WEST VIRGINIA CODE CHAPTER 5b

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§5B-1-1. Department of Commerce; office of Secretary of Department of Commerce.

(a) The Secretary of Commerce is the chief executive officer of the department. The Governor shall appoint the secretary, by and with the advice and consent of the Senate, for the term for which the Governor is elected. Any reference in this code to the Bureau of Commerce means the Department of Commerce. Any reference in this code to the Commissioner of the Department of Commerce means the Secretary of Commerce. As used in this article, "secretary" means the Secretary of Commerce and "department" means Department of Commerce.

(b) The department may receive federal funds.

(c) The secretary serves at the will and pleasure of the Governor. The annual salary of the secretary is as provided in §6-7-2a of this code.

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§5B-1-1a. Marketing and Communications Office.

(a) There is continued in the Department of Commerce the Marketing and Communications Office. The office is created to provide marketing and communications goods and services to other state agencies, departments, units of state or local government or other entity or person.

(b) The office is authorized to charge for goods and services it provides to other state agencies. The Secretary of the Department of Commerce shall approve a fee schedule determining the amounts that may be charged for goods and services provided by the office to other state agencies. At the discretion of and with the approval of the Secretary of the Department of Commerce, the office may also sell partnerships, sponsorships or advertising in its publications, events or promotions to help offset the cost of producing and distributing its products and services.

(c) All moneys collected shall be deposited in a special account in the State Treasury to be known as the Department of Commerce Marketing and Communications Operating Fund. Expenditures from the fund shall be for the operation of the office and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article two, chapter eleven-b of this code.

(d) Any balance remaining at the end of any fiscal year shall not revert to the General Revenue Fund, but shall remain in the fund for expenditures in accordance with the purposes set forth in this section.

(e) The Department of Commerce shall develop and maintain a system of annual or more frequent performance measures useful in gauging the efficiency and effectiveness of the office's marketing and communications activities. The measures shall also reflect the office's efficiency and effectiveness with respect to commercially available marketing and communications services and any private sector benchmarks which might be identified or created. For the purposes of this section, "performance measures" means income, output, quality, self-sufficiency and outcome metrics.

(f) On January 1 of each year the Secretary of the Department of Commerce shall report to the Joint Committee on Government and Finance, the Joint Standing Committee on Finance and the Joint Commission on Economic Development on the performance of the office. This report is to include a statement of the performance measurements for the office developed by the Secretary of the Department of Commerce and an analysis of the office's performance.

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§5B-1-2. Agencies, boards, commissions, divisions, and offices comprising the Department of Commerce.

(a) The Department of Commerce consists of the following agencies, boards, commissions, divisions, and offices, including all of the allied, advisory, affiliated, or related entities, which are incorporated in and administered as part of the Department of Commerce:

(1) Division of Labor provided in §21-1-1 *et seq.* of this code, which includes the Board of Manufactured Housing Construction and Safety provided in §21-9-1 *et seq.* of this code.

(2) Office of Miners' Health, Safety and Training provided in §22A-1-1 *et seq.* of this code. The Board of Coal Mine Health and Safety and the Coal Mine Safety and Technical Review Committee provided in §22A-6-1 *et seq.* of this code are transferred to the Office of Miners' Health, Safety, and Training for purposes of administrative support and liaison with the Office of the Governor.

(3) Division of Natural Resources and Natural Resources Commission provided in §20-1-1 *et seq.* of this code;

(4) Division of Forestry provided in §19-1A-1 *et seq.* of this code;

(5) Geological and Economic Survey provided in §29-2-1 *et seq.* of this code;

(6) Workforce West Virginia provided in Chapter 21A of this code, which includes:

(A) Division of Unemployment Compensation;

(B) Division of Employment Service;

(C) Division of Workforce Development; and

(D) Division of Research, Information and Analysis; and

(7) Division of Economic Development provided in §5B-2-1 *et seq.* of this code, which includes:

(A) Office of Broadband provided for in 31G-1A-1 *et seq.*;

(B) Small Business Development Center provided for in §12-1A-1 *et seq.*;

(C) Office of Energy provided for in §5B-2F-2 of this code; and

(D) Broadband Enhancement Council provided for in §31G-1-1 *et seq.* of this code.

(b) Beginning on July 1, 2025, all employees of the Department of Commerce, or agency, board, commission, division, and office listed under subsection (a) of this section, shall be exempt from the state grievance procedures as set forth in §6C-2-1 *et seq.* of this code and

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from the classified civil service system under §29-6-1 *et seq.* of this code except that:

(1) All employees of the Department of Commerce, or agency, board, commission, division, and office listed under subsection (a) of this section, who are currently members of the classified civil service system shall retain their status as long as they remain in their current position, and all employees of the Department of Commerce who currently have recourse to the state grievance procedures will continue to have access to the state grievance procedures as long as they remain in their current position; and

(2) Any employee of the Department of Commerce, or agency, board, commission, division, and office listed under subsection (a) of this section, that leaves his or her position and remains an employee within the Department of Commerce shall, at that time, be transferred to the classified-exempt service system as defined in §29-6-2(g) of this code and be exempted from the state grievance procedures as set forth in §6C-2-1 *et seq.* of this code.

(c) The Secretary of the Department of Commerce shall have the authority to designate certain employees' status under the classified civil service system and grievance procedures as may be deemed necessary to comply with federal law, federal regulation, or the requirements for receipt of federal funding or assistance.

(d) Subsection (b) of this section shall not apply to:

(1) Any position appointed by the Governor; and

(2) Natural Resource Police Officers and Special Natural Resource Police Officers employed with the Division of Natural Resources who are charged with carrying out law enforcement activity, as set forth in §20-7-1 *et seq.* of this code.

(e) Nothing in this section shall exempt the Department of Commerce from the provisions of this code prohibiting nepotism, favoritism, discrimination, or unethical practices related to the promotion, transfer, layoff, removal, discipline, and compensation of state employees.

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§5B-1-3. Powers and duties of secretary, administrators, division heads and employees.

(a) The secretary controls and supervises the department and is responsible for the work of each department employee.

(b) The secretary has the power and authority specified in this article, in article two, chapter five-f of this code and as otherwise specified in this code.

(c) The secretary may assess agencies, boards, commissions, divisions and offices in the department for the payment of expenses of the office of the secretary.

(d) The secretary may employ professional staff, including, but not limited to, certified public accountants, economists and attorneys, assistants and other employees as necessary for the efficient operation of the department.

(e) The secretary and administrators, division heads and other employees of the department shall perform their duties as specified in this code and as may be prescribed by the Governor.

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§5B-1-4. Reports by secretary.

The secretary shall report annually to the Governor concerning the conduct of the department and make other reports as the Governor may require.

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§5B-1-5. Delegation of powers and duties by secretary.

The secretary may delegate his or her powers and duties to assistants and employees, but the secretary is responsible for all official acts of the department.

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§5B-1-6. Confidentiality of information.

(a) Information provided to secretary under expectation of confidentiality. -- Information that would be confidential under the laws of this state when provided to a division, agency, board, commission or office within the department is confidential when that information is provided to the secretary or an employee in the office of the secretary. The confidential information may be disclosed only: (1) To the applicable agency, board, commission or division of the department to which the information relates; or (2) in the manner authorized by provisions of this code applicable to that agency, board, commission or division. This confidentiality rule is a specific exemption from disclosure under article one, chapter twenty-nine-b of this code.

(b) Interdepartmental communication of confidential information. -- Notwithstanding any provision of this code to the contrary, information that is confidential pursuant to this code in the possession of any division, agency, board, commission or office of the department may be disclosed to the secretary or an employee in the office of the secretary. The secretary or employee shall safeguard the information and may not further disclose the information except under the same conditions, restrictions and limitations applicable to the administrator of the agency, board, commission, division or office of the department in whose hands the information is confidential. This subsection does not require disclosure of individually identifiable health care or other information that is prohibited from disclosure by federal law. This subsection is a specific exemption from the disclosure requirements of article one, chapter twenty-nine-b of this code.

(c) The provisions of this section:

(1) Apply only to information that is actually disclosed by a division, agency, board, commission or office within a department to the secretary, or an employee in the office of the secretary, of that department;

(2) Do not authorize disclosure or exempt from the provisions of article one, chapter twenty-nine-b of this code any confidential information of a division, agency, board, commission or office within a department to any person or entity other than the secretary, or an employee in the office of the secretary, of that department;

(3) Apply only to disclosure between a division, agency, board, commission or office within a department and the secretary, or an employee in the office of the secretary, of that department.

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§5B-1-7. Right of appeal from interference with functioning of agency.

Any governmental entity may appeal to the Governor for review upon a showing that application of the secretary's authority may interfere with the successful functioning of that entity. The Governor's decision controls on appeal.

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§5B-1-8. Financial assistance for small businesses during state of emergency.

(a) The Department of Commerce is authorized to make short-term, low-interest loans available to small businesses located in counties listed in a state declaration of a state of emergency. The purpose of these loans is to mitigate the effects of business losses resulting from the conditions giving rise to the state of emergency where other forms of compensation or relief are not available.

(b) For purposes of this section, an eligible, small business means a business with less than seventy-five full-time or full-time equivalent employees, operating lawfully within this state and in compliance with the state's tax, unemployment compensation and workers' compensation laws, and which meets the criteria specified by the Department of Commerce by rule for issuance of a loan.

(c) The loan program provided by this section shall only be available when the Governor makes a written finding, following a declaration of a state of emergency by either the Governor or the Legislature, that a substantial portion of small businesses within the relevant counties require emergency financial assistance and authorizes the Department of Commerce to issue loans through this program: Provided, That the authorization also identify an appropriate source of funding for the loans.

(d) Following the Governor's finding and authorization, an eligible, small business may make application for an emergency assistance loan at any time within the duration of a state of emergency, declared pursuant section six, article five, chapter fifteen of this code, and up to ninety days after the termination of the state of emergency. The application shall be made to the division or office designated by the Secretary of Commerce to administer the loan program. Only one loan will be permitted to a business for losses arising out of a declared state of emergency and shall only be available to a business that is located within a county identified in the declaration of the state of emergency. Eligibility provisions of this subsection may apply to any state of emergency, declared by the Governor or the Legislature, that is in effect upon the effective date of this section, but in no event shall loans be made for business losses incurred or originating prior to January 1, 2014.

(e) The source of principal for any loan provided under this section shall be from funds appropriated to the Civil Contingent Fund or from any other appropriation designated for or applicable to the purpose of providing state of emergency loans to small businesses. The principal amount of any loan provided under this section shall not exceed $20,000 and the interest rate of the loan shall be fixed at a rate equal to half of the federal prime interest rate published at the time of execution of a written agreement between the agency and the loan recipient. The period of duration for loans shall be not more than twenty-four months. The provision of loans is subject to the availability of funds and shall not exceed an aggregate amount of $2 million per declared state of emergency, unless a greater amount is authorized by subsequent appropriation of the Legislature.

(f) Payments of interest on loans provided pursuant to this section shall be credited to the

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general fund of the state. Payments of principal shall be credited back to the source of funding, or if the source of funding has expired, to the general revenue fund of the state.

(g) Loans will only be provided upon execution of a written agreement with the Department of Commerce, or with the authorized designee of the Secretary of Commerce. The duty to repay the principal and pay the interest constitutes a debt to the state. The Secretary of Commerce or his or her designated representative is authorized to enforce, by any legal means, the provisions of the written agreement and to pursue collection of any and all amounts due under the terms of the written agreement and any costs to the state for the collection.

(h) Following the effective date of this section, the Secretary of Commerce shall designate an office or division within the Department of Commerce to administer the loan program and shall, acting through the designated office or division, promulgate emergency rules and propose corresponding legislative rules for consideration and authorization by the legislature to describe and delineate the manner in which application for loans will be submitted and reviewed, the criteria for approval of loan applications, including, but not limited to, the credit history of the applicant, required security and other provisions necessary for the efficient administration of this program.

(i) When the Governor authorizes the Department of Commerce to issue loans hereunder following the declaration of a state of emergency, the Secretary of Commerce shall make a report to the Joint Committee on Government and Finance at the conclusion of each fiscal year in which the loan program is in effect and loans are outstanding, regarding the number of businesses that have applied for loans, the number of loans approved, the amounts awarded, the number of employees affected thereby and a financial statement including the balance of funds available and the aggregate amount of principal and interest outstanding and due to the state.

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§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 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

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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 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:

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(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 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,

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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 limited to:

(1) The application and timeline process;

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(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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§5B-1-10. West Virginia Health Care Workforce Sustainability Study.

(a) As used in this section, the following words and terms have the following meanings:

(1) "Continuum of Care" means the following health care providers or facilities, singularly or consecutively, that provide care for an individual:

(A) Assisted Living residence, as regulated and defined by §16-5D-1 *et seq.* of this code;

(B) Behavioral Health service, as defined by §16-2D-2(7) of this code;

(C) Hospice, as regulated and defined by §16-5I-1 *et seq.* of this code;

(D) Hospitals, as regulated and defined by §16-5B-1 *et seq.* of this code;

(E) Home Health agency, as regulated and defined by §16-2C-1 *et seq.* of this code;

(F) Skilled Nursing Facility/Nursing Home, as regulated and defined by §16-5C-1 *et seq.* of this code; and

(G) Emergency Medical Service Agency, as defined by §16-4C-1 *et seq.* of this code.

(2) "Department" means the Department of Commerce, including any and all agencies 11 within the Department of Commerce.

(3) "Direct-care status" means health care providers that for the majority of time deliver care or services to individuals in such a manner that the provider could be personally identifiable by the recipient of services.

(4) "Entity" means an individual, partnership, corporation, or other legal entity that employs or plans to employ skilled workers.

(5) "Government agency" means any state, county, municipal, or local public agency, board, committee, or division, including educational, vocational, and technical schools.

(6) "Health care facility" means a publicly or privately owned facility, agency, or entity that offers or provides health services, whether a for-profit or nonprofit entity and whether or not licensed, or required to be licensed, in whole or in part.

(7) "Health care provider" means a person authorized by law to provide professional health services in this state to an individual.

(8) "Health services" means clinically related preventive, diagnostic, treatment, or rehabilitative services.

(9) "Indirect-care status" means health care providers that for the majority of time perform managerial or administrative functions and are not in direct contact with consumers of care.

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(10) “New graduate employee” means a health care provider within 18 months of graduation from a program qualifying the individual as a health care provider.

(11) “Private third-party” means an individual, partnership, corporation, or other legal entity that employs or plans to employ skilled workers in the workforce or that teaches, trains, certifies, or provides licensure for individuals in the workforce.

(12) “Report” means the report required to be completed and issued by the Secretary pursuant to this article.

(13) “Secretary” means the Secretary of the Department of Commerce.

(14) “Separations” means the number of full-time or part-time employees leaving an entity voluntarily or involuntarily excluding per diem, contract, agency, or traveling health care professionals.

(15) “Workforce” means an individual employed by an entity within the continuum of care.

(b) On or before February 1, 2021, the Secretary shall research, survey, study, and issue a public report on the existing workforce in the continuum of care, as well as the anticipated future workforce needs over the next 15 years.

(c) In addition to being made publicly available, the completed report shall be provided to the Legislative Oversight Commission on Health and Human Resources Accountability (LOCHHRA), created pursuant to §16-29E-1 *et seq.* of this code.

(d) In order to create the report required in this section in the most cost-effective and efficient manner, the Secretary may seek or obtain grants to facilitate the research, survey, and study; may enter into agreements with other governmental agencies, committees, research divisions, including educational institutions, for the collection and analysis of information; and may contract with private persons or companies: *Provided,* That any and all agreements, grants, or contracts for the assistance or sharing of information shall include confidentiality provisions consistent with the provisions of this section.

(e) The findings in the report shall summarize the data collected utilizing the categories and professions contained in this section. In presenting the findings, the report shall also break down its summaries on a statewide, regional, and county basis.

(f) The report, or any other disclosure of collected data, shall not identify specific entities, providers, or facilities, nor make specific correlation between an entity, provider, or facility and the workforce numbers at that entity, provider, or facility.

(g) To facilitate the timely collection and accuracy of data, the department is expressly authorized to seek, and specifically request, information from any entity, government agency, health care provider, health care facility, or private third-party: *Provided,* That the department shall only request information reasonably designed to elicit the information that

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is sought by this section, and in a manner intended to minimize obstruction to the requested entities providing necessary health services. Any entity, government agency, heath care provider, health care facility, or private third-party in receipt of a survey or request for information from the department shall comply with the request and provide any and all requested information pertinent to the research, survey, and study.

(h) The department shall research, survey, and study the following aspects of the continuum of care workforce:

(1) The number of individuals employed;

(2) The number of full-time and part-time individuals so employed;

(3) The number of contract, agency, or traveling nurse or specialists utilized;

(4) The number of vacancies;

(5) The number of employee separations;

(6) The number of new graduate employee separations;

(7) The average number of patients/residents treated at each entity;

(8) The overall number of individuals licensed, certified, or registered by the state to work in the health care continuum;

(9) The current rate of licensure, certification, or registration by the state to work in the health care continuum;

(10) The anticipated growth in the number of individuals that will be licensed, certified, or registered in the state to work in the continuum of care over the next 15 years;

(11) The availability of classes or courses offered by secondary, vocational, technical, community, and higher education schools or institutions to train those necessitating licensure, certification, or registration to work in the health care continuum; and

(12) The average number of graduates per year in those classes or courses offered to train those necessitating licensure, certification, or registration to work in the health care continuum.

