

WEST VIRGINIA LEGISLATURE

2026 REGULAR SESSION

Committee Substitute

for

Senate Bill 627

By Senator Deeds

[Reported January 30, 2026, from the Committee on
Economic Development]

1 A BILL to amend and reenact §5B-2L-3 and §5B-2L-16 of the Code of West Virginia, 1931, as
2 amended, relating to the Build WV Act; defining “rural area”; replacing the project cost with
3 a cap on new tax credit liability; clarifying that the cost cap applies only to new project
4 approvals; allowing credit for smaller projects in rural areas; requiring periodic review and
5 adjustment to reflect demand and usage; and establishing a Build WV Credit Reserve
6 Fund, adjusted annually.

Be it enacted by the Legislature of West Virginia:

| | | | | |
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| ARTICLE | 2L. | BUILD | WV | ACT. |
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§5B-2L-3. Definitions.

1 (a) *General.* — When used in this article, or in the administration of this article, terms
2 defined in this section have the meanings ascribed to them by this section unless a different
3 meaning is clearly required by the context in which the term is used.

4 (b) *Terms defined.* — As used in this article, unless the context clearly indicates otherwise:

5 (1) “Agreement” means a BUILD WV project agreement entered into pursuant to this
6 article, between the Department of Economic Development and an approved company or group of
7 multiple party project participants with respect to a project.

8 (2) “Approved company” means any eligible company approved by the Department of
9 Economic Development pursuant to this article seeking to undertake a project. The Department of
10 Economic Development may certify multiple party projects comprised of more than one approved
11 company, as provided in this article. “Approved company” means and includes an approved
12 multiple party project participant.

13 (3) “Approved costs” means costs included, as stated herein, and not excluded pursuant to
14 the provisions of this definition, or this article, or any other provision of this code.

15 (A) Included costs:

16 (i) Obligations incurred for labor and to vendors, contractors, subcontractors, builders,
17 suppliers, delivery persons, and material persons in connection with the acquisition, construction,

equipping, or installation of a project;

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

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

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

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

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

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

(B) *Excluded costs.* — The term “approved costs” does not include:

(i) Any portion of the cost required to be paid for the acquisition, construction, equipping, or installation of a project that is financed with governmental incentives, grants or bonds, other than the exemptions and tax credits allowable under this article. “Approved costs” does not include any portion of the cost or for which the approved company or group of multiple party project participants elects to qualify for other economic development incentive tax credits authorized under West Virginia law. The exclusion of certain costs of a project under this paragraph does not

44 automatically disqualify the remainder of the costs of the project;

45 (ii) Any portion of the cost of property or space that is covered by a rehabilitated building
46 tax credit under the provisions of §11-21-8a, §11-21-8b, §11-21-8c, §11-21-8d, §11-21-8e, §11-21-
47 8f, or §11-21-8g of this code or §11-24-23a, §11-24-23b, §11-24-23c, §11-24-23d, §11-24-23e,
48 §11-24-23f, or §11-24-23g of this code;

49 (iii) Any portion of the cost of property or space that is used, in whole or in part, as a
50 residential timeshare, commercial timeshare, or as part of any similar arrangement; or

51 (iv) Any portion of the cost of property or space that is excluded from certification by the
52 Department of Economic Development by rule or administrative notice.

53 (4) “Certified BUILD WV district” or “certified district” means a geographic district
54 designated pursuant to this article as an area in which a proposed BUILD WV residential housing
55 project may be approved for certification.

56 (5) “Certified BUILD WV project” or “project” means BUILD WV project that has received
57 the certification of the Department of Economic Development in accordance with this article, and
58 for which certification remains current and in effect. A BUILD WV project shall be for the
59 construction of residential housing, including new construction or the rehabilitation of existing
60 unoccupied structures.

