectly through a lessee or management company.

48 (8) "Ineligible company" means any West Virginia pari-mutuel racing facility licensed to  
49 operate multiple video lottery machines as authorized by §29-22A-1 *et seq.* of this code or any  
50 limited lottery retailer holding a valid license issued under §60-7-1 *et seq.* of this code.

51 (9) "Entertainment destination center" means a facility containing a minimum of 200,000  
52 square feet of building space adjacent or complementary to an existing tourism attraction, an  
53 approved project, or a major convention facility and which provides a variety of entertainment and  
54 leisure options that contain at least one major theme restaurant and at least three additional  
55 entertainment venues, including, but not limited to, live entertainment, multiplex theaters, large-  
56 format theaters, motion simulators, family entertainment centers, concert halls, virtual reality or  
57 other interactive games, museums, exhibitions or other cultural and leisure time activities.  
58 Entertainment and food and drink options shall occupy a minimum of 60 percent of total gross  
59 area, as defined in the application, available for lease and other retail stores shall occupy no more  
60 than 40 percent of the total gross area available for lease.

61 (10) "Final approval" means the action taken by the secretary of the department qualifying  
62 the eligible company to receive the tax credits provided in this article.

63 (11) "Project" means a tourism development project and/or a tourism development  
64 expansion project administered in accordance with the provisions of this article.

65 (12) "Qualified professional services destination facility" means a facility with a minimum  
66 qualified investment, as defined in this article, of not less than \$80 million physically located in  
67 this state and adjacent or complementary to a historic resort hotel, which primarily furnishes and  
68 provides personal or professional services, or both types of services, to individuals who primarily  
69 are residents of another state or foreign country.

70 (13) "State agency" means any state administrative body, agency, department, division,  
71 board, commission or institution exercising any function of the state that is not a municipal  
72 corporation or political subdivision.

73 (14) "Tourism attraction" means a cultural or historical site, a recreation or entertainment  
74 facility, an area of natural phenomenon or scenic beauty, a West Virginia crafts and products  
75 center, or an entertainment destination center, or a qualified professional services destination  
76 facility, or a lodging facility. A project or tourism attraction does not include any of the following:

77 (A) Lodging facility, unless:

78 (i) The facility constitutes a portion of a project and represents less than fifty percent of  
79 the total approved cost of the project, or the facility is to be located on recreational property owned  
80 or leased by the state or federal government and the facility has received prior approval from the  
81 appropriate state or federal agency;

82 (ii) The facility involves the substantial reconstruction, restoration, or rehabilitation of a  
83 structure that is listed individually in the national register of historic places or is located in a  
84 national register historic district and certified by the state historic preservation officer as  
85 contributing to the historic significance of the district and the substantial reconstruction,  
86 rehabilitation, or restoration project has been approved in advance by the state historic  
87 preservation officer; or

88 (iii) The facility involves the construction, reconstruction, restoration, rehabilitation or  
89 upgrade of a full-service lodging facility or the reconstruction, restoration, rehabilitation or upgrade  
90 of an existing structure into a full-service lodging facility having not less than five hundred guest  
91 rooms, with construction, reconstruction, restoration, rehabilitation or upgrade costs exceeding  
92 ten million dollars;

93                   (B) A facility that is primarily devoted to the retail sale of goods, other than an  
94 entertainment destination center, a West Virginia crafts and products center, or a project where  
95 the sale of goods is a secondary and subordinate component of the project; and

96           (C) (B) A recreational facility that does not serve as a likely destination where individuals  
97 who are not residents of the state would remain overnight in commercial lodging at or near the  
98 project or existing attraction.

99           (15) "Tourism development project" means the acquisition, including the acquisition of real  
100 estate by a leasehold interest with a minimum term of 10 years; the design, construction, and  
101 equipping of a tourism attraction; the construction and installation of improvements to facilities  
102 necessary or desirable for the acquisition, construction, installation of a tourism attraction,  
103 including, but not limited to, surveys, installation of utilities, which may include water, sewer,  
104 sewage treatment, gas, electricity, communications and similar facilities; and off-site construction  
105 of utility extensions to the boundaries of the real estate on which the facilities are located, all of  
106 which are to be used to improve the economic situation of the approved company in a manner  
107 that allows the approved company to attract persons.

108           (16) "Tourism development expansion project" means the acquisition, including the  
109 acquisition of real estate by a leasehold interest with a minimum term of 10 years; the design,  
110 construction, equipping, and installation of additions, betterments, and improvements to facilities  
111 necessary or desirable for the expansion of an existing tourism attraction including, but not limited  
112 to, surveys, installation of utilities, which may include water, sewer, sewage treatment, gas,  
113 electricity, communications, and similar facilities; and off-site construction of utility extension to  
114 the boundaries of real estate on which the facilities are located, all of which are to be used to  
115 improve the economic situation of the approved company in a manner that allows the approved  
116 company to attract persons.

117           (17) "Tourism development project tax credit" means the tourism development project tax  
118 credit allowed by §5B-2E-7 of this code.

119           (18) "Tourism development expansion project tax credit" means the tourism development  
120 expansion project tax credit allowed by §5B-2E-7a of this code.