(i) In collecting and reporting the data, the department shall utilize, at a minimum, the following categories and professions within the continuum of care:

(1) Categories of entities:

(i) Assisted Living;

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(ii) Behavioral Health;

(iii) Hospice;

(iv) Hospital;

(v) Home Health;

(vi) Skilled Nursing Facility/Nursing Home; and

(vii) Emergency Medical Service Agency.

(2) Job Professions delineated by direct-care or indirect-care status:

(i) Physician (M.D./D.O.) by specialty;

(ii) Physician Assistant;

(iii) Advanced Practice Registered Nurse by role and certification;

(iv) Registered Nurse;

(v) Licensed Professional Nurse;

(vi) Nurse Aide;

(vii) Medical Assistant;

(viii) Dietician;

(ix) Social Worker;

(x) Physical Therapist;

(xi) Physical Therapy Assistant;

(xii) Occupational Therapist;

(xiii) Occupational Therapy Assistant;

(xiv) Speech Therapist;

(xv) Respiratory Therapist;

(xvi) Psychologist;

(xvii) MDS/coding specialist;

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(xviii) Pharmacist;

(xix) Pharmacy Technician;

(xx) Radiologic Technologist; and

(xxi) Emergency Medical Service Personnel.

(j) Any material, data, or other writing made or received by the department for the purpose of conducting the research, survey, study, or report, is deemed to be confidential trade secrets which are exempt from disclosure under the provisions of §29B-1-4 of this code.

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§5B-1A-1. Purpose.

The Legislature hereby declares that the long-term value to the public of retaining networks of abandoned railroad corridor lines is substantial, not only for the preservation of corridors for future rail transportation uses, but in terms of providing interim recreational use, providing public open space and linking together other community areas and recreational spaces, providing for efficient and convenient placement of underground utilities and telecommunication lines, providing environmental greenways and wildlife habitat, providing public access to other forms of recreation and improving economic development opportunities associated with all of the above listed multiple uses.

WV Legislature

§5B-1A-2. Rails to trails program.

There is continued within the state rail authority provided for in article eighteen, chapter twenty-nine of this code the "West Virginia Rails to Trails Program," the purpose of which is to acquire or assist with the acquisition of, and to develop or assist with the development of, abandoned railroad rights-of-way for interim use as public nonmotorized recreational trails.

WV Legislature

§5B-1A-3. Definitions.

(1) “Abandoned railroad rights-of-way” means land on which discontinuance of rail service has been authorized by the interstate commerce commission.

(2) “Division” means the Division of Tourism and parks.

(3) “Nonmotorized recreational trail use” means bicycle, hiking, cross-country skiing, horseback riding, horse drawn wagon, jogging or other similar activities.

(4) “Rail bank” means the holding intact of an abandoned railroad right-of-way for future railroad service.

(5) “Rail trail” means an abandoned railroad right-of-way utilized in the interim as a public nonmotorized recreational trail.

WV Legislature

§5B-1A-4. Powers and duties of the authority.

The state rail authority is authorized to:

(1) Enter into agreements with any person on behalf of the state to acquire an interest in any abandoned railroad right-of-way, to develop, maintain or promote any rail trails created pursuant to the provisions of this article and, with the consent of the director of the Division of Natural Resources, to transfer the maintenance and operation of rail trails created and developed to the Division of Natural Resources.

(2) Assist any political subdivision or any person in acquiring an interest in any abandoned railroad right-of-way and in developing, maintaining or promoting rail trails.

(3) Evaluate existing and potential abandoned railroad rights-of-way so as to identify such lands as may be suitable for nonmotorized recreational trail use.

(4) Establish state rail trails, subject to the limitations on acquisition of land for state recreational facilities as set forth in section twenty, article one, chapter twenty of this code.

WV Legislature

§5B-1A-5. Powers to hold and acquire real property.

(a) The state rail authority shall hold fee simple title or any lesser interest in land, including easements and leaseholds, on all abandoned railroad rights-of-way acquired by the state and utilized for interim nonmotorized recreational trail use pursuant to the provisions of this article. The state rail authority may, at the option of a political subdivision of this state, hold fee simple title or any lesser interest in land, including easements and leaseholds, on all abandoned railroad rights-of-way acquired by such political subdivision and utilized for interim nonmotorized recreational trail use. Any provision of article one-a, chapter twenty of this code to the contrary notwithstanding, the public land corporation shall not be vested with title to any abandoned railroad right-of-way which becomes vested in the state pursuant to the provisions of this article.

(b) The state rail authority may acquire an interest in an abandoned railroad right-of-way to be used as a rail trail, in accordance with the provisions of section six, article eighteen, chapter twenty-nine of this code.

(c) The state rail authority shall issue a rail bank certificate for each abandoned railroad right-of-way held by the state rail authority for interim nonmotorized recreational purposes in accordance with the provisions of section six of this article.

WV Legislature

§5B-1A-6. Abandoned rights-of-way owned by the state prior to effective date of article.

(a) No abandoned railroad right-of-way acquired by the state prior to the effective date of this article and used as a rail trail may be used for any purpose that would unreasonably limit the ability to restore rail service over the right-of-way if such service were to be required in the future.

(b) Any and all abandoned railroad rights-of-way acquired by the state prior to the effective date of this article are hereby declared held for railroad transportation purposes as of the date of acquisition, until, by executive order of the Governor, the right-of-way is declared no longer suitable for a public transportation purpose as a railroad right-of-way. Such abandoned railroad rights-of-way shall not revert by operation of law to any other ownership while being held for future railroad use in accordance with the provisions of this article.

WV Legislature

§5B-1A-7. Railroad rights-of-way preservation.

(a) Upon receipt of a notice to abandon a railroad right-of-way by the owner thereof, the commissioner may enter into an agreement with the owners of the railroad right-of-way to preserve intact the railroad right-of-way for a period of time not to exceed three months to afford the state sufficient time to evaluate the potential for use by the state for the purposes of this article, and the funds available for acquisition.

(b) With regard to any land or an interest therein actually acquired by the state pursuant to the provisions of this article:

(1) Every specifically identified railroad right-of-way, including all bridges still in place, shall remain intact except for necessary modifications required to adapt the right-of-way for use as a nonmotorized recreational trail, except for where it is necessary for a motorized vehicle to cross the trail;

(2) Any abandoned railroad right-of-way shall be used solely for nonmotorized recreational purposes, subject to such right-of-way being made available for future rail use, if necessary; and

(3) Any abandoned railroad right-of-way acquired by the state pursuant to the provisions of this article shall be deemed to be held for railroad use and in continuation of the railroad easement and shall not revert by operation of law to any other ownership during the term of the agreement or during the term of a rail bank certificate issued pursuant to section five of this article.

WV Legislature

§5B-1A-8. Limitation on liability of owner from whom state acquires land or interest therein.

During the interim period when an abandoned railroad right-of-way is held by the state for possible future railroad use, the owner of the railroad right-of-way from whom the state acquired the land or an interest therein is relieved from civil liability for any personal injury or property damage occurring on the right-of-way during such interim period, which might otherwise arise from ownership.

WV Legislature

§5B-1A-9. Limitation on liability of persons making land available for trail use without charge.

(a) General rule. -- Except as specifically recognized or provided in subsection (d) of this section, an owner or lessee who provides the public with land for use as a trail under this article or who owns land adjoining any trail developed under this article owes no duty of care to keep the land safe for entry or use by others for recreational purposes, or to give any warning to persons entering or going on the trail or adjoining land of a dangerous condition, use, structure or activity thereon.

(b) Owner. -- Any person, public agency or corporation owning an interest in land utilized for recreational trail purposes pursuant to this article shall be treated as an "owner" for purposes of this article.

(c) Specific limitations on liability. -- Except as specifically recognized by or provided in subsection (d) of this section, an owner or lessee who provides the public with land or who owns adjoining land to the trail under this article is not, by providing that trail or land or owning land adjoining the trail:

(1) Presumed to extend any assurance that the land is safe for any purpose;

(2) Incur any duty of care toward a person who goes on that land; or

(3) Become liable for any injury to persons or property caused by an act or an act of omission of a person who goes on that land.

(d) Exception. --

(1) This section does not apply to the owner or lessee of the land used as a trail if there is any charge made or usually made for entering or using the trail or land, or any part thereof.

(2) This section does not apply to the owner of land adjoining a trail if there is any charge made or usually made by the owner of such adjoining land for using the trail or land, or any part thereof, or if any commercial or other activity relating to the use of the trail whereby profit is derived from the patronage of the general public is conducted on such adjoining land, or on any part thereof.

(3) The foregoing applies whether the person going on the land provided or adjoining is an invitee, licensee, trespasser or otherwise.

(e) This article does not relieve any person of liability which would otherwise exist for deliberate, willful or malicious injury to persons or property. The provisions of this article do not create or increase the liability of any person.

WV Legislature

§5B-1B-1. Southern West Virginia Lake Development Study Commission Act.

[Repealed.]

WV Legislature

§5B-1B-2. Legislative findings.

[Repealed.]

WV Legislature

§5B-1B-3. Commission created; undertake study; report to the Legislature.

[Repealed.]

WV Legislature

§5B-1B-4. Report to the Legislature.

[Repealed.]

WV Legislature

§5B-2-1. West Virginia Division of Economic Development; confidentiality.

(a) The West Virginia Division of Economic Development, formerly the Department of Economic Development and formerly the Development Office, is hereby continued as a division of the Department of Commerce.

(b) All references in this code to the West Virginia Department of Economic Development, West Virginia Development Office, the office of community and industrial development, or the Governor's office of community and industrial development shall be construed as references to the West Virginia Division of Economic Development. As used in this article, "division" means the Division of Economic Development, "department" means the Department of Commerce, and "secretary" means the Secretary of the Department of Commerce.

(c) Beginning on July 1, 2025, all employees of the Division of Economic Development shall be exempt from the state grievance procedures as set forth in §6C-2-1 *et seq.* of this code and from the classified civil service system under §29-6-1 *et seq.* of this code except that:

(1) All employees of the Division of Economic Development who are currently members of the classified civil service system shall retain their status as long as they remain in their current position, and all employees of the Division of Economic Development who currently have recourse to the state grievance procedures will continue to have access to the state grievance procedures as long as they remain in their current position; and

(2) Any employee of the Division of Economic Development that leaves his or her position and remains an employee within the Department of Commerce shall, at that time, be transferred to the classified-exempt service system as defined in §29-6-2(g) of this code and be exempted from the state grievance procedures as set forth in §6C-2-1 *et seq.* of this code.

(d) The Secretary of the Department of Commerce shall have the authority to designate certain employees' status under the classified civil service system and grievance procedures as may be deemed necessary to comply with federal law, federal regulation, or the requirements for receipt of federal funding or assistance.

(e) Subsection (c) of this section shall not apply to any position appointed by the Governor.

(f) Nothing in this section shall exempt the Division of Economic Development from the provisions of this code prohibiting nepotism, favoritism, discrimination, or unethical practices related to the promotion, transfer, layoff, removal, discipline, and compensation of state employees.

(g) Any documentary material, data or other writing made or received by the Division of Economic Development or other public body whose primary responsibility is economic development, for the purpose of furnishing assistance to a new or existing business shall be exempt from §29B-1-1 *et seq.* of this code: *Provided*, That any agreement entered into or

WV Legislature

signed by the Division of Economic Development or other public body which obligates public funds shall be subject to inspection and copying pursuant to §29B-1-1 *et seq.* of this code as of the date the agreement is entered into, signed, or otherwise made public.

WV Legislature

§5B-2-2. Office of Executive Director of the Division of Economic Development.

(a) The Executive Director of the Division of Economic Development is the chief executive officer of the division. The Governor shall appoint the Executive Director, who shall be qualified for the position by reason of his or her extensive education and experience in the field of professional economic development. The Executive Director shall serve at the will and pleasure of the Governor. Any reference in this code to the Secretary of the Department of Economic Development, or the Executive Director of the West Virginia Development Office means the Executive Director of the Division of Economic Development. As used in this article, "executive director" means the Executive Director of the Division of Economic Development. Subject to the provisions of the contract provided in §5B-2-4 of this code, the executive director may hire, and fire economic development representatives employed pursuant to §5B-2-5 of this code.

(b) The Executive Director may promulgate rules to carry out the purposes and programs of the Division of Economic Development to include generally the programs available and the procedure and eligibility of applications relating to assistance under the programs. These rules are not subject to Chapter 29A of this code, but shall be filed with the Secretary of State. The Executive Director may adopt any of the rules previously promulgated by the Department of Economic Development, the West Virginia Development Office, or the council for community and economic development.

WV Legislature

§5B-2-3. Powers and duties of the Executive Director.

(a) The Executive Director shall enhance economic growth and development through the development of a comprehensive economic development strategy for West Virginia. "Comprehensive economic development strategy" means a plan that outlines strategies and activities designed to continue, diversify or expand the economic base of the state as a whole; create jobs; develop a highly skilled workforce; facilitate business access to capital, including venture capital; advertise and market the resources offered by the state with respect to the needs of business and industry; facilitate cooperation among local, regional and private economic development enterprises; improve infrastructure on a state, regional and community level; improve the business climate generally; and leverage funding from sources other than the state, including federal and private sources.

(b) The Division of Economic Development shall be exempt from §5A-3-1 *et seq*. of this code.

WV Legislature

§5B-2-3a.

Repealed.

Acts, 2015 Reg. Sess., Ch. 40.

WV Legislature

§5B-2-3b. Economic development promotion and closing fund.

The previously created fund known as the "Development Office promotion fund" is hereby continued but shall hereafter be known as the "Economic Development Promotion and Closing Fund". Moneys deposited in this fund shall be administered by the Division of Economic Development, with the approval of the Secretary of the Department of Commerce, and used solely to promote business formation, expansion, recruitment and retention through aggressive marketing and international development and export assistance, and to provide a fund from which moneys may be drawn to offer certain incentives for business formation or expansion, to provide assistance with respect to site development or other concerns identified by the Executive Director, and to further facilitate economic development in this state, all of which economic development efforts and initiatives lead to more and better jobs with higher wages for all geographic regions and communities of the state, including rural areas and urban core areas, and for all residents.

WV Legislature

§5B-2-4. Public-private partnerships.

The Division of Economic Development may enter into contractual or joint venture agreements with a nonprofit corporation organized pursuant to the corporate laws of the state, organized to permit qualification pursuant to section 501(c) of the Internal Revenue Code and for purposes of the economic development of West Virginia, and funded from sources other than the state. The contract shall include provisions relating to the employment of economic development representatives assigned to the Division of Economic Development to be paid a base salary by the state and performance-based economic incentives from private funds of the nonprofit corporation. Provisions relating to hiring practices with respect to economic development representatives, job descriptions, accountability, public-private liaison, and performance standards may be the subject of contract negotiations. The contract may include provisions for continuing education and certification in the field of economic or industrial development for persons employed as economic development representatives. Agreements providing for the payment of performance-based incentives to the executive director are authorized. Agreements providing for the payment of travel and other expenses of or to the executive director or of or to economic development representatives from private funds by the nonprofit corporation are authorized. The prohibitions of §6B-2-5(b) and §6B-2-5(d) of this code are not applicable to the receipt by economic development representatives or by the executive director of performance-based incentives and other payments made by the nonprofit corporation and specifically authorized pursuant to this section.

From time to time the executive director may enter into joint ventures wherein the division and the nonprofit corporation share in the development and funding of economic development programs.

All contracts and joint venture agreements must be approved by the Executive Director of the Division and the Secretary of the Department of Commerce. Contracts entered into pursuant to this section for longer than one fiscal year shall contain, in substance, a provision that the contract shall be considered cancelled without further obligation on the part of the state if the State Legislature or, where appropriate, the federal government, shall fail to appropriate sufficient funds therefor or shall act to impair the contract or cause it to be cancelled.

WVLegislature

§5B-2-4a. State allocation to regional councils.

The Division of Economic Development may enter into contractual agreements with the regional councils formed under §8-25-5 of this code to provide funding to the regional councils to be used to obtain federal matching grants and for other purposes determined to be appropriate by the department: *Provided,* That the amount of any allocation shall be determined by dividing the number of eligible regional councils into the total amount of funds made available for allocation by the Legislature. The Division of Economic Development shall develop criteria to determine a regional council's eligibility for the state allocation.

WV Legislature

§5B-2-5. Economic development representatives.

(a) The executive director may employ economic development representatives to be paid a base salary within legislative appropriations to the division, subject to applicable contract provisions pursuant to §5B-2-4 of this code. Economic development representatives may receive performance-based incentives and expenses paid from private funds from a nonprofit corporation contracting with the division pursuant to §5B-2-4 of this code. The executive director shall establish job descriptions and responsibilities of economic development representatives, subject to the provisions of any contract with a nonprofit corporation entered into pursuant to §5B-2-4 of this code.