61 (6) “Common areas” means, but is not limited to, lawns, roads, streets, alleys, sidewalks,
62 parks, waterways, driveways, stairways, hallways, lobbies, corridors, sidewalks, parking lots,
63 parking garages, community swimming pools, community laundry facilities, elevators, roofs,
64 maintenance buildings, maintenance facilities, stairways, lobbies, corridors, and other property
65 available for common use by all tenants and groups of tenants and their invitees. Common areas
66 of a certified BUILD WV project are included as certified project property.

67 (7) “Corporation” or “C corporation” means a corporation that is taxed separately from its
68 owners for federal income tax purposes under subchapter C of the Internal Revenue Code and
69 includes a limited liability company, partnership, or other entity that is treated as a corporation for

federal income tax purposes.

(8) “Department of Economic Development” means the West Virginia Department of Economic Development established under the provisions of §5B-2-1 *et seq.* of this code.

(9) “Eligible company” means any corporation, limited liability company, partnership, limited liability partnership, sole proprietorship, business trust, joint venture, or any other entity operating or intending to operate a certified project, whether owned or leased, within the state that meets the standards required by the Department of Economic Development for certification under this article. An eligible company may operate, or intend to operate, directly or indirectly through a lessee. The Department of Economic Development may certify multiple party projects comprised of more than one eligible company, as provided in this article.

(10) “*Eligible taxpayer*” —

(A) For purposes of the property value adjustment tax credit, “eligible taxpayer” means any approved company:

(i) That has made qualified investment in certified BUILD WV project property or any group of multiple party project participants that has made qualified investment in certified BUILD WV project property; or

(ii) That is subject to the taxes imposed under §11-21-1 *et seq.* or §11-24-1 *et seq.* of this code, or the owners, interest holders, partners, S Corporation shareholders, or other owners of an approved company, that receive flow-through income from the approved company, that are subject to the taxes imposed under §11-21-1 *et seq.* or §11-24-1 *et seq.* of this code.

(B) “Eligible taxpayer” also means and includes those members of an affiliated group of taxpayers engaged in a unitary business with an approved company or group of multiple party project participants, in which one or more members of the affiliated group is a person subject to the tax imposed under §11-24-1 *et seq.* of this code: *Provided*, That application of the property value adjustment tax credit against the tax imposed under §11-24-1 *et seq.* of this code is subject to the provisions of §11-24-13a(g) and §11-24-13c(b)(2) of this code, and is limited to the single entity,

from among the affiliated group of taxpayers, that earned entitlement to the credit. Credit may apply solely against that single entity's proportionate share of taxable income. No tax credit earned by one member of the affiliated group may be used, in whole or in part, by any other member of the affiliated group.

(11) "Final approval" or "certification" means the action taken by the Secretary of the Department of Economic Development to certify a BUILD WV project.

(12) "Flow-through entity", "conduit entity", or "pass through entity" means an S corporation, partnership, limited partnership, limited liability partnership, or limited liability company. The term "Flow-through entity", "conduit entity", or "pass through entity" includes a publicly traded partnership as that term is defined in section 7704 of the Internal Revenue Code that has equity securities registered with the securities and exchange commission under section 12 of title I of the Securities Exchange Act of 1934, 15 U.S.C. § 78l: *Provided*, That, a partnership, limited liability company, or other entity or organization that is treated as a C corporation for federal income tax purposes shall be subject to income allocation, apportionment, and taxation under §5B-24-1 *et seq.* of this code.

(13) "Infrastructure" means, and is limited to, the real and tangible personal property located in a project that is directly used in, and necessary for, providing broadband internet access, electricity, water, natural gas, sewer service, sewage treatment service, rubbish disposal, and other utility services for residential units within a certified BUILD WV project. An electrical charging facility for charging electrical motor vehicles, or electrical hybrid motor vehicles of certified BUILD WV project residents may be treated as an infrastructure component of a certified BUILD WV project: *Provided*, That in no case shall any property or space that is used, in whole or in part, as a gasoline filling station or other motor vehicle fueling station constitute certified project property, or any part thereof.

