WEST VIRGINIA CODE: §5b-1-9

§5B-1-9. Authority to assist qualifying tourism development projects and tourism development expansion projects; legislative findings.

(a) The Department of Commerce may assist qualifying tourism development projects and tourism development expansion projects by approved companies pursuant to §5B-2E-1 *et seq.* of this code which are located in, or partially in, municipalities with a population of 2,000 or less, effective as of the effective date of the most recent census, as specified in §8-1-4 of this code relating to the creation of tourism development districts.

(b) The Legislature finds and declares that the general welfare and material well-being of the citizens of the state depend, in large measure, upon the development and expansion of tourism in the state, and that, beyond the creation and expansion of tourism development projects and tourism development expansion projects, it is in the best interest of the state to induce and assist in tourism development in small municipalities through the creation of tourism development districts, in order to advance the public purposes of relieving unemployment by preserving and creating jobs, and preserving and creating new and greater sources of revenues for the support of public services provided by the state and local government; and that tourism development districts are of paramount importance to the state and its economy and for the state's contribution to the national economy.

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

(c) This section prohibits:

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

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

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

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

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

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

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

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

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

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

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

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

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

(l) In accordance with subsections (b) and (c) of this section, and notwithstanding any provision of this code to the contrary, or any municipality's home rule powers with respect to ordinances and ordinance procedures, including any authority pursuant to the Municipal

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Home Rule Program under §8-1-5a of this code, designated tourism development districts, and the tourism development projects or tourism development expansion projects therein, may not be subject to the following:

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

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

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

(4) Municipal license requirements;

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

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

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

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

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

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

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

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

(5) Pay all municipal service fees enacted pursuant to §8-13-13 of this code, including, but

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not limited to, fire, police, sanitation, or city service fees;

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

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

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

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

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

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

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

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

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limited to:

(1) The application and timeline process;

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

(3) Notice provisions;

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

(5) Additional application consideration criteria; and

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

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

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

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