(b) Notwithstanding any provision of this code to the contrary, economic development representatives employed within the division are not subject to the procedures and protections provided by §29-6-1 *et seq*. and §29-6A-1 *et seq*. of this code. Any employee of the division on the effective date of this article who applies for employment as an economic development representative is not entitled to the protections of §29-6-1 *et seq*. of this code with respect to hiring procedures and qualifications; and upon accepting employment as an economic development representative, the employee relinquishes the protections provided for in §6C-2-1 *et seq*. and §29-6-1 *et seq*. of this code.

WV Legislature

§5B-2-6. Transition; savings provision.

All programs, orders, determinations, rules, permits, grants, contracts, certificates, bonds, authorizations and privileges which have been issued, made, granted or allowed to become effective pursuant to any prior enactments of this article or by the Governor, the executive director of the Development Office, the Secretary of the Department of Economic Development, the Governor's Office of Community and Industrial Development or its director, or by a court of competent jurisdiction, and which are in effect on February 1, 1992, shall continue in effect according to their terms until modified, terminated, superseded, set aside or revoked by the Governor, the Secretary of the Department of Commerce, by a court of competent jurisdiction, or by operation of law.

WV Legislature

§5B-2-6a. Brownfield economic development districts; applications; fees; rules.

(a) Any property owner of a tract of land that is a brownfield or voluntary remediated site pursuant to §22-22-1 *et seq*. of this code may, if the site and surrounding area were involved in the extraction and processing of coal, limestone, or other natural resources, apply to the division to become a brownfield economic development district.

(1) Applicants for a brownfield economic development district must demonstrate that the district when designated will create significant economic development activity;

(2) 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 district;

(3) Brownfield economic development districts:

(A) May not contain single-family housing;

(B) Shall provide all the infrastructure within the district without cost to the state, county, public service district or local municipal government;

(4) Applicants shall demonstrate that were it not for this designation, the contemplated development would not be possible, and that the development is in the best interest of the state;

(5) The applicant shall own or control the property within the district;

(6) All costs for the application process shall be borne by the applicant;

(7) An applicant shall demonstrate that the applicant has attempted to work in good faith with local officials in regard to land-use issues;

(8) Beginning July 1, 2011, an application for a brownfield economic development district may not be approved unless the district conforms to a county's or municipality's planning and zoning laws established pursuant to §8A-7-1 *et seq.*, §8A-8-1 *et seq.*, and §8A-9-1 *et seq*. of this code.

(9) Prior to granting a designation of brownfield economic development district, the applicant shall provide documentation that the applicant has met all the requirements set forth in §22-22-1 *et seq*. of this code to be designated as a brownfield site or voluntary remediated site and is in compliance with the remediation plan;

(10) Nothing may be construed by this section to exempt brownfield economic districts from environmental regulation that would pertain to the development;

(11) The decision of the division in regard to an application is final; and

WV Legislature

(12) Once designated, the district shall work in conjunction with the regional brownfield assistance centers of Marshall University and West Virginia University as specified in §18B-11-7 of this code.

(b) The division 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 limited to, the application and time line process, notice provisions, additional application consideration criteria and application fees sufficient to cover the costs of the consideration of an application.

WV Legislature

§5B-2-6b.

Repealed.

Acts, 1992 Reg. Sess., Ch. 55.

WV Legislature

§5B-2-6c.

Repealed.

Acts, 1992 Reg. Sess., Ch. 55.

WV Legislature

§5B-2-6d.

Repealed.

Acts, 1992 Reg. Sess., Ch. 55.

WV Legislature

§5B-2-6e.

Repealed.

Acts, 1992 Reg. Sess., Ch. 55.

WV Legislature

§5B-2-7.

Repealed.

Acts, 2015 Reg. Sess., Ch. 40.

WV Legislature

§5B-2-8

Repealed

Acts, 2017 Reg. Sess., Ch. 238.

WV Legislature

§5B-2-8a

Repealed

Acts, 2017 Reg. Sess., Ch. 238.

WV Legislature

§5B-2-9

Repealed

Acts, 2017 Reg. Sess., Ch. 238.

WV Legislature

§5B-2-9a. Powers and duties of Secretary of the Department of Tourism and Tourism Advisory Council for improving Cardinal Passenger Train Service; declaration of public policy and Legislative intent.

(a) It is hereby declared the public policy of the State of West Virginia and the intent of the Legislature to facilitate, advance, and improve the availability of interstate passenger rail service to the state, the contributions of such service to local tourism development including the Boy Scouts of America Summit Bechtel Reserve in Fayette County, the marketing of such services for both interstate rail travel for the benefit of the state's citizens, businesses, and local tourism and to improve the quality and frequency of such service, including the provision of a daily passenger train service at the earliest opportunity, of the Cardinal Passenger Train operated by the National Railroad Passenger Corporation, doing business as AMTRAK, on railroad lines crossing the south-central region of the state from Huntington eastward to White Sulphur Springs, being that same route historically and continuously used by the passenger train and its predecessors since the year 1871.

(b) Notwithstanding any other provision of this code to the contrary, the Secretary of the Department of Tourism, with the advice of the tourism advisory council, and in consultation with the Secretary of the West Virginia Department of Commerce, is directed to coordinate and supervise the activities of the state, to coordinate and cooperate with the political subdivisions and municipalities of the state, to cooperate with the National Railroad Passenger Corporation and with the other states served by the Cardinal Passenger Train to achieve the public policy set forth in subsection (a) of this section. The secretary may conduct such studies, and make such investigations, as may be reasonable and appropriate to advance the public policy set forth in subsection (a) of this section.

(c) The secretary may enter into contracts and memoranda of understanding with the National Railroad Passenger Corporation, with the other states served by the Cardinal Passenger Train, and with the political subdivisions and municipalities of this state, to achieve the public policy set forth in subsection (a) of this section. The secretary is further authorized to cooperate with the aforesaid other states and National Railroad Passenger Corporation in the formation of an interstate committee for the purpose of achieving the public policy set forth in subsection (a) of this section, to participate in said committee and appoint other designees thereto.

(d) In the exercise of their powers and duties under this section, the secretary and tourism advisory council shall consult with the West Virginia Department of Transportation and the Division of Multimodal Transportation Facilities. The West Virginia Department of Transportation and the Division of Multimodal Transportation Facilities shall cooperate with the secretary and the tourism advisory council, and shall provide the secretary and the tourism advisory council with such reasonable and necessary assistance as may be possible based on available staff and funds to achieve the public policy set forth in subsection (a) of this section.

(e) There is hereby created a special revenue account, designated the "Cardinal Passenger

WV Legislature

Train Enhancement Fund" into which all moneys intended to advance the purposes of this section shall be deposited. Moneys in this account shall be expended solely for the public policy and purposes set forth in this section. Funds paid into this account may also be derived from the following sources: (1) All interest or return on investment accruing to this account; (2) any gifts, grants, bequests, transfers, appropriations, or other donations which may be received from any governmental entity or unit or any person, firm, foundation, or corporation; and (3) any appropriations by the Legislature which may be made for the purposes of this section. Any balance including accrued interest and other earnings at the end of any fiscal year shall not revert to the general fund but shall remain in the fund for the purposes set forth in this section. The moneys in the fund shall be paid out, at the sole discretion and direction of the secretary, to advance the purposes of this section.

WV Legislature

§5B-2-10. Program and policy action statement; submission to Joint Committee on Government and Finance.

The tourism advisory council, the Division of Economic Development, and any other authorities, boards, commissions, corporations or other entities created or amended under this chapter and §18B-11-1 *et seq*. of this code, shall prepare and submit to the Joint Committee on Government and Finance on or before December 1, 1995, and each year thereafter, a program and policy action statement which shall outline in specific detail according to the purpose, powers and duties of the office or section, its procedure, plan and program to be used in accomplishing its goals and duties as required under this article.

WV Legislature

§5B-2-11

Repealed

Acts, 2017 Reg. Sess., Ch. 238.

WV Legislature

§5B-2-12

Repealed

Acts, 2017 Reg. Sess., Ch. 238.

WV Legislature

§5B-2-12a

Repealed

Acts, 2017 Reg. Sess., Ch. 238.

WV Legislature

§5B-2-13.

Repealed.

Acts, 2010 Reg. Sess., Ch. 32.

WV Legislature

§5B-2-14. Certified development community program.

The certified development community program is continued and is transferred to, incorporated in and administered as a program of the Division of Economic Development. The program shall provide funding assistance to the participating economic development corporations or authorities through a matching grant program. The division shall establish criteria for awarding matching grants to the corporations or authorities within the limits of funds appropriated by the Legislature for the program. The matching grants to eligible corporations or authorities are in the amount of $50,000 for each fiscal year, if sufficient funds are appropriated by the Legislature. The division shall recognize existing county, regional or multicounty corporations or authorities where appropriate.

In developing its plan, the division shall consider resources and technical support available through other agencies, both public and private, including, but not limited to, the state college and university systems; the West Virginia Housing Development Fund; the West Virginia Economic Development Authority; the West Virginia Parkways Authority; the West Virginia Round Table; the West Virginia Chamber of Commerce; Regional Planning and Development Councils; Regional Partnership for Progress Councils; and state appropriations.

WV Legislature

§5B-2-15. Upper Kanawha Valley Resiliency and Revitalization Program.

(a) Definitions. —

(1) General. — Terms defined in this section have the meanings ascribed to them by this section, unless a different meaning is clearly required by either the context in which the term is used, or by specific definition in this section.

(2) Terms Defined. —

"Contributing partners" means those entities or their representatives described in subsection (f) of this section.

"Prioritize" means, with regard to resources, planning, and technical assistance, that the members of the revitalization council are required to waive their discretionary program guidelines to allow funding requests that may fall outside of the program's guidelines but address the Upper Kanawha Valley communities' goals for revitalization: *Provided*, That properly filed funding applications by Upper Kanawha Valley communities shall be given preferential treatment.

"Program" means the Upper Kanawha Valley Resiliency and Revitalization Program established in this section.

"Revitalization council" means those entities or their representatives described in subsection (d) of this section.

"Technical assistance" means resources provided by the state, revitalization council, contributing partners, or any other individuals or entities providing programming, funding, or other support to benefit the Upper Kanawha Valley under the program.

"Upper Kanawha Valley" means an area historically known as the Upper Kanawha Valley including municipalities and surrounding areas from the Charleston city limits to Gauley Bridge or other communities in the vicinity of the West Virginia University Institute of Technology.

"Upper Kanawha Valley Resiliency and Revitalization Program" means the entire process undertaken to further the goals of this section, including collaboration development and implementation between the members, contributors, and technical assistance resource providers.

(b) Legislative purpose, findings, and intent. —

(1) The decision to relocate the historic campus of the West Virginia University Institute of Technology from Montgomery, West Virginia, to Beckley, West Virginia, will have a dramatic economic impact on the Upper Kanawha Valley.

WV Legislature

(2) The purpose of this section is to establish the Upper Kanawha Valley Resiliency and Revitalization Program. To further this purpose, this program creates a collaboration among state government, higher education, and private and nonprofit sectors to streamline technical assistance capacity, existing services, and other resources to facilitate community revitalization in the Upper Kanawha Valley.

(3) It is the intent of the Legislature to identify existing state resources that can be prioritized to support the Upper Kanawha Valley, generate thoughtful and responsible ideas to mitigate the negative effects of the departure of the West Virginia Institute of Technology from the Upper Kanawha Valley, and help chart a new course and prosperous future for the Upper Kanawha Valley.

(c) Upper Kanawha Valley Resiliency and Revitalization Program established; duration of program. —

(1) The Development Office shall establish the Upper Kanawha Valley Resiliency and Revitalization Program in accordance with the provisions of this section. The program shall inventory existing assets and resources, prioritize planning and technical assistance, and determine such other assistance as might be available to revitalize communities in the Upper Kanawha Valley.

(2) The program shall remain active until it concludes its work on June 30, 2024, and delivers a final report to the Joint Committee on Government and Finance no later than October 1, 2024.

(d) Revitalization council created. — There is created a revitalization council to fulfill the purposes of this section. The revitalization council shall be coordinated by the Department of Economic Development and be subject to oversight by the secretary of the department. The following entities shall serve as members of the revitalization council:

(1) The Secretary of the Department of Economic Development or their designee, who shall serve as chairperson of the council;

(2) The Secretary of the Department of Health or their designee;

(3) The Commissioner of the Department of Agriculture or their designee;

(4) The Executive Director of the West Virginia Housing Development Fund or their designee;

(5) A representative from the Kanawha County Commission;

(6) A representative from the Fayette County Commission;

(7) The mayor, or their designee, from the municipalities of Montgomery, Smithers, Pratt, and Gauley Bridge;

WV Legislature

(8) A representative from Bridge Valley Community and Technical College; and

(9) A representative from West Virginia University.

(e) Duties of the revitalization council. —

(1) The council shall identify existing state resources that can be prioritized to support economic development efforts in the Upper Kanawha Valley.

(2) The council shall direct existing resources in a unified effort and in conjunction with contributing partners, as applicable, to support the Upper Kanawha Valley.

(3) The council shall develop a rapid response strategy to attract or develop new enterprises and job-creating opportunities in the Upper Kanawha Valley.

(4) The council shall conduct or commission a comprehensive assessment of assets available at the campus of the West Virginia Institute of Technology and determine how those assets will be preserved and repurposed.

(5) The council shall assist communities in the Upper Kanawha Valley by developing an economic plan to diversify and advance the community.

(6) Members of the council shall support both the planning and implementation for the program and shall give priority wherever possible to programmatic activity and discretionary, noncompetitive funding during the period the program remains in effect.

(7) Members of the council shall work together to leverage funding or other agency resources to benefit efforts to revitalize the Upper Kanawha Valley.

(f) Contributing partners. — To the extent possible, the revitalization council shall incorporate the resources and expertise of additional providers of technical assistance to support the program, which shall include but not be limited to:

(1) The West Virginia Small Business Development Center;

(2) The Center for Rural Health Development;

(3) The West Virginia University Brickstreet Center for Entrepreneurship;

(4) The West Virginia University Land Use and Sustainability Law Clinic;

(5) The West Virginia University Center for Big Ideas;

(6) The New River Gorge Regional Development Authority;

(7) The Appalachian Transportation Institute;

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(8) The Marshall University Center for Business and Economic Research;

(9) TechConnect;

(10) The West Virginia Community Development Hub;

(11) The West Virginia University Northern Brownfields Assistance Center;

(12) West Virginia State University Extension Service; and

(13) West Virginia University Extension Service, Community, Economic and Workforce Development.

(g) Reporting and agency accountability. — The revitalization council, in coordination with its contributing partners, as applicable, shall report annually to the Governor and the Legislature detailing the progress of the technical assistance support provided by the program, the strategic plan for the Upper Kanawha Valley, and the results of these efforts. The annual report to the Legislature shall be made to the Joint Committee on Government and Finance regarding the previous fiscal year no later than October 1 of each year. Copies of the annual report to the Legislature shall be provided to the county commissions and the mayors of the Upper Kanawha Valley.

(h) Economic incentives for businesses investing in the Upper Kanawha Valley. — The Department of Economic Development and the revitalization council, as applicable, shall work to educate businesses investing, or interested in investing, in the Upper Kanawha Valley, about the availability of, and access to, economic development assistance, including but not limited to, the economic opportunity tax credit provided in §11-13Q-19 of this code; the manufacturing investment tax credit provided under §11-13S-1 *et seq*. of this code; and any other applicable tax credit or development assistance.

(i) Use of state property and equipment; faculty. — The Department of Economic Development or other owner of state property and equipment in the Upper Kanawha Valley is authorized to provide for the low cost and economical use and sharing of state property and equipment, including computers, research labs, and other scientific and necessary equipment to assist any business within the Upper Kanawha Valley at a nominal or reduced-cost reimbursements to the state for that use.

wv Legislature

§5B-2-16. Entrepreneurship and Innovation Investment Fund.

(a) The Entrepreneurship and Innovation Investment Fund is hereby created. The fund shall be administered by the Division of Economic Development and shall consist of all moneys made available for the purposes and from the sources set forth in this section of the code.

(b) The fund consists of moneys received from the following sources:

(1) All appropriations provided by the Legislature;

(2) Any moneys available from external sources; and

(3) All interest and other income earned from investment of moneys in the fund.

(c) The Division of Economic Development shall use moneys in the fund to support entrepreneurship, creation of business startups, improvements in workforce participation, and attracting individuals to relocate to West Virginia.

(d) Any balance, including accrued interest and any other returns, in the Entrepreneurship and Innovation Investment Fund at the end of each fiscal year may not expire to the General Revenue Fund but remain in the fund and be expended for the purposes provided by this section.

(e) Fund balances may be invested with the state's Consolidated Investment Fund. Earnings on the investments shall be used solely for the purposes defined in §5B-2-16(c) of this code.

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§5B-2-17. West Virginia Motorsports Committee.

(a) The West Virginia Motorsport Committee is hereby continued.

(b) The committee consists of 18 members, including its chairperson. The chairperson shall be selected by the committee from among its members. The committee members shall represent:

(1) Asphalt oval racing;

(2) Dirt drag racing;

(3) Dirt oval racing;

(4) Drag racing;

(5) Drift racing;

(6) Hill climb racing;

(7) Karting racing;

(8) Motor cross racing;

(9) Motorcycle road course racing;

(10) Mud racing;

(11) Off-road racing;

(12) Rallying racing;

(13) Rallycross racing;

(14) Road course racing;

(15) Time Trials racing;

(16) Truck/Tractor pulls;

(17) Remote control racing; and

(18) Boat racing.