(14) "Natural person" or "individual" means a human being.

(15) "Partner" includes a partner in a partnership, and a member in a syndicate, group,

pool, joint venture, or organization.

(16) "Partnership" means and includes a syndicate, group, pool, joint venture, or other unincorporated organization through or by means of which any business, financial operation, or venture is carried on and which is not a trust or estate, a corporation, or a sole proprietorship.

(17) "Person" means and includes any natural person, corporation, limited liability company, flow-through entity, or partnership.

(18) "Rural area" means any county or municipality that is not part of a Metropolitan Statistical Area as defined by the United States Office of Management and Budget, or that meets other rural characteristics as determined by the state's Department of Economic Development, including but not limited to low population density, distance from urban centers, or housing scarcity.

~~(18)~~ (19) "Taxpayer" means any person subject to the taxes imposed under §11-21-1 *et seq.* or §11-24-1 *et seq.* of this code.

~~(19)~~ (20) "Tax year" or "taxable year" means the tax year of the taxpayer for federal income tax purposes.

~~(20)~~ (21) "Timeshare" means an agreement or arrangement in which two or more parties share the ownership of, or right to use, property (e.g. an apartment or condominium) that authorizes occupation by each party, typically for periods of less than a year. "Timeshare" includes a deeded contract providing such an arrangement and a fractional ownership agreement or arrangement. "Timeshare" means and includes property that the subject of any such agreement or arrangement.

~~(24)~~ (22) "Unitary business" means a unitary business as defined in §11-24-3a of this code.

§5B-2L-16. Project application; evaluation standards; approval of projects.

(a) Each eligible company or group of multiple party project participants that seeks certification of a proposed project as a certified BUILD WV project ~~must~~ shall file a written application for approval and certification of the project with the Department of Economic

4 Development.

5 (b) With respect to each eligible company or group of multiple party project participants
6 making an application to the Department of Economic Development seeking certification of a
7 proposed project as a certified BUILD WV project the Department of Economic Development shall
8 make inquiries and request documentation, including a completed application, from the applicant
9 that shall include the following:

10 (1) A description and location of the proposed project;

11 (2) Capital and other anticipated expenditures for the project and the sources of funding
12 therefor;

13 (3) The anticipated employment, revenues, and expenses generated by the project; and

14 (4) Anything else determined necessary by the Department of Economic Development.

15 (c) ~~The aggregate sum of approved costs for all projects for any fiscal year shall not exceed~~
16 ~~\$150 million. Any project application submitted for certification in the fiscal year after the sum of~~
17 ~~\$150 million has been reached shall not be approved or certified. Notwithstanding any other~~
18 ~~provision of this code, for any fiscal year,~~

19 The aggregate amount of property value adjustment tax credits authorized for award under
20 this article may not exceed \$2 million in new project approvals per fiscal year, based on the
21 estimated date of project completion as declared by the applicant in their approved certification.
22 This cap shall apply only to credits authorized for projects first approved during the fiscal year in
23 question and may not include credits previously allocated to projects approved in prior years.

24 At the time of application, each project shall provide an anticipated date of completion. The
25 Department of Economic Development shall allocate a tax credit reservation for that project to the
26 fiscal year of estimated completion and may not approve additional new projects for that fiscal year
27 once the estimated cumulative credit liability reaches \$2 million.

28 The estimated property value adjustment tax credit shall be calculated at the time of project
29 approval using the credit formula outlined in §5B-2L-10 of this code. For the purposes of

estimating the property value adjustment tax credit under §5B-2L-10 of this code, the value used for the statewide average Class III property tax rate shall be the average of the published statewide Class III property tax rates for the three calendar years immediately preceding the date of project approval. This average shall be used solely for administrative estimation and fiscal cap compliance purposes and may not affect the final credit awarded, which shall still be calculated using the actual Class III rate for the year in which the project is completed.