(c) The Secretary of the Department of Tourism and the Executive Director of the Division of Economic Development shall also serve on the committee, ex officio.

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(d) The committee shall:

(1) Work with the existing facilities within the state to enhance existing motorsport racing;

(2) Develop a strategy that creates further opportunities, such as encouraging racing training schools, conducting special events, and encouraging special events and the construction of larger in-state racing facilities; and

(3) Seek opportunities to promote economic growth and manufacturing jobs related to motorsports.

(e) The committee shall hold regular meetings, at least quarterly, and conduct public hearings as it considers necessary.

WV Legislature

§5B-2-18. Small Business Supplier Certification Assistance Program.

(a) The Legislature finds that there is currently no standardized certification process for small business enterprises in West Virginia. As a result, there is no uniform method for verifying or certifying small business contractors or suppliers seeking to participate in government contracting and procurement processes. The Legislature further finds that it is important to develop such a certification program to promote more in-state businesses and to strengthen regional supply chains within the institutions of the state or its political subdivisions. Therefore, it is the purpose of this section to establish the Small Business Supplier Certification Assistance Pilot Program, to develop and implement a certification process for the benefit of small business enterprises seeking to further engage in the government contracting and bidding processes.

(b) The Division of Economic Development is hereby authorized to work in collaboration with Marshall University to establish a Small Business Supplier Certification Assistance Pilot Program to be implemented for purposes of developing a certification process for small business enterprises.

(c) Prior to implementation of the pilot program, Marshall University shall coordinate with the division to develop a master plan for the pilot program, the focus of which should include, but not be limited to, the following:

(1) A mission statement and small business participation plan for the program aimed at creating a competitive business environment by promoting the growth and success of small businesses through meaningful participation in the procurement process. The small business participation plan shall include:

(A) A study to determine any inequities that exist in public procurement and contracting that adversely affect small business vendors;

(B) An outreach program to identify and provide education to small business vendors;

(C) Initial and continuing education opportunities for the small business vendor community through both virtual and in-person workshops;

(D) A small business vendor notification process for bidding opportunities; and

(E) A method of assessing overall program results and establishing recommendations for future goals and participation.

(2) Development of an application and certification process for small business enterprises, including guidelines for certification, based upon existing federal Small Business Administration guidelines;

(3) Education and outreach proposals relating to program certifications and the benefits of small business participation;

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(4) Technical training to be provided on state and government contracting and the public bidding process;

(5) Notification of current bidding opportunities for small business providers;

(6) Opportunities for collaboration with other public and private sector entities; and

(7) Methods of implementation of the pilot program, which shall include:

(A) Defined program goals;

(B) Program research to be conducted;

(C) Scheduling milestones, assignment of tasks, and allocation of resources; and

(D) Reporting of program certifications, successes, and benefits to the economy and small business opportunities.

(d) The pilot program shall continue in duration through December 31, 2023, and unless continued by the legislature, the program will terminate at midnight on January 1, 2024. Prior to the conclusion of the program, the division, in coordination with Marshall University, shall report to the Legislature's Joint Commission on Economic Development on the following:

(1) Progress towards and methods of implementation of the pilot program, including the required certifications and training for small business enterprises;

(2) An analysis of the overall program results based on the metrics created in the master plan of the pilot program;

(3) Recommendations as to whether the pilot program should continue beyond its current duration; and

(4) Any proposed plan or legislation necessary to accomplish the purpose of making the program permanent.

(e) For purposes of the pilot program, any information provided by a small business enterprise for purposes of the certification process shall be considered private and confidential and exempt from the provisions of the Freedom of Information Act, as provided in §29B-1-1 *et seq*. of this code. Neither the division nor Marshall University may share any information provided by a small business enterprise with any other state or federal agencies unless required by law.

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§5B-2-18a. Applicability of federal laws and Federal Aviation Administration regulations; permissible use of uncrewed aircraft.

(a) Notwithstanding any provision of this article to the contrary, any person or entity operating an uncrewed aircraft system may do so in compliance with applicable federal law and applicable regulations of the Federal Aviation Administration.

(b) Except as authorized by law, a political subdivision of the state shall not enact or adopt an ordinance, policy, or rule that relates to the ownership or operation of an advanced air mobility aircraft or advanced air mobility system, and shall not otherwise engage in the regulation of any uncrewed aircraft system, advanced air mobility aircraft, or advanced air mobility system. Any ordinance, policy, or rule, to the extent that it violates any provision of this subsection, whether enacted or adopted by the political subdivision before or after the effective date of this section, is void.

(c) As used in this section, “advanced air mobility aircraft” or “advanced air mobility system” means a system that transports people and property by air between points in the United States using aircraft, as defined in §29-2A-1 of this code, including electric aircraft and electric vertical takeoff and landing aircraft, in both controlled and uncontrolled airspace.

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§5B-2-19. Certified Sites and Development Readiness Program.

(a)(1) The Certified Sites and Development Readiness Program is hereby created and is to be administered as a program within the Division of Economic Development with appropriate rules as necessary. The program shall establish evaluation criteria and site certification levels based upon developmental readiness of an applicant's site. In developing the program, the division shall consider utilizing all available resources and technical support, both public and private.

(2) The division shall establish an application process and forms through which an applicant may begin to participate in the program and identify and describe potential sites for economic development and investment. The application process and forms should include site specific information such as property ownership and control, descriptions and mapping, historical and current uses, access to various forms of transportation, availability of various utility services, environmental studies, conceptual plans, marketing materials, and all other information requested by the department.

(3) Applicants may include only state, county, municipal, or regional governmental entities such as, without limitation, economic development authorities, economic development corporations, economic development alliances, or economic development partnerships.

(4) The division shall select applicant's sites to participate in the program from the application materials. The division will select sites to participate in the program, evaluate the selected sites, and certify each site based upon its readiness to be developed from the established criteria. After evaluation, the division shall provide a report to the applicant detailing the results of the site evaluation, identifying site deficiencies and strengths, and suggesting a prioritized list of site improvements which may be made to improve the site's readiness to develop. The division may thereafter reevaluate and recertify a site as improvements are made to a site and deficiencies cured.

(5) The division may provide to applicants funding assistance up to a 50 percent match through a matching grant program which may be spent only for directly improving the developmental readiness of sites which have been selected to participate in the program. The division shall establish criteria and an application process for awarding matching grants to improve an applicant's site readiness: *Provided*, That no single site may receive any amount greater than a maximum amount established by the division through this grant matching program. Applications for this grant matching program must include details which specifically identify what deficiency or deficiencies will be cured and through what means and all other information required by the division. Grant matching funds must be spent, contracted to be spent, or returned to the department within 12 months of the date of receipt of the grant matching funds. Grant matching funds shall be paid back to the division when a participating site is sold or leased for development. The division shall take prudent steps to receive a security interest in a participating site in the amount of the grant matching funds award including, but not limited to, placing of record in the county where the participating site is located, an appropriate lien against the title. All funds repaid under

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this section shall remain within the program for use on participating sites. The division shall monitor, and request appropriate evidence documenting the cured deficiencies and thereafter reevaluate and recertify a participating site as part of this grant matching program.

(6)(A) The division may provide funding assistance to applicants through a micro grant program which may be spent only for directly improving the developmental readiness of sites which have been selected to participate in the program. The division shall establish criteria and an application process for awarding the micro grants to improve an applicant's site readiness. Applications for this micro grant program must include details which specifically identify what deficiency or deficiencies will be cured and through what means and all other information required by the division. Micro grant funds must be spent, contracted to be spent, or returned to the division within 12 months of the date of receipt of the micro grant funds. All funds returned under this section shall remain within the program for use on participating sites. The division shall monitor and request appropriate evidence documenting the cured deficiency and thereafter reevaluate and recertify a participating site as part of this micro grant program.

(B) (i) Sites that are a minimum of five acres in size may receive an amount up to $100,000 through the micro grant program.

(ii) Sites that exceed 20 acres in size may receive an amount up to $250,000 through the micro grant program.

(iii) Notwithstanding these limitations on acreage, sites eligible for participation in the West Virginia Business Ready Sites Program, as defined in §24-2-1n of this code, are eligible for access to funds from the Certified Sites and Development Readiness Fund as established in §5B-2-19(b) of this code: *Provided*, That the Department of Commerce must approve each such application for funding.

(b) (1) The Certified Sites and Development Readiness Fund is hereby created. The fund shall be administered by the Division of Economic Development and shall consist of all moneys made available for the purposes from:

(A) Appropriations provided by the Legislature;

(B) Any moneys available from external sources; and

(C) All interest and other income earned from investment of moneys in the fund.

(2) The Division of Economic Development shall use moneys in the fund to support The Certified Sites and Development Readiness Program.

(3) Any balance, including accrued interest and any other returns, in the fund at the end of each fiscal year may not expire to the General Revenue Fund but shall remain in the fund and be expended for the purposes provided by this section.

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(4) Fund balances may be invested under §12-6C-6 of this code. Earnings on the investments shall be used solely for the purposes defined in this section.

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§5B-2-20. Promotion of West Virginia Uncrewed Aircraft Systems.

(a) The Director of the Division of Economic Development shall:

(1) Identify trends and technologies driving innovation in uncrewed aircraft systems;

(2) Develop comprehensive strategies, including, but not limited to, the promotion of research and development, education, economic growth, and jobs in the uncrewed aircraft system industry in West Virginia; public acceptance of the uncrewed aircraft system industry; business planning; air vehicle technology and manufacturing; and airspace management and national airspace system integration; and

(3) Develop recommended legislation addressing specific issues and in furtherance of the comprehensive strategies identified in subdivision (2) of this section.

(b) In its annual report required by §5-1-20(a) of this code, the Secretary of Commerce shall include a progress report on the promotion of uncrewed aircraft systems, including accomplishments and recommendations to the Legislature.

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§5B-2-21. Certified Microgrid Development Program.

(a) Program established. — The Certified Microgrid Development Program is hereby created and is to be administered as a program within the Division of Economic Development to encourage the continued development, construction, operation, maintenance, and expansion in West Virginia of high impact i plants and facilities, in certain circumstances where the availability of electricity generated is demonstrated to be necessary. In order to effectuate the purposes of this section, the Division of Economic Development, or any agency, division, or subdivision thereof, may propose for promulgation of legislative rules, including emergency rules, in accordance with §29A-3-1 *et seq*. of this code.

(b) District certification. — The Secretary of the Department of Commerce may identify and certify microgrid districts in this state upon a finding that the following requirements are met:

(1) Certification of the microgrid district and location of new or expanded businesses within the microgrid district will have a significant and positive economic impact on the state;

(2) Certification of the microgrid district is necessary to attract at least two businesses to locate or expand in this state;

(3) The area to be certified as a microgrid district shall be no greater than 2,250 acres and nearly contiguous;

(4) The electricity generated within the microgrid district will be used only within the microgrid district or delivered to the wholesale market;

(5) The information described in §5B-2-21(h) of this code has been provided to the Department of Commerce;

(6) The requirements of §5B-2-21(i) of this code have been satisfied; and

(7) The requirements of §5B-2-21(b)(5) and (6) of this code may not apply to microgrid districts certified on or before January 1, 2024;

(8) The requirements of subsections (d), (e), (g), (h), and (j) of this section enacted during the regular session of the Legislature, 2025, shall not apply to any microgrid district certified on or before January 1, 2024, or any special contract entered into and approved by the Public Service Commission on or before January 1, 2025. No amendments to this section enacted during the regular session of the Legislature, 2025, shall be interpreted to remove an existing microgrid district certification.

The Secretary of the Department of Commerce may not certify more than two microgrid districts: *Provided*, That this limit on certifying microgrid districts shall not apply to any microgrid district wherein greater than 70% of the electricity generated within the microgrid district is consumed by one or more high impact data centers, as defined in

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§11-6N-2 of this code, or will be consumed by one or more high impact data centers, when such data centers are completed and fully operational. A designation made pursuant to this section by the secretary as to the certification of a microgrid district is final.

(c) Providing electric service within a certified microgrid district. — Within a microgrid district, any person, firm, corporation, or entity or their lessees and tenants seeking to provide electric service through the generation or distribution of electricity within the microgrid district to businesses locating within the microgrid district may:

(1) Not be subject to the jurisdiction of the Public Service Commission with respect to rates, obtaining a certificate of convenience and necessity, conditions of service or complaints pursuant to chapter 24 of this code;

(2) Not be subject to the net metering and interconnection standards as set forth in §24-2F-8 of this code;

(3) Elect to qualify as an exempt wholesale generator under federal law for purposes of furnishing electric service through the generation of electricity to a utility or regional transmission organization without being subject to the Public Service Commission's siting certificate requirements as set forth in §24-2-1(d), §24-2-11c, or §24-2-1o of this code;

(4) Provide any such electric service to businesses making a capital investment in a new or expanded facility located within the certified microgrid district;

(5) Not provide any such electric service for purposes of encouraging businesses already receiving electric service from a regulated utility in this state to relocate to the certified microgrid district; and

(6) Not deliver outside the microgrid district more than 10% of the electricity generated within the certified microgrid district and only delivered to the wholesale market.

(d) Microgrid customers; eligibility. — In order to take advantage of the provisions of this section, a plant or facility choosing to locate and operate within a microgrid district must constitute new electric load. Any owner, lessee, or tenant of a plant or facility that has not previously received electric service from a regulated public electric utility located within this state, or who is making a capital investment in a new facility within the microgrid district shall be considered eligible new electric load. Electric service to any such plant or facility shall be considered new electric load so long as any customer making a new capital investment within the microgrid district does not decrease the load of an existing facility outside the microgrid district in this state in conjunction with the new capital investment within the microgrid district, and regardless of whether or not a person or entity previously received service from a public electric utility at or near the same location prior to the certification of the microgrid district.

An eligible plant or facility choosing to locate and operate within a microgrid district is not

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required to connect with and use any public electric utility: *Provided*, That any connection with and use of a public electric utility for purposes of the initial construction and development within the microgrid district shall not impact a plant or facility's status as new electric load in order to take advantage of the provisions of this section.

(e) Microgrid customers; special contracts and rates. — After certification of a microgrid district, the Public Service Commission may approve special contracts for a a microgrid customer within the microgrid district. For purposes of this section, a “special contract” is:

(1) a written agreement between an electric utility and an eligible retail electric microgrid customer within the microgrid district that is filed with the Public Service Commission and that provides that an eligible retail electric microgrid customer will receive utility service on terms and conditions, including rates, that vary from the utility’s tariff on file with the Public Service Commission, or

(2) electric utility service terms and conditions, including rates, ordered by the Public Service Commission that vary from the electric utility’s tariff to be in effect between a utility and an eligible retail electric microgrid customer when the electric utility and the eligible retail electric microgrid customer are unable to negotiate a written agreement.

A microgrid customer seeking a special contract shall first enter into negotiations with the utility within whose service territory the microgrid district is located regarding the terms and conditions of a mutually agreeable special contract. If the negotiations result in an agreement between the microgrid customer and the utility within 120 days, the microgrid customer and the utility shall jointly file with the Public Service Commission the special contract. If the negotiations are unsuccessful in the 120-day period, the microgrid customer may file a petition with the Public Service Commission to consider establishing a special contract. The Public Service Commission shall consider all relevant factors in establishing a special contract. Upon the filing of a petition pursuant to this section, the Public Service Commission shall establish a special contract for the provision of requested service, including backup and supplemental service to a microgrid customer within the microgrid district. Microgrid customers’ load within the microgrid district not covered by a contract for back up and supplemental service shall be considered non-firm and interruptible. The Public Service Commission shall establish a special contract upon the filing of a petition pursuant to this section and shall do so within 90 days of filing.

(f) Electrical infrastructure costs. — Regulated electric utility customers shall not bear any costs including, but not limited to, construction, operational, ancillary services, grid-related, energy-related, or capacity-related costs, associated with any electricity generation, transmission or distribution facilities that provide electrical service to a microgrid district. Any costs of this nature are to be borne by the generator or electricity consumers situated within the microgrid district.

(g)(1) Payment In Lieu Of Taxes Electricity Generation and Distribution. — Notwithstanding the provisions of §5D-1-14, §7-5-13, §7-11B-3(b), §7-11B-8(c)(4), §7-11B-15(a)(7),

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§7-11B-15(a)(15), §7-11B-18, §8-19-4, §8-29A-7, §8A-12-12, §11-13-2p, §11-13C-5(l)(1)(A), §16-13A-21, §16-15-18(b)(6), §17-16A-16(b), §17-16B-20(b), §18-9A-12(c), § 31-21-5, and §31-21-15 of this code, or any other provision of this code, no payment in lieu of taxes shall be entered into with relation to the property of any electricity generating plant, facility, or generating unit or any property comprising, in whole or in part, any electricity distribution apparatus, equipment, lines or facilities (A) located in the county and (B) directly or indirectly dedicated to providing electric power to any plant, facility or property subject to this subsection. Nor shall any payment in lieu of taxes be entered into with relation to any leasehold interest or any other property interest related thereto.

(2) Tax Increment Financing. — Notwithstanding the provisions of §7-11B-1 *et seq*. of this code, or any other provision of this code, no tax increment financing project, plan or arrangement shall be entered into or undertaken with relation to any electricity generation or distribution property subject to this subsection.

(3) For purposes of this subsection, an electricity generating plant, facility, or generating unit or electricity distribution apparatus, equipment, lines, or facilities shall be deemed to be "dedicated" to providing electric power to any plant, facility, or property subject to this subsection if not less than 75% of the output of the electricity generation property or electricity distribution property, measured in kilowatt hours, are used to supply electricity to a facility, project, or series of related or integrated facilities within the county or counties subject to this subsection.

(4) For purposes of this section, property includes all real property, all buildings and structures affixed to land, and all tangible personal property, including, but not limited to equipment, inventories and mobile equipment, and also including property subject to special salvage valuation under §11-6A-1 *et seq*., §11-6E-1 *et seq*., §11-6H-1 *et seq*., §11-6J-1 *et seq*., §11-6F-1 *et seq*., and §11-6L-1 *et seq*. of this code, or any other special ad valorem property valuation provision of this code; *Provided*, That property subject to special valuation shall be allowed that special valuation as authorized by law, for purposes of calculating and determining the ad valorem property tax imposed with relation thereto, notwithstanding being otherwise subject to the provisions of this section.

(h) Microgrid District Development; Letters of Intent. — To become a certified microgrid district under this section, the person or entity must present the Secretary of the Department of Commerce with a confidential letter of intent. The letter of intent shall include sufficient economic, financial, and engineering information concerning the proposed project with sufficient detail to adequately inform the department of the size, scope, and nature of the target customers of the project, including, without limitation, the approximate proposed acreage and location, estimated capital investment, evidence of financial capacity, estimated project completion date, major project milestones, estimated generation capacity, estimated power loading internal to the microgrid, estimated power, including backup power, needed from the local distribution electric utility, estimated power supplied to the wholesale market, and the types or sources of each electric power generation unit. The letter of intent and all supplied information shall be held in confidence pursuant to §5B-2-21a(e) of

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this code by the department.

(i) Microgrid District Development; Notice Period and Negotiation. — At least 120 days before submitting a letter of intent and other materials to the department, an applicant seeking a microgrid district certification must make good faith efforts to negotiate for the supply of all or part of its electricity needs for the project from the local distribution electric utility. The letter of intent must also include documentation evidencing the good faith efforts to negotiate. This time-period limitation and negotiation requirement does not apply to microgrid districts proposing to produce 300 megawatts or more of electricity or for microgrid districts that are proposing to not be connected in any way to the local distribution electric utility after completion of all construction.

(j) Microgrid District Development; Special Contracts and Power Rates. — (1) A certified microgrid district seeking a special contract from a local distribution electric utility located in the state shall first enter negotiations for not more than 120 days with the local distribution utility regarding the terms and conditions of a special contract. The microgrid district shall provide reasonable access and terms to the local distribution utility to enable the electric utility's transmission and/or distribution facilities to tie into those of the microgrid district. The 120-day negotiation period required by this section may be satisfied by the precertification negotiation period required by §5B-2-21(i) of this code.

(2) If the negotiations result in a mutually agreeable special contract, the contracting parties shall jointly file the special contract pursuant to the rules of the commission.

(3) If negotiations for a special contract with the local distribution utility are unsuccessful, a certified microgrid district may file a petition with the commission to establish a special contract.

(4) The commission shall establish a special contract upon the filing of a petition pursuant to this section. The Public Service Commission shall consider all relevant factors in establishing special contracts. The Public Service Commission shall establish a special rate for the requested service, including backup and supplemental service to a microgrid district. The microgrid district's load not covered by a contract shall be considered non-firm and interruptible. The commission shall issue a final order determining the terms of a special contract within 90 days of filing of a petition.

W. Legislature

§5B-2-21a. Data Centers.

(a) Findings and purpose. — The Legislature hereby finds and declares the following:

(1) Data centers represent a significant and growing sector of the economy, generating substantial economic activity, including jobs, infrastructure investments, and technological innovation.

(2) Data centers are critical national infrastructure that require abundant, low-cost energy to protect sensitive data, operate high-level computation assets, and ensure the resilience of the digital economy.

(3) The People’s Republic of China is positioning itself to be the global leader of data centers and is investing in technology to encourage the flow of data toward China instead of toward the United States.

(4) It is in the United States’ national security interests to limit the flow of data to China and to protect the flow of data and maximize computational power inside the United States. The President has declared that it is the policy of the United States "to sustain and enhance America’s global AI dominance in order to promote human flourishing, economic competitiveness and national security." Removing Barriers to American Leadership in Artificial Intelligence, Executive Order 14179 (Jan 23, 2025).

(5) As of early 2025, the highest concentration of high-level computational power and data centers in the world is located in Loudoun County, Virginia. This severe concentration of data centers in one location is a national security vulnerability because it invites the potential for cyberattacks and espionage against the Nation’s critical data infrastructure.

(6) Data centers have historically obtained their electricity from the electric grid. Some data center developers now seek or require the use of microgrids to provide their primary and backup power.

(7) West Virginia is strategically positioned as the best location in the United States to place data centers due to: (A) its close proximity to Washington, D.C., and the federal government; (B) its close proximity to the majority of the Nation’s population; (C) its low tax rates; (D) it having the least restrictive regulatory environment in the Nation; (E) its supply of abundant energy and natural resources to power the data centers; (F) its supply of resources, such as coal mine methane blended with natural gas, to assist data centers locating in West Virginia to meet their energy needs and environmental goals; and (G) its skilled and loyal workforce that has some of the lowest turnover rates in the Nation.

As such, the state has a significant interest in encouraging the development and expansion of data centers, which can serve as drivers of broader economic growth. The Legislature finds that these externalities transcend local borders, including environmental concerns, energy consumption, and regional economic growth. Additionally, the provisions in this

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section align with the Legislature's goal of fostering a competitive, forward-thinking economy that benefits all residents.

(b) Program established. — The High Impact Data Center Program is hereby created and is to be administered as a program within the Division of Economic Development to encourage the continued development, construction, operation, maintenance, and expansion in West Virginia of high impact data centers. In order to effectuate the purposes of this section, the Division of Economic Development, or any agency, division, or subdivision thereof, may promulgate legislative rules, including emergency rules, in accordance with §29A-3-1 *et seq*. of this code.

(c) Notification. — Any data center shall compare its current or planned operations against the definition of "high impact data center" established in §11-6N-2 of this code and provide notification to the Division of Economic Development when the data center becomes aware that it will satisfy or has satisfied that definition. The notification will include information addressing the elements of that definition, including known or expected power consumption of the data center. This notification shall be made (1) within 30 days after the data center determines that it meets these requirements, or (2) when the data center reasonably anticipates that it will, at some future date, meet these requirements, in which case the data center may provide that anticipated future date in its notification.

(d) Certification. — The Secretary of the Department of Commerce shall identify and certify high impact data centers in this state upon a finding that a data center satisfies the requirements for the definition of "high impact data center" set forth in §11-6N-2 of this code. The Secretary shall issue confirmation of certification to a high impact data center within 14 days following receipt of the notification from the data center required by this section.

(e) Recordkeeping. — Any information provided by a data center pursuant to this section that is identified by the data center as confidential business information shall be exempt from the Freedom of Information Act. The Secretary shall take reasonable and appropriate steps to protect this information. Notwithstanding the foregoing, the Secretary shall maintain a complete list of all certified high impact data centers and all relevant information that can be made available to the Governor and Legislature, removing specifically identifying information to ensure confidentiality of any such information as identified by any high impact data center.

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§5B-2-21b. Authority to assist certified microgrid district projects and certified high impact data center projects; legislative findings.

(a) Findings and purpose. — The Legislature hereby finds and declares the following:

(1) The findings and purpose set forth in §5B-2-21a(a) (2025), except to the extent expressly modified herein, are hereby incorporated herein by reference with the same force and effect as though fully set forth herein.

(2) It is in the best interests of the state to induce and assist in development of these projects, in order to advance the public purposes of relieving unemployment by preserving and creating jobs, and preserving and creating new and greater sources of revenue for the support of public services provided by the state and local government.

(3) It is the intent of the Legislature to occupy the whole field of the creation and regulation of certified microgrid districts and certified high impact data centers. The stated purpose of this section is to promote uniform and consistent application of the act within the state.

(b) The Department of Commerce shall assist projects developing or operating a certified microgrid district pursuant to §5B-2-21 of this code or a certified high impact data center pursuant to §5B-2-21a of this code. The Secretary of Commerce shall designate one of their personnel as "Data Economy Liaison" to serve as a single point-of-contact for certified microgrid districts and high impact data centers to assist coordinate and expedite their development and operation, including, but not limited to site selection and permitting. A "certified microgrid district" is a microgrid project, regardless of stage of development or operation, that has been certified by the Secretary of the Department of Commerce as set forth in §5B-2-21 of this code. A "certified high impact data center" is a data center project, regardless of stage of development or operation, that has been certified by the Secretary of the Department of Commerce as set forth in §5B-2-21a of this code.

(c) This section prohibits:

(1) Counties and 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 certified microgrid district or certified high impact data center project; and

(2) Counties and municipalities from imposing or enforcing local laws and ordinances concerning the creation or regulation of any certified microgrid district or certified high impact data center therein.

(d) In accordance with §5B-2-21(b) and §5B-2-21(c) of this code, 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, certified microgrid districts and certified high impact data centers may not be subject to the following:

(1) County or municipal zoning, horticultural, noise, viewshed, lighting, development, or land use ordinances, restrictions, limitations, or approvals;

(2) County or municipal building permitting, inspection, or code enforcement;

(3) County or municipal license requirements;

(4) The legal jurisdiction of the county or municipality in which the certified microgrid district or certified high impact data center is entirely or partially located, except as specifically provided in this article;

(5) Any requirement under state law for the consent or approval of the municipality in which a certified microgrid district or certified high impact data center 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.

(e) Notwithstanding the creation of a certified microgrid district or a certified high impact data center, the owner, operator, or manager, as applicable, and all tenants, lessees or licensees thereof, of a certified microgrid district or a certified high impact data center 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 county and municipality;

(4) Pay all municipal and county service fees enacted pursuant to §8-13-13, §7-15-17, and §7-17-12 of this code, including, but not limited to, fire, ambulance, police, sanitation, or city service fees: Provided, That in no event shall any owner, operator, or manager, as applicable, and all tenants, lessees or licensees thereof, of a certified microgrid district or a certified high impact data center be required to pay both county and municipal fees for fire protection.

(5) Pay all utility rates, fees, and charges for utilities used or consumed during construction and operation of premises within the certified microgrid district or certified high impact data

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center, including, but not limited to, water, sewer, stormwater, and garbage and recycling collection: Provided, That (A) The rates, fees, and charges for such services shall be based on the cost of providing such service and the utility shall enter into a contract under the rules of the Public Service Commission for each such service with the developer and file the special contract with the Public Service Commission; and (B) 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 utility to provide such service to the project; Utility customers outside of the microgrid district shall not bear any construction or operational costs associated with any new utility property built solely to provide service within a microgrid district;

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

(7) Design, acquire, construct, and equip the certified microgrid district or certified data center pursuant to the State Building Code in accordance with §8-12-13 of this code and the corresponding State Rule 87 CSR 4.

(f) The Department of Commerce, Department of Environmental Protection, and Department of Transportation may take actions necessary in support of the development of any certified microgrid district or certified data center, including, but not limited to, the development or improvement of such highways, roads, thoroughfares, and sidewalks within any county or municipality in which the certified microgrid district or certified data center is partially or entirely located.

(g) In order to effectuate the purposes of this section, the Department of Commerce, or any agency, division, or subdivision thereof, may promulgate legislative rules, including emergency rules, in accordance with §29A-3-1 *et seq*. of this code.

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§5B-2A-1. Legislative findings and declaration.

The Legislature hereby finds and declares the following:

(a) Coal mining has made and continues to make significant contributions to the economy of West Virginia. These contributions include the creation of quality jobs that pay high wages and provide good benefits; the consequent stimulation and support of mining contractors, suppliers of mining equipment and services, other mining-related industries and numerous providers of goods and services that are indirectly related to coal mining and dependent upon its existence and prosperity; the generation of significant severance and other tax revenues that support important economic development, infrastructure and education initiatives in mining communities and throughout the state; the support of civic, education and service groups in mining communities; and, in the case of surface mining operations, including mountaintop mining, the creation of much-needed flat land for economic development and recreational uses.

(b) The development and increasing prominence of surface mining operations, including mountaintop mining, has brought increasingly high levels of productivity, safety and efficiency to the state's mining industry, enabling the recovery of coal that could not otherwise be mined and marketed profitably, increasing the severance tax revenues and other economic benefits described in subsection (a) of this section and ensuring the competitiveness of the state's coal industry from a national and international perspective.

(c) Where implemented, surface mining operations, particularly mountaintop mining, tend to extract most, if not all, of the recoverable coal reserves in an accelerated fashion. For a state long dependent on the employment and revenue coal mining provides, this reality should be sobering and there is no place in which the comprehension of this reality is more crucial than the coalfields of West Virginia. Long dependent primarily on mining, this area must plan for a future without coal. The state and its subdivisions have a legitimate interest in securing that future.

(d) The coal industry and those related to the extraction of mineral resources benefit from the mining of our state's coal through mining practices which impact its citizens — some in a negative way — and through practices which will extract significant portions of coal reserves in an accelerated fashion. Those industries must therefore accept a greater responsibility to help address the long-term needs of the communities and citizens impacted by their activities.

(e) Once it becomes public knowledge that a permit is being sought, the marketability of property may change and the relative bargaining power of the parties may change with it. The potential for negative impact on those living in communities near surface mining operations may limit the options and bargaining power of the property owners.

(f) Surface mining operations, including mountaintop mining, present unique challenges to the coal mining industry and the state and its citizens, especially those living and working in

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communities that rely heavily upon these methods of mining. This requires that these communities, in conjunction with county commissions, state, local, county and regional development authorities, landowners and civic, community and business groups and interested citizens, develop plans related to the communities' long-term economic viability.

(g) The Office of Energy, as the state agency charged with energy policy and development activities, shall engage in planning and coordinating the long-term economic development of communities in which these mining methods are prevalent and shall establish a formal process to assist property owners in the determination of the fair market value where the property owner and the coal company voluntarily enter into an agreement relating to the purchase and sale of such property.

WV Legislature

§5B-2A-2. Application of article.

(a) The provisions of this article shall apply to all surface-mining operations, except:

(1) The surface operations and surface impacts incident to an underground coal mine; and

(2) Surface-mining operations of operators that: (A) Establish that their probable total annual coal production from all locations during any consecutive twelve-month period, either during the term of the permit or during the first five years after issuance of the permit, whichever period is shorter, will not exceed three hundred thousand tons, as determined pursuant to rules promulgated by the division; and (B) otherwise qualify for the small operator assistance program authorized under the federal Surface-Mining Control and Reclamation Act of 1977, as amended, and the federal regulations promulgated thereunder, as amended.

(b) The provisions of this article shall not apply: (1) To underground coal mining operations; or (2) to the extraction of minerals by underground mining methods or the surface impacts thereof.

WV Legislature

§5B-2A-3. Definitions.

(a) For the purpose of this article:

(1) "Department" means the Department of Environmental Protection established in §22-1-1 *et seq*. of this code;

(2) "Office" means the Office of Energy established in §5B-2F-1 *et seq*. of this code;

(3) "Operator" means the definition in §22-3-3 of this code;

(4) "Program" means the Coalfield Community Development Program within the Office of Energy;

(5) "Alternative energy" means energy produced or generated from natural or replenishable resources other than traditional fossil fuels or nuclear resources and includes, without limitation, hydropower, geothermal energy, biomass energy, biologically derived fuels, energy produced with advanced coal technologies, coalbed methane, fuel produced by a coal gasification or liquefaction facility, synthetic gas, waste coal, tire-derived fuel, pumped storage hydroelectric power or similar energy sources; and

(6) "Secretary" means the Secretary of the Department of Commerce.

(b) Unless used in a context that clearly requires a different meaning or as otherwise defined herein, terms used in this article shall have the definitions set forth in this section.

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§5B-2A-4. Transferring the powers, duties, and responsibilities of the Office of Coalfield Community Development into a program within the Office of Energy.

(a) The Office of Coalfield Community Development all the powers, rules, duties, and responsibilities previously granted and authorized to the Office pursuant to this article are hereby transferred into a program within the Office of Energy.

(b) The Director of the Office of Energy may hire such assistants and clerical staff as may be necessary to carry out the responsibilities of the program.

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§5B-2A-5. Powers and duties.