The Department may allow applicants to amend the estimated completion year prior to project completion, subject to availability under the revised fiscal year's credit cap.

The fiscal cap established in this subsection shall be reviewed and revised, as appropriate, by the Department of Economic Development at least once every five years, based on program participation, demonstrated demand, and actual usage trends across approved projects.

A Build WV Credit Reserve Fund shall be created and maintained in the State Treasury. The fund shall be used exclusively to support the refundable portion of the property value adjustment tax credits authorized under §5B-2L-11 of this code.

The Reserve Fund shall be capitalized initially at \$2 million and replenished annually to ensure availability for refund claims associated with completed Build WV projects. The Department of Economic Development shall determine an appropriate funding level each year based on the number of completed projects, anticipated claims, and historical refund utilization trends.

The Department shall manage the allocation and oversight of the Reserve Fund and shall publish an annual report outlining the fund's balance, projected obligations, and any potential shortfall risk. The Legislature may appropriate additional funds as needed to address increases in program participation or actual refund demands.

~~the~~ The Secretary of the Department of Economic Development may not approve any single proposed project as a certified BUILD WV project for the fiscal year unless the proposed project has an aggregate sum of approved costs that is at least \$3 million or the proposed project

includes at least six residential units or houses.

However, a project located in a designated rural area may be approved by the Secretary with aggregate certified costs below \$3 million or fewer than six residential units, if the project otherwise meets the requirements of subsection (d) of this section and demonstrates a substantial positive economic or community impact.

(d) The Secretary of the Department of Economic Development, within 60 days following receipt of an application or receipt of any additional information requested by the Department of Economic Development respecting the application, whichever is later, shall act to grant or not to grant certification of the project, based on the following criteria:

(1) The project will have approved costs of at least \$3 million or includes at least six residential units or houses; except that, for projects located in a rural area as defined in §5B-2L-3 of this code or as otherwise designated by the Secretary, these thresholds may be reduced.

(2) The project will have a significant and positive economic impact on the state;

(3) The quality of the proposed project and how it addresses economic problems in the area in which the project will be located;

(4) Whether there is substantial and credible evidence that the project is likely to be started and completed in a timely fashion;

(5) Whether the project will, directly or indirectly, improve the opportunities in the area where the project will be located for the successful establishment or expansion of other commercial businesses;

(6) Whether the project will, directly or indirectly, assist in the creation of additional employment opportunities in the area where the project will be located;

(7) Whether the project helps to diversify the local economy;

(8) Whether the project is consistent with the goals of this article;

(9) Whether the project is economically and fiscally sound using recognized business standards of finance and accounting;

(10) Whether the proposed project demonstrates that the project will meet the immediate future needs of the area; and

(11) The ability of the eligible company or group of multiple party project participants to carry out the project.

(e) Exclusions.

(1) In no case ~~shall~~ may any property or space that is used, in whole or in part, as a residential timeshare, commercial timeshare, or as part of any similar arrangement, constitute certified project property, or any part thereof.

(2) In no case ~~shall~~ may any property or space that is used in whole or in part as an industrial or manufacturing operation, constitute certified project property, or any part thereof.

(3) In no case ~~shall~~ may any property or space that is used in whole or in part as a warehouse, distribution center, telephone call center, or telemarketing operation, constitute certified project property, or any part thereof.

(4) In no case ~~shall~~ may any property or space that is used, in whole or in part, as an airport constitute certified project property, or any part thereof.

(5) In no case ~~shall~~ may any property or space that is used primarily for business activity, business, or other operation or activity excluded from certification by the Department of Economic Development by rule or administrative notice, constitute certified project property, or any part thereof.

(f) The Department of Economic Development may establish additional criteria for consideration when evaluating and approving applications for certified BUILD WV housing projects.

(g) The decision by the Secretary of the Department of Economic Development as to certification of a proposed project, refusal to certify a proposed project, decertification, or revocation of certification of a project is final.