The office has and may exercise the following duties, powers, and responsibilities:

(1) To establish a procedure for determining the assets that could be developed in and maintained by the community to foster its long-term viability as provided in §5B-2A-8 of this code and to administer the procedure so established;

(2) To establish a procedure for determining the land and infrastructure needs in the general area of the surface mining operations as provided in §5B-2A-9 of this code and to administer the procedure so established;

(3) To establish a procedure to develop action reports and quarterly updates as provided in §5B-2A-10 of this code and to administer the procedure so established;

(4) To determine the need for meetings to be held among the various interested parties in the communities impacted by surface mining operations and, when appropriate, to facilitate the meetings;

(5) To establish a procedure to assist property owners in the sale of their property as provided in §5B-2A-11 of this code and to administer the procedure so established;

(6) In conjunction with the department, to maintain and operate a system to receive and address questions, concerns, and complaints relating to surface mining;

(7) To coordinate the expenditure of grants issued by the United States Department of Energy and the U.S. Department of Commerce's Economic Development Administration for coalfield economic development or coalfield revitalization projects;

(8) To identify coal assets, including, but not limited to, coal mine operations, coal-fired electric utilities, and coal-based manufacturing or steelmaking facilities, within West Virginia or in states that provide markets for, and consume, West Virginia steam or metallurgical coal and offer assistance and to sustain, protect, and expand their continued operation and reliance on West Virginia coal;

(9) On its own initiative or at the request of a community or a mining operation, offer assistance to facilitate the development of economic or community assets. Such assistance may include the preparation of a master land use plan pursuant to the provisions of §5B-2A-9 of this code;

(10) To develop an educational program and policy materials in support of West Virginia's coal industry, to be incorporated into a program designed to educate the public on the economic and societal benefits provided by the coal industry, including the provision of reliable baseload electric generation by coal-fired power plants; and

(11) To coordinate a program of recruitment and training of industrial workers in

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conjunction with the West Virginia Office of Miners' Health Safety and Training and Workforce West Virginia to respond to West Virginia's growing manpower needs generally and coal mining particularly. The state-of-art training facility in Julian (Boone County) will serve as host to the "West Virginia Mine Safety and Training Academy" to attract, train new and experience miners and other industrial workers.

WV Legislature

§5B-2A-6. Community impact review.

(a) The office shall, no less frequently than quarterly, either consult with representatives of the department's Office of Mining and Reclamation or review the department's permit application database(s) to determine whether newly proposed surface mines or significant modifications to existing surface mining operations may present opportunities for mine operators to cooperate with local landowners and local governmental officials to mine and reclaim properties so as to develop community assets or secure developable land and infrastructure pursuant to this article.

(b) The provisions of this section shall apply to all surface mining permit applications granted after July 1, 2018.

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§5B-2A-7.

Repealed.

Acts, 2002 Reg. Sess., Ch. 58.

WV Legislature

§5B-2A-8. Determining and developing needed community assets.

(a) The office shall determine the community assets that may be developed by the community, county, or region to foster its viability when surface mining operations are completed.

(b) Community assets to be identified pursuant to subsection (a) of this section may include the following:

(1) Water and wastewater services;

(2) Developable land for housing, commercial development, or other community purposes;

(3) Recreation facilities and opportunities; and

(4) Education facilities and opportunities.

(c) In determining the nature and extent of the needed community assets, the office shall consider at least the following:

(1) An evaluation of the future of the community once mining operations are completed;

(2) The prospects for the long-term viability of any asset developed under this section;

(3) The desirability of foregoing some or all of the asset development required by this section in lieu of the requirements of §5B-2A-9 of this code; and

(4) The extent to which the community, local, state, or the federal government may participate in the development of assets the community needs to assure its viability.

WV Legislature

§5B-2A-9. Securing developable land and infrastructure.

(a) The office shall determine the land and infrastructure needs in the general area of the surface mining operations for which it makes the determination authorized in §5B-2A-6 of this code.

(b) For the purposes of this section, the term "general area" shall mean the county or counties in which the mining operations are being conducted or any adjacent county.

(c) To assist the office, the operator, upon request by the office, shall be required to prepare and submit to the office the information set forth in this subsection as follows:

(1) A map of the area for which a permit under §22-3-1 *et seq*. of this code is being sought or has been obtained;

(2) The names of the surface and mineral owners of the property to be mined pursuant to the permit; and

(3) A statement of the post-mining land use for all land which may be affected by the mining operations.

(d) In making a determination of the land and infrastructure needs in the general area of the mining operations, the office shall consider at least the following:

(1) The availability of developable land in the general area;

(2) The needs of the general area for developable land;

(3) The availability of infrastructure, including, but not limited to, access roads, water service, wastewater service, and other utilities;

(4) The amount of land to be mined and the amount of valley to be filled;

(5) The amount, nature, and cost to develop and maintain the community assets identified in §5B-2A-8 of this code; and

(6) The availability of federal, state, and local grants and low-interest loans to finance all or a portion of the acquisition and construction of the identified land and infrastructure needs of the general area.

(e) In making a determination of the land and infrastructure needs in the general area of the surface mining operations, the office shall give significant weight to developable land on or near existing or planned multilane highways.

(f) The office may secure developable land and infrastructure for a Development Office or county through the preparation of a master land use plan for inclusion into a reclamation

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plan prepared pursuant to the provisions of §22-3-10 of this code. No provision of this section may be construed to modify requirements of §22-3-1 *et seq*. of this code.

(1) The county commission or other governing body for each county in which there are surface mining operations that are subject to this article shall determine land and infrastructure needs within their jurisdictions through the development of a master land use plan which incorporates post-mining land use needs, including, but not limited to, alternative energy uses, residential uses, highway uses, industrial uses, commercial uses, agricultural uses, public facility uses, or recreational facility uses. A county commission or other governing body of a county may designate a local, county, or regional development or redevelopment authority to assist in the preparation of a master land use plan. A county commission or other governing body of a county may adopt a master land use plan developed after July 1, 2026, only after a reasonable public comment period.

(2) Upon the request of a county or designated development or redevelopment authority, the office shall assist the county or development or redevelopment authority with the development of a master land use plan.

(3)(A) The Department of Environmental Protection and the Office shall review master land use plans existing as of July 1, 2026. If the office determines that a master land use plan complies with the requirements of this article and the rules promulgated pursuant to this article, the office shall approve the plan on or before July 1, 2027.

(B) Master land use plans developed after July 1, 2026, shall be submitted to the department and the office for review. The office shall determine whether to approve a master land use plan submitted pursuant to this subdivision within three months of submission. The office shall approve the plan if it complies with the requirements of this article and the rules promulgated pursuant to this article.

(C) The office shall review a master land use plan approved under this section every three years. No later than six months before the review of a master land use plan, the county or designated development or redevelopment authority shall submit an updated master land use plan to the department and the office for review. The county may submit its updated master land use plan only after a reasonable public comment period. The office shall approve the master land use plan if the updated plan complies with the requirements of this article and the rules promulgated pursuant to this article.

(D) If the office does not approve a master land use plan, the county or designated development or redevelopment authority shall submit a supplemental master land use plan to the office for approval.

(4) The required infrastructure component standards needed to accomplish the designated post-mining land uses identified in a master land use plan shall be developed by the county or its designated development or redevelopment authority. These standards shall be in place before the respective county or development or redevelopment authority can accept

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ownership of property donated pursuant to a master land use plan. Acceptance of ownership of such property by a county or development or redevelopment authority may not occur unless it is determined that:

(A) The property use is compatible with adjacent land uses;

(B) The use satisfies the relevant county or development or redevelopment authority's anticipated need and market use;

(C) The property has in place necessary infrastructure components needed to achieve the anticipated use;

(D) The use is supported by all other appropriate public agencies;

(E) The property is eligible for bond release in accordance with §22-3-23 of this code; and

(F) The use is feasible.

Required infrastructure component standards require approval of the relevant county commission, commissions, or other county governing body before such standards are accepted. County commission or other county governing body approval may be rendered only after a reasonable public comment period.

(5) The provisions of this subsection shall not take effect until legislative rules are promulgated pursuant to this code governing bond releases which assure sound future maintenance by the local or regional economic development, redevelopment, or planning agencies.

WV Legislature

§5B-2A-10. Action report; annual update.

[Repealed]

WV Legislature

§5B-2A-11. Land acquisitions.

The office shall establish a procedure to assist property owners who desire voluntarily to sell their property to the operator or any person, firm or corporation directly or indirectly affiliated with the operator. The procedure developed shall be subject to the following:

(1) The procedure only shall apply if all the following conditions are met:

(A) The operator or any person, firm or corporation directly or indirectly affiliated with the operator, makes an offer in writing to purchase the property stating all the terms and conditions of the proposed purchase;

(B) The property to be purchased is located within one thousand feet of property which actually is or will be mined; and

(C) The structures are actually being used for commercial purposes or are occupied residences situate on the property to be purchased;

(2) Once a permit application has been filed, the operator shall notify the office of any intended property acquisitions to which this section applies;

(3) The office shall cause notice to be given to potential sellers of the procedure established by this section, but shall provide no other assistance unless requested by the potential seller;

(4) If requested by the potential seller, the office shall make a determination as to whether the value of the property intended to be acquired is diminished by ongoing or intended mining operations and that the purchase price offered by the purchaser is less than the value the property would have had prior to any diminution of value. The office only shall provide assistance if it determines that the value of such property is diminished and that the offer made by the operator is less than the value the property would have had prior to any diminution of value; and

(5) If the office determines that the value of such property is diminished and that the offer made by the operator is less than the value the property would have had prior to any diminution of value, then the office shall establish the value of such property prior to any diminution and shall certify the same to the parties.

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§5B-2A-12. Rulemaking.

The office shall propose rules for legislative approval in accordance with §29A-3-1 *et seq*. of this code to establish, implement and enforce the provisions of this article, which rules shall include, but not be limited to:

(1) The development of standards for establishing the value of property by the office; and

(2) Criteria for the development of a master plan by local, county, regional or redevelopment authorities which coordinates the permitting and reclamation requirements of the Department of Environmental Protection with these authorities.

WV Legislature

§5B-2A-13.

Repealed.

Acts, 2010 Reg. Sess., Ch. 32.

WV Legislature

§5B-2A-14. Sunset

[Repealed.]

WV Legislature

§5B-2B-1. Short title.

This article shall be known and may be cited as the West Virginia Workforce Innovation and Opportunity Act.

WV Legislature

§5B-2B-2. Definitions.

As used in this article, the following terms have the following meanings, unless the context clearly indicates otherwise:

"Board" means the West Virginia Workforce Development Board.

"Commission" or "Legislative Oversight Commission" means the Legislative Oversight Commission on Workforce Investment for Economic Development.

"Local area" means a local workforce investment area.

"Local board" means a local workforce development board.

"Team" means the workforce investment interagency collaborative team.

"WIOA" means the Workforce Innovation and Opportunity Act, 29 U. S. C. §3101, *et seq*.

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§5B-2B-3. West Virginia Workforce Development Board; membership of board; meetings; quorum requirements.

(a) The West Virginia Workforce Development Board is hereby created and shall serve as the state's Workforce Development Board, as required by the WIOA. The board shall make general recommendations regarding workforce investment in the state to the Governor and the Legislature.

(b) The membership of the board shall meet the requirements of WIOA §101(b) and represent diverse geographic areas of the state, including urban, rural and suburban areas. The board membership includes:

(1) The Governor, or his or her designated representative; and

(2) The President of the Senate, or his or her designee, and the Speaker of the House of Delegates, or his or her designee, both of whom shall be nonvoting members of the board; and

(3) Members appointed by the Governor, with the advice and consent of the Senate, which shall include:

(A) Representatives of businesses or organizations, who shall comprise a majority of the board membership, who:

(i) Are the owner or chief executive officer for the business or organization, or is an executive with the business or organization with optimum policy-making or hiring authority, and may also be members of a local board as described in WIOA §107(b)(2)(A)(i);

(ii) Represent businesses, or organizations that represent businesses described in paragraph (A), subdivision (3), subsection (b) of this section, that, at a minimum, provide employment and training opportunities that include high-quality, work-relevant training and development in in-demand industry sectors or occupations in the state;

(iii) Are appointed from a list of potential members proposed by state business organization and business trade associations; and

(iv) At a minimum, one member representing small businesses as defined by the U. S. Small Business Administration.

(B) Not less than twenty percent of the board shall be representatives of the workforce within the state, which:

(i) Shall include two or more representatives of labor organizations appointed from a list proposed by state labor federations;

(ii) Shall include one representative who shall be a member of a labor organization or

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training director from a joint labor-management apprenticeship program, or, if no such joint program exists in the state, a member of a labor organization or training director who is a representative of an apprenticeship program;

(iii) May include one or more representatives of community-based organizations that have demonstrated experience and expertise in addressing the employment, training or education needs of individuals with barriers to employment, including organizations that serve veterans or provide or support competitive, integrated employment for individuals with disabilities; and

(iv) May include one or more representative of organizations that have demonstrated experience and expertise in addressing the employment, training or education needs of eligible youth, including representative of organizations that serve out-of-school youth.

(C) The balance of the members:

(i) Shall include representatives of government including:

(I) The lead state officials with primary responsibility for each of the core programs. Where the lead official represents more than one core program, that official shall ensure adequate representation of the needs of all core programs under his or her jurisdiction; and

(II) Two or more chief elected officials, collectively representing both cities and counties, where appropriate.

(ii) May include other appropriate representatives and officials designated by the Governor, such as, but not limited to, state agency officials responsible for one-stop partner programs, economic development or juvenile justice programs in the state, individuals who represent an Indian tribe or tribal organization as defined in WIOA §166(b), and state agency officials responsible for education programs in the state, including chief executive officers of community colleges and other institutions of higher education.

(c) The Governor shall select a chairperson for the board from the business representatives on the board described in paragraph (A), subdivision (3), subsection (b) of this section.

(d) Initial terms for appointed members of the board are for up to three years as determined by the Governor. All subsequent terms shall be for three years.

(e) Members who represent organizations, agencies or other entities described in paragraphs (B) and (C), subdivision (3), subsection (b) of this section shall be individuals who have optimum policy-making authority in the organizations they represent.

(f)(1) A board member may not represent more than one of the categories described in:

(A) Paragraph (A), subdivision (3), subsection (b) of this section;

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(B) Paragraph (B), subdivision (3), subsection (b) of this section; or

(C) Paragraph (C), subdivision (3), subsection (b) of this section.

(2) A board member may not serve as a representative of more than one subcategory under paragraph (B), subdivision (3), subsection (b) of this section.

(3) A board member may not serve as a representative of more than one subcategory under paragraph (C), subdivision (3), subsection (b) of this section: Provided, That where a single government agency is responsible for multiple required programs, the head of the agency may represent each of the required programs.

(g) All required board members, other than the ex officio members of the Legislature, shall have voting privileges. The Governor may also convey voting privileges to nonrequired members.

WV Legislature

§5B-2B-4. Duties of the Workforce Development Board.

(a) The board shall provide information and guidance to local boards and staff, to enable them to better educate both women and men about higher paying jobs and careers including jobs traditionally dominated by men or women. Such guidance shall promote services provided by the local boards for job seekers that include:

(1) Current information about compensation for jobs and careers that offer high earning potential including jobs that are traditionally dominated by men or women;

(2) Counseling, skills development, and training opportunities that encourage both women and men to seek employment in such jobs;

(3) Referral information to employers offering such jobs; or

(4) Information regarding the long-term consequences, including lower Social Security benefits or pensions, of choosing jobs that offer lower earnings potential and are traditionally dominated by women or men.

(b) Under WIOA §101(d), the board shall assist the Governor in the:

(1) Development, implementation, and modification of the four-year state plan;

(2) Review of statewide policies, programs, and recommendations on actions that should be taken by the state to align workforce development programs to support a comprehensive and streamlined workforce development system. Such review of policies, programs, and recommendations shall include a review and provision of comments on the state plans, if any, for programs and activities of one-stop partners that are not core programs;

(3) Development and continuous improvement of the workforce development system, including:

(A) Identification of barriers and means for removing barriers to better coordinate, align, and avoid duplication among programs and activities;

(B) Development of strategies to support career pathways for the purpose of providing individuals, including low-skilled adults, youth, and individuals with barriers to employment, including individuals with disabilities, with workforce investment activities, education, and supportive services to enter or retain employment;

(C) Development of strategies to provide effective outreach to, and improved access for, individuals and employers who could benefit from workforce development system;

(D) Development and expansion of strategies to meet the needs of employers, workers, and jobseekers, particularly through industry or sector partnerships related to in-demand industry sectors and occupations;

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(E) Identification of regions, including planning regions for the purpose of WIOA §106(a), and the designation of local areas under WIOA §106 after consultation with local boards and chief elected officials;

(F) Development and continuous improvement of the one-stop delivery system in local areas, including providing assistance to local boards, one-stop operators, one-stop partners, and providers. Such assistance includes assistance with planning and delivering services, including training and supportive services, to support effective delivery of services to workers, jobseekers, and employers; and

(G) Development of strategies to support staff training and awareness across the workforce development system and its programs;

(4) Development and updating of comprehensive state performance and accountability measures to access core program effectiveness under WIOA §116(b);

(5) Identification and dissemination of information on best practices, including best practices for:

(A) The effective operation of one-stop centers, relating to the use of business outreach, partnerships and service delivery strategies, including strategies for serving individuals with barriers to employment;

(B) The development of effective local boards, which may include information on factors that contribute to enabling local boards to exceed negotiated local levels of performance, sustain fiscal integrity, and achieve other measures of effectiveness; and

(C) Effective training programs that response to real-time labor market analysis, that effectively use direct assessment and prior learning assessment to measure an individual's prior knowledge, skills, competencies and experiences for adaptability, to support efficient placement into employment or career pathways;

(6) Development and review of statewide policies affecting the coordinated provision of services through the state's one-stop delivery system described in WIOA §121(e), including the development of:

(A) Objective criteria and procedures for use by local boards in assessing the effectiveness, physical and programmatic accessibility and continuous improvement of one-stop centers. Where a local board serves as the one-stop operator, the board shall use such criteria to assess and certify the one-stop center;

(B) Guidance for the allocation of one-stop center infrastructure funds under WIOA §121(h); and

(C) Policies relating to the appropriate roles and contributions of entities carrying out one-stop partner programs within the one-stop delivery system, including approaches to

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facilitating equitable and efficient cost allocation in the system;

(7) Development of strategies for technological improvements to facilitate access to, and improve the quality of services and activities provided through, the one-stop delivery system, including such improvements to:

(A) Enhance digital literacy skills (as defined in §202 of the Museum and Library Service Act, 20 U. S. C. §9101);

(B) Accelerate acquisition of skills and recognized post-secondary credentials by participants;

(C) Strengthen professional development of providers and workforce professionals; and

(D) Ensure technology is accessible to individuals with disabilities and individuals residing in remote areas;

(8) Development of strategies for aligning technology and data systems across one-stop partner programs to enhance service delivery and improve efficiencies in reporting on performance accountability measures, including design implementation of common intake, data collection, case management information, and performance accountability measurement and reporting processes and the incorporation of local input into such design and implementation to improve coordination of services across one-stop partner programs;

(9) Development of allocation formulas for the distribution of funds for employment and training activities for adults and youth workforce investment activities, to local areas as permitted under WIOA §128(b)(3) and §133(b)(3);

(10) Preparation of the annual reports described in paragraphs (1) and (2) of WIOA §116(d);

(11) Development of the statewide workforce and labor market information system described in §15(e) of the Wagner-Peyser Act, 29 U. S. C. §49, *et seq.*;

(12) Development of other policies as may promote statewide objectives for and enhance the performance of the workforce development system in the state; and

(13) Determination of the eligibility of short-term workforce training programs for Workforce Pell Grants pursuant to §5B-12-1 *et seq*. of this code.

WV Legislature

§5B-2B-4a. Report to Legislature.

[Repealed.]

WV Legislature

§5B-2B-4b. Open meetings; public information.

(a) The board shall conduct business in an open manner as required by WIOA §101(g).

(b) The board shall make available to the public, on a regular basis through electronic means and open meetings, information about the activities and functions of the board including:

(1) The state plan, or modification to the state plan, prior to submission of the plan or modification of the plan;

(2) Information regarding membership; and

(3) Minutes of formal meetings of the board upon request.

WV Legislature

§5B-2B-5. State agencies.

On or before November 1, any state agency that receives federal or state funding that has been used for workforce investment activities for the past fiscal year shall provide to the board a report, detailing the source and amount of federal, state or other funds received; the purposes for which the funds were provided; the services provided in each regional workforce investment area; the measures used to evaluate program performance, including current and baseline performance data; and any other information requested by the board. All reports submitted pursuant to this section are to be in a form approved by the board.

WV Legislature

§5B-2B-6. Administration of board.

(a) Workforce West Virginia shall provide administrative and other services to the board as the board requires.

(b) Workforce West Virginia shall facilitate the coordination of board activities and local workforce investment activities, including holding meetings with the executive directors of each local board at least monthly. Any executive director of a local board who participates in a meeting held pursuant to this subsection shall report to his or her local board and the county commission of each county represented by the local board regarding the meeting.

WV Legislature

§5B-2B-7. Legislative oversight commission on workforce investment for economic development.

[Repealed.]

WV Legislature

§5B-2B-8. Powers and duties of the commission.

(a) The commission shall make a continued investigation, study and review of the practices, policies and procedures of the workforce investment strategies and programs implemented in the state.

(b) The commission has the authority to conduct or cause to be conducted performance audits upon local workforce investment boards.

(c) For purposes of carrying out its duties, the commission is hereby empowered and authorized to examine witnesses and to subpoena persons, books, records, documents, papers or any other tangible things it believes should be examined to make a complete investigation. All witnesses appearing before the commission shall testify under oath or affirmation, and any member of the commission may administer oaths or affirmations to witnesses. To compel the attendance of witnesses at hearings or the production of any books, records, documents, papers or any other tangible things, the commission is hereby empowered and authorized to issue subpoenas, signed by one of the chairpersons, in accordance with section five, article one, chapter four of this code. Subpoenas are to be served by any person authorized by law to serve and execute legal process and service is to be made without charge. Witnesses subpoenaed to attend hearings are to be allowed the same mileage and per diem as are allowed witnesses before any petit jury in this state. If any person subpoenaed to appear at any hearing refuses to appear or to answer inquiries there propounded, or fails or refuses to produce books, records, documents, papers or other tangible things within his or her control when they are demanded, the commission shall report the facts to the circuit court of Kanawha County or any other court of competent jurisdiction and the court may compel obedience to the subpoena as though the subpoena had been issued by the court in the first instance.

WV Legislature

§5B-2B-9. Coordination between agencies providing workforce investment programs, local workforce investment boards and the Executive Director of Workforce West Virginia.

(a) To provide ongoing attention to addressing issues that will build and continually improve the overall workforce investment system, the Workforce Investment Interagency Collaborative Team is hereby created. The team shall be the single state interagency source for addressing issues or concerns related to building and maintaining the most effective and efficient implementation of WIOA and the overall workforce development system in West Virginia. The team shall focus on how best to collaborate between and among the state agencies directly involved in workforce investment activities and shall develop a strategic plan to that end. The team shall serve as a forum for the board to seek information or recommendations in furtherance of its responsibilities under this article. Workforce West Virginia is the entity which shall convene the team at least monthly and shall provide administrative and other services to the team as the team requires.

(b) The team shall consist of members from each agency subject to the reporting provisions of section five of this article. Each agency shall appoint two representatives to the team consisting of the chief official of the department or division and the official within that department or division who is directly responsible for overseeing the workforce investment program or activities at the state level. A designee may be selected to represent a member appointed to the team: Provided, That the designee has policy-making decision authority regarding workforce investment activities including program and fiscal issues. The team members have authority to make decisions on behalf of the agency at the level required for the team to address issues and advance system improvements.

(c) The team shall coordinate the development of a self-sufficiency standard study for the State of West Virginia. The self-sufficiency standard is to measure how much income is needed for a household of a given composition in a given place to adequately meet its basic needs without public or private assistance. Beginning on November 1, 2004, and every two years thereafter, this study is to be reported to the Speaker of the House of Delegates, the President of the Senate, the board and the Legislative Oversight Commission on Workforce Investment for Economic Development.

(d) Beginning January 1, 2003, in order to lawfully continue any workforce investment activities, any agency subject to the reporting provisions of section five of this article shall enter into a memorandum of understanding with the Executive Director of Workforce West Virginia and any local board representing an area of this state in which the agency is engaged in workforce investment activities. To the extent permitted by federal law, the agreements are to maximize coordination of workforce investment activities and eliminate duplication of services on both state and local levels.

(e) No memorandum of understanding may be effective for more than one year without annual reaffirmation by the parties.

WV Legislature

(f) Any state agency entering a memorandum of understanding shall deliver a copy thereof to both the board and the Legislative Oversight Commission.

WV Legislature

§5B-2C-1. Legislative purpose.

(a) The Legislature hereby finds that educational and economic development require an integrated program of support for research and development, assistance in the transfer of technological innovations and discoveries to public and private enterprises and facilitation of the commercialization of intellectual property. To that end, the state recognizes the need for:

(1) Informed analysis of the status of science and technology research, development and commercialization capabilities, infrastructure and activities within West Virginia and the development of innovative options that build upon and expand them with the goal of increasing the gross state product;

(2) Coordination of efforts to attract private and federal assistance for research, development and commercialization in those fields most likely to maximize the gross state product;

(3) Increased collaboration between all of the federal, state and private research and development and technology commercialization organizations in the state;

(4) Strengthening the leadership and support of the West Virginia experimental program to stimulate competitive research; and

(5) Leadership in science and technology policy.

(b) The Legislature therefore declares that creation of a West Virginia academy of science and technology will promote and foster the educational and economic development of the state.

WV Legislature

§5B-2C-2. West Virginia academy of science and technology; composition; creation of council, appointment and terms; expenses; selection of chairperson; quorum; meetings.

(a) There is hereby created, within the West Virginia Development Office, a West Virginia academy of science and technology. The academy consists of a standing council of nine members and such ad hoc working groups as may be necessary to review a particular field of study. A working group may include both members of the council and also such individuals having expertise within their profession or discipline who can be appointed fellows of the academy.

(b) Members of the academy council shall be selected for their demonstrated ability in innovative thinking, management skills, broad technical knowledge and a record of working to improve the science and technology base of the state. The objective of the process of selection shall be to create a council that, in its composition, represents a broad cross-section of those involved throughout the state's science and technology enterprises. Members of the council shall be selected and appointed as follows:

(1) The Governor shall appoint to the council, with the advice and consent of the Senate, three members experienced with, or serving in, federal agencies that promote and utilize research, development and commercialization, from a list of six persons recommended by a nominating committee. The nominating committee will be organized and lead by a representative from the national energy technology laboratory and may consist of representatives of United States government agencies, including, but not limited to, the federal departments of energy, transportation, agriculture, defense and homeland security, the national science foundation and the national aeronautics and space administration;

(2) The Governor shall appoint to the council, with the advice and consent of the Senate, three members with experience and expertise in private enterprise, research and development and commercialization from a list of six persons recommended by a nominating committee. The nominating committee will be organized and lead by a representative from the council for community and economic development and may consist of representatives from labor and industry, including, but not limited to, the economic development authority, the infrastructure council, the West Virginia high technology consortium and the West Virginia American federation of labor - congress of industrial organizations; and

(3) The Governor shall appoint to the council, with the advice and consent of the Senate, three members with experience and expertise in stimulating competitive research and development from a list of six persons recommended by a nominating committee. The nominating committee shall be organized and lead by a representative of the Higher Education Policy Commission and may consist of representatives from the state institutions of higher education.

(c) The terms of the council members taking office on or after the effective date of this legislation shall expire as designated by the Governor at the time of their appointment, with

WV Legislature

one term in each of the three categories in subsection (b) of this section expiring at the end of the second year, one term in each category expiring at the end of the fourth year and one term in each category expiring at the end of the sixth year. As the original appointments expire, each subsequent appointment will be for a full six-year term. Any member whose term has expired may serve until a successor has been duly appointed and qualified. For any vacancy in the office of a member occurring prior to the expiration of that term, the vacancy may be filled by the Governor from a list of three qualified persons recommended by the remaining members of the council. Any person appointed to fill a vacancy shall serve for only the unexpired term unless reappointed by the Governor for an additional term. Any member may be appointed to successive terms not to exceed two full terms.

(d) Members of the council are not entitled to compensation for service on the council but may be reimbursed by the West Virginia Development Office for all reasonable and necessary expenses actually incurred in the performance of their duties in a manner consistent with guidelines of the travel management office of the Department of Administration or its successor.

(e) The Governor will select and appoint a member of the council to serve as chairperson for a term of two years to run concurrently with the term of office of the member designated as chair.

(f) A majority of members constitutes a quorum for the purpose of conducting business.

(g) The council shall meet at least once each quarter of the year and shall conduct all meetings in accordance with the open governmental meetings proceedings act pursuant to article nine-a, chapter six of this code.

WV Legislature

§5B-2C-3. Executive director; powers and duties; compensation; expenses.

(a) The Governor is authorized and directed to request and negotiate the loan of a federal executive employee, pursuant to the provisions of the federal intergovernmental personnel act, to serve as the initial executive director of the council. This person is expected to serve as executive director of the academy for a period of not less than one year. He or she must have training and experience in science, technology research, development and commercialization and demonstrable skills in managing new programs. The executive director shall serve at the will and pleasure of the academy council and is not entitled to compensation but may be reimbursed by the West Virginia Development Office for all reasonable and necessary expenses actually incurred in the performance of his or her duties in a manner consistent with guidelines of the travel management office of the Department of Administration or its successor.

(b) Subsequent executive directors may be selected by the council in consultation with the director of the West Virginia Development Office.

(c) In addition to assisting the council and its working groups in the exercise of their duties, the executive director shall:

(1) Facilitate and oversee the process for the initial nomination and appointment of council members;

(2) Provide and obtain scientific, technical, economic, programmatic information and market research to support the work of the academy;

(3) Foster and maintain relationships between agencies of this state, other states, the federal government, educational institutions, nonprofit organizations and private enterprises for the advancement of research, development and commercialization;

(4) Organize, prepare and lead presentations on science, technology research and development and commercialization for business executives, state legislative leaders and committees, and federal agencies; and

(5) Develop yearly work plans for the academy.

(d) The executive director will be available to the Governor, the Speaker of the House of Delegates and the President of the Senate to analyze and comment upon proposed legislation and rules that relate to or materially affect state scientific, technical and commercialization issues.

WV Legislature

§5B-2C-4. Powers and duties of the council of the academy of science and technology.

(a) The council may seek and accept public and private research grants and contracts, matching funds and procurement arrangements from the state and federal government, private industry and other agencies, in furtherance of and consistent with its mission and programs: Provided, That members of the council may not violate the West Virginia ethics act, pursuant to the provisions of chapter six-b of this code.

(b) The council may, through the West Virginia Development Office, receive and accept gifts or grants from private foundations, corporations, individuals, devises and bequests or from other lawful sources. All moneys collected shall be deposited in a special account in the state Treasury to be known as the "West Virginia academy of science and technology fund". Expenditures from the fund shall be made by the West Virginia Development Office on the request of the council for the purposes set forth in this article and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon fulfillment of the provisions of article two, chapter five-a of this code: Provided, That for the fiscal year ending June 30, 2004, expenditures are authorized from collections rather than pursuant to appropriation by the Legislature.

(c) The council may select and appoint fellows of the council pursuant to the provision of section five of this article.

(d) The council may make recommendations to the Governor, the Speaker of the House of Delegates, the President of the Senate and the joint commission on economic development concerning strategic and specific policies to foster research and development within this state.

(e) The council may recommend legislation to facilitate improved coordination between state agencies, educational institutions, industries and research laboratories.

(f) The council may develop and produce written or electronic information to assist researchers in educational institutions or private enterprise in identifying, applying for and obtaining grants, stipends or other financial support for research, development, technology transfer or commercialization of intellectual property.

(g) The council may convene public meetings to gather information or receive public comments regarding the administration and coordination of research and development efforts within this state.

(h) The council may, through the West Virginia Development Office, enter into contracts or joint venture agreements with federal and state agencies, corporations, partnerships and other organizations that conduct research, make grants, improve educational programs and work for the scientific, educational or economic development of this state. The director of

WV Legislature

the West Virginia Development Office and the council must, by majority vote, approve all contracts and joint venture agreements.

(i) The council may enter into contractual agreements for consideration with entities that are funded from sources other than the state: Provided, That members of the council may not violate the West Virginia ethics act pursuant to the provisions of chapter six-b of this code.

(j) Members of the academy may be appointed to serve on boards of directors of any contracting private nonprofit corporation, foundation or firm: Provided, That members of the council may not violate the West Virginia ethics act pursuant to the provisions of chapter six-b of this code.

WV Legislature

§5B-2C-5. Fellows of the academy of science and technology.

(a) In order to address the specific opportunities and needs of any particular field of science and technology, the council may establish working groups composed of a member or members of the council with expertise in that field or discipline and additional individuals, to be known as fellows of the academy of science and technology. Any working group so created may conduct business, research and meetings by telephone, electronic mail or in person and shall not require a quorum to conduct its business. The committee or working group shall submit a report or reports of its findings and recommendations to the council for incorporation in policy recommendations and the annual report of the academy.

(b) Selection of a fellow of the academy will be made on the basis of the designated individual's experience and expertise in the field to be addressed by the working group and must be by a majority vote of the council. The term of a fellow of the academy is one year and a term may be renewed by the council as needed.

WV Legislature

§5B-2C-6. Periodic reports.

(a) The academy will prepare and produce an annual report on the state of science and technology in West Virginia and submit it to the Governor, the Speaker of the House of Delegates, the President of the Senate and the joint commission on economic development or before July 1, of each year. The report shall address all aspects of research, development and commercialization that the academy council deems material, including, but not limited to:

(1) Strengths, weaknesses, opportunities, and threats to West Virginia's research, development, and commercialization environment and establishments;

(2) Options for actions by the Legislature and the Governor to maximize the ability of the state to attract investment, grants, and infrastructure development to support growth of science and technology research, development, and commercialization in the state;

(3) The status of, and options to improve, scientific and technological entrepreneurship in West Virginia; and

(4) The status of, and options to improve, the collaboration of institutions of higher education in obtaining competitive research awards and grants.

(b) In preparing its annual report, the council may utilize the technical support available to it through the West Virginia Development Office, the West Virginia Experimental Program to Stimulate Competitive Research (EPSCoR), the West Virginia higher education system, federal and state agencies, and other entities that have an interest in fostering science and technology research, development, and commercialization in this state.

(c) Each month, an academy representative shall meet with legislative and executive leaders to provide updates and information concerning opportunities, issues and progress of science, technology, and commercialization in the state.

WV Legislature

§5B-2C-7. Confidentiality of contributed material.

Any documentary material, data or other writing made or received by the West Virginia academy of science and technology for the purpose of developing state summaries or policy options concerning the capabilities, performance or plans of individual businesses or organizations is deemed to be confidential trade secrets which are exempt from disclosure under the provisions of section four, article one, chapter twenty-nine-b of this code, and the provisions of section one, article two of this chapter.

WV Legislature

§5B-2C-8.

Repealed.

Acts, 2010 Reg. Sess., Ch. 32.

WV Legislature

§5B-2D-1. Short title.

This article shall be known and may be cited as the “West Virginia Guaranteed Work Force Program.”

WV Legislature

§5B-2D-2. Definitions.

As used in this article, the following words and terms have the following meanings unless the context indicates another or different meaning or intent:

(1) "WVDO" means the West Virginia Development Office;

(2) "Employer" means an individual, partnership, corporation, or other legal entity that employs or plans to employ skilled workers;

(3) "Retraining and job upgrade" means the specialized training that is given to an identified level of employees to enable them to advance to a higher level of employment;

(4) "Program" means the West Virginia Guaranteed Work Force Program established pursuant to section three of this article;

(5) "Training" means custom-designed training given to employees or prospective employees of new or expanding businesses and industries within the state;

(6) "Training provider" means any persons, public or private educational institutions, agencies, companies or other entities that may be utilized for training or consultative services for an employer.

WV Legislature

§5B-2D-3. Training program.

The West Virginia Development Office shall develop a business and industrial training program, the purpose of which is to provide assistance for new or expanding businesses for the training, retraining or upgrading of the skills of potential employees. The program shall emphasize employee training specifically designed to accommodate the needs of individual employers. The program shall encourage the expansion of existing businesses and industries within the state, promote retention of businesses and industries within the state, promote retention of existing jobs within the state, prevent economic and industrial out-migration, and assist in the relocation of out-of-state businesses and industries in the state. Under this program, the West Virginia Development Office may pay up to one hundred percent or $2,000 per employee, whichever is less, of training costs of new employees in firms creating at least ten jobs in a one-year period. Training assistance may also be provided to existing businesses in cases in which training, retraining or upgrading services will result in the retention of existing jobs or the creation of additional jobs, or both: Provided, That the West Virginia Development Office may pay up to one hundred percent or $10,000 per employee, whichever is less, for the training, retraining or upgrading. Training costs associated with this program will be paid directly by the training provider.

Provision of training services will depend upon the employer meeting program requirements as set forth by the West Virginia Development Office and this article. The state of West Virginia guarantees if employer satisfaction is not achieved, the West Virginia Development Office will carefully review the effectiveness of the recently completed training plan and program with the employer and the training provider. After such review, if the West Virginia Development Office determines that the training program was inadequate to meet the employer's specifications and satisfaction as originally agreed to, then those employees so trained shall be eligible for retraining under the guarantee provision except when the training program curriculum or provider were selected solely at the discretion of the employer, then no such additional training shall be considered or approved: Provided, That in no instance may the cost of training and retraining an employee exceed $4,000.

WV Legislature

§5B-2D-4. Funds.

The funds made available by this section shall supplement but not displace funds available through existing programs conducted by employers themselves and public programs such as the Workforce Investment Act (WIA), the Carl D. Perkins Vocational Education Act, the Stewart B. McKinney Homeless Assistance Act, and the JOBS Act, or apportionment fund allocated to the community colleges, regional occupational centers and programs, or other local educational agencies. In addition, it is further the intention of the Legislature that the program established pursuant to this section shall not replace, parallel, supplant, compete with, or duplicate in any way existing, approved apprenticeship programs.

The fund shall consist of all moneys provided by the Legislature and also any contributions, grants or bequests received from federal, private or other sources. Appropriations made from the funds shall be for the purpose of providing contractual services through the West Virginia Development Office for vocational related training or retraining provided by public or private training institutions within West Virginia and for contracted services through the West Virginia Development Office for vocational related training, retraining or upgrading provided by public or private training institutions located outside of West Virginia and for vocational related training or retraining provided on site, within West Virginia by any training provider as defined in this article.

WV Legislature

§5B-2D-5. Program activities.

The primary concern in the provision of training services shall be the needs and types of services identified by the employer. A college or university, community college or area vocational education center shall be given initial consideration to provide any training, retraining, or job upgrade training. The employer will have the opportunity to participate in the selection of a training provider and training program curriculum. Training services may begin upon execution of a written agreement between the West Virginia Development Office and the employer.

Program activities may include, but not be limited to, the following:

(a) The performance of a job skills analysis and the designing of a training curriculum for an employer.

(b) The recruitment and referral of trainee applicants to an employer.

(c) The provision of off site preemployment training to prospective employees of a new or expanding business or industry or to existing employees for purposes of retraining or upgrading: Provided, That on site preemployment training may be provided if off site preemployment training is not practical.

(d) Retraining of employees in response to a technological change.

(e) The provision of job upgrade training, if the training will retain or increase the employer's total work force.

(f) Contracting with persons, public or private educational institutions, agencies or other bodies for training or consultative services for an employer.

(g) The provision of materials and supplies used in the training process, instructors with specialized skills, instructional training aids and equipment, consultative services relative to highly specific or technical data and other services.

(h) Assisting a foreign employer locating or expanding in this state by familiarizing the employer's foreign personnel with the work attitudes, work methods, expectations, customs and life style of employees who work within this state.

(i) Taking any other action that is considered to be necessary or desirable for the furtherance of the provisions of this article.

Funds may not be awarded or reimbursed to any business or industry for the training, retraining or upgrading of skills of potential employees with the purpose of replacing or supplanting employees engaged in an authorized work stoppage.

WV Legislature

§5B-2D-6. Reporting.

(a) The office shall file a report with the Legislature, the Legislative Oversight commission on workforce investment for economic development and the Governor at the end of each fiscal year, commencing June 30, 1990. This report shall include the following:

(1) The number of persons trained and their demographics;

(2) The number of persons placed in employment;

(3) The number of employers for which persons have been trained and placed;

(4) The number of persons trained and placed for each employer;

(5) The types of work for which persons have been trained;

(6) The source of training fund; and

(7) The overall effectiveness of this article in contributing to economic stabilization and business and industrial growth within this state.

(b) In addition, the West Virginia Development Office shall report on a quarterly basis to the West Virginia workforce investment council and the Legislative Oversight commission on workforce investment for economic development the following as they relate to the training program established by this article:

(1) The names of all companies approved for training during the reporting quarter;

(2) The names of all companies receiving funding for training during the reporting quarter;

(3) The amount and source of funds utilized for each training program;

(4) The type of training being delivered;

(5) The number of employees trained; and

(6) Those agencies providing the training.

WV Legislature

§5B-2D-7. Marketing.

The West Virginia Development Office shall market and promote the program.

WV Legislature

§5B-2D-8. Summer youth intern pilot program.

A summer youth intern pilot program is established within the Department of Commerce to provide high school students with internship opportunities that allow these youths to explore and prepare for high-demand careers, gain work experience, and develop the life characteristics necessary for success in occupations and entrepreneurship. The Department of Commerce shall work with employers, nonprofit organizations, and educational institutions to provide for the placement of youth in internships primarily in high-demand career fields with a prioritization of offering equitable opportunities for all students. Subject to an appropriation by the Legislature for this purpose, the Department of Commerce may award grants to assist employers with costs of the summer youth intern pilot projects on a competitive basis subject to the following:

(1) The Department of Commerce shall annually issue a request for proposals to the public, specifying the expectations, requirements, and qualifications for the summer youth intern pilot program grant, including, but not limited to, the provision of facilities, programming, staffing, and outcomes; and

(2) The Department of Commerce shall give full and fair consideration to each proposal submitted under subdivision (1) of this subsection and shall award grants after considering, at a minimum, the following:

(A) The bidder’s history and experience in the community;

(B) The capacity to serve a substantial number of youths;

(C) The suitability of the available facilities;

(D) The bidder’s contacts and partnerships in the community that can be leveraged to maximize opportunity for project participants; and

(E) The capacity to provide employability skills, including but not limited to training relating to soft skills, financial literacy, and career development.

WV Legislature

§5B-2E-1. West Virginia Tourism Development Act.

This article shall be referred to as the "West Virginia Tourism Development Act."

WV Legislature

§5B-2E-2. Legislative findings.

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 of tourism development projects in the state and that it is in the best interest of the state to induce the creation of new, or the expansion of existing, tourism development projects within the state in order to advance the public purposes of relieving unemployment by preserving and creating jobs and by preserving and creating new and greater sources of revenues for the support of public services provided by the state; and that the inducement for the creation or expansion of tourism development projects should be in the form of a tax credit to be applied to consumers sales and service taxes collected on the gross receipts generated directly from the operations of the new or expanded tourism development projects, in lieu of tax credits on income that are largely deferred for a number of years after start up of a major tourism development project; and all of which new or expanded tourism developments are of paramount importance to the state and its economy and for the state's contribution to the national economy.

WV Legislature

§5B-2E-3. Definitions.

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

(1) "Agreement" means a tourism development agreement entered into, pursuant to section six of this article, between the department and an approved company with respect to a project.

(2) "Approved company" means any eligible company approved by the department pursuant to section five of this article seeking to undertake a project.

(3) "Approved costs" means:

(a) Included costs:

(i) Obligations incurred for labor and to vendors, contractors, subcontractors, builders, 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 acquisition, construction, e quipping and installation of a project, 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 in a manner that allows the approved company 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 any portion of the cost required to be paid for the acquisition, construction, equipping or installation of a portion of

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a project that is financed with state grants or for which the eligible taxpayer elects to qualify for other state tax credits, including, but not limited to, those provided by article thirteen-q, chapter eleven of this code. The exclusion of certain costs of a project under this paragraph (b) does not disqualify the remainder of the costs of the project.

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

(5) “Department” means the West Virginia Department of Economic Development as provided in article two of this chapter.

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

(7) "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 project, whether owned or leased, within the state that meets the standards required by the department. An eligible company may operate or intend to operate directly or indirectly through a lessee or management company.

(8) "Ineligible company" means any West Virginia pari-mutuel racing facility licensed to operate multiple video lottery machines as authorized by article twenty-two-a, chapter twenty-nine of this code or any limited lottery retailer holding a valid license issued under article seven, chapter sixty of this code.

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

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

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

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

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

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

(A) Lodging facility, unless:

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

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

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

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

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

(15) "Tourism development project" means the acquisition, including the acquisition of real estate by a leasehold interest with a minimum term of ten years; the design, construction,

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and equipping of a tourism attraction; the construction and installation of improvements to facilities necessary or desirable for the acquisition, construction, installation of a tourism attraction, including, but not limited to, surveys, installation of utilities, which may include water, sewer, sewage treatment, gas, electricity, communications and similar facilities; 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 in a manner that allows the approved company to attract persons.

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

(17) "Tourism development project tax credit" means the tourism development project tax credit allowed by section seven of this article.

(18) "Tourism development expansion project tax credit" means the tourism development expansion project tax credit allowed by section seven-a of this article.

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§5B-2E-4. Additional powers and duties of the development office.

The development office has the following powers and duties, in addition to those set forth in this case, necessary to carry out the purposes of this article including, but not limited to:

(1) Make approval of all applications for projects and enter into agreements pertaining to projects with approved companies;

(2) Employ fiscal consultants, attorneys, appraisers and other agents as the executive director of the development office finds necessary or convenient for the preparation and administration of agreements and documents necessary or incidental to any project; and

(3) Impose and collect fees and charges in connection with any transaction.

(4) Impose and collect from the applicant a non-refundable application fee in the amount of $10,000 to be paid to the Development Office when the application is filed.

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

(a) Each eligible company that seeks to qualify a project for the tourism development project tax credit provided by section seven of this article, or for the tourism development expansion project tax credit provided by section seven-a of this article, as applicable, must file a written application for approval of the project with the department.

(b) With respect to each eligible company making an application to the department for a tourism development project tax credit or a tourism development expansion project tax credit, the department shall make inquiries and request documentation, including a completed application, from the applicant that shall include: A description and location of the project; capital and other anticipated expenditures for the project and the sources of funding therefor; the anticipated employment and wages to be paid at the project; business plans that indicate the average number of days in a year in which the project will be in operation and open to the public; and the anticipated revenues and expenses generated by the project.

(c) On and after the effective date of this section as amended in 2023, the Secretary of the Department, within sixty days following receipt of an application or receipt of any additional information requested by the Department respecting the application, whichever is later, shall act to grant or not to grant approval of the application, based on the following criteria, all subjective criteria is subject to the sole discretion of the Department:

(1) The project will attract at least twenty-five percent of its visitors from outside of this state;

(2) The project will have approved costs in excess of $1,000,000;

(3) The project will have a significant and positive economic impact on the state considering, among other factors, the extent to which the project will compete directly with or complement existing tourism attractions in the state and the amount by which increased tax revenues from the project will exceed the credit given to the approved company;

(4) The project is expected to produce sufficient revenues and public demand to be operating and open to the public for a minimum of one hundred days per year, not accounting for any unforeseen weather or other force majeure events;

(5) The project will provide additional employment opportunities in the state;

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

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

(8) Whether the project will, directly or indirectly, improve the opportunities in the area

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where the project will be located for the successful establishment or expansion of other industrial or commercial businesses;

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

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

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

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

(13) The ability of the eligible company to carry out the project.

(d) The department may establish other criteria for consideration when approving the applications.

(e) The decision by the Secretary of the Department is final.

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§5B-2E-6. Agreement between department and approved company.

The department, upon final approval of an application by the Secretary, may enter into an agreement with any approved company with respect to its project. The terms and provisions of each agreement shall include, but not be limited to:

(1) The estimated amount of approved costs of the project that qualify for a sales tax credit, as provided in section seven or section seven-a of this article, as applicable. Within six months of the actual completion date, which, for purposes of this section, means the date on which the project is completed and opened to the public, the approved company shall document the actual cost of the project through a certification of the costs to the department by an independent certified public accountant acceptable to the department; and

(2) A date certain by which the approved company reasonably expects the project to be completed and to be opened to the public: *Provided*, That such date may be updated and amended as necessary, with the written approval of the department upon a submission by the approved company outlining the reason for amendment, and, if approved, the completion and opening of the project either prior to or after the initial proposed date shall not impact the qualification of the approved company for the tax credit as provided in §5B-2E-7 or §5B-2E-7a of this code.

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§5B-2E-7. Amount of credit allowed for tourism development project; approved projects.

(a) Approved companies are allowed a credit against the West Virginia consumers sales and service tax imposed by §11-15-1 *et seq*., of this code and collected by the approved company on sales generated by or arising from the operations of the tourism development project: *Provided*, That if the consumers sales and service tax collected by the approved company is not solely attributable to sales resulting from the operation of the new tourism development project, the credit shall only be applied against that portion of the consumers sales and service tax collected in excess of the base tax revenue amount. The amount of this credit is determined and applied as provided in this article.

(b) The maximum amount of credit allowable in this article is equal to twenty-five percent of the approved company's approved costs as provided in the agreement: *Provided*, That, if the tourism development project site is located within the permit area or an adjacent area of a surface mining operation, as these terms are defined in §22-3-3 of this code, from which all coal has been or will be extracted prior to the commencement of the tourism development project; or the tourism development project site is a structure that is listed individually in the national register of historic places or is located in a national register historic district and certified by the state historic preservation officer as contributing to the historic significance of the district; or the tourism development project site is located on or within five miles of recreational property owned or leased by the state or federal government and when the project is located on property owned or leased by the state or federal government, the project has received prior approval from the appropriate state or federal agency, the maximum amount of credit allowable is equal to thirty-five percent of the approved company's approved costs as provided in the agreement.

(c) The amount of credit allowable may be taken over a 10-year period, at the rate of one 10th of the amount thereof per taxable year, beginning with the taxable year in which the project is opened to the public, unless the approved company elects to delay the beginning of the 10-year period until the next succeeding taxable year. This election may be made in the first consumers sales and service tax return filed by the approved company following the date the project is opened to the public. Once made, the election cannot be revoked. If any credit remains after application of this initial ten-year period, the approved company may request an additional 15 year credit application period from the department. If any unused credit remains after the 25th year, the amount thereof is forfeited. No carryback to a prior taxable year is allowed for the amount of any unused portion of any annual credit allowance.

(d) The amount determined under subsection (b) of this section is allowed as a credit against the consumers sales and service tax collected by the approved company on sales from the operation of the tourism development project. The amount determined under said subsection may be used as a credit against taxes required to be remitted on the approved company's monthly consumers sales and service tax returns that are filed pursuant to section sixteen, article fifteen, chapter eleven of this code. The approved company shall claim the credit by reducing the amount of consumers sales and service tax required to be remitted with its

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monthly consumers sales and service tax returns by the amount of its aggregate annual credit allowance until such time as the full current year annual credit allowance has been claimed. Once the total credit claimed for the tax year equals the approved company's aggregate annual credit allowance no further reductions to its monthly consumers sales and service tax returns will be permitted.

(e) Notwithstanding any other provision of this code, an approved company may elect not to utilize the tax credit awarded in this article for any reason whatsoever, including, but not limited to, utilizing other tax credits permitted in this code, after the project is completed and placed in use but prior to making an election pursuant to subsection (c) of this section. Any decision not to utilize the tax credit for an approved company in this article may not impact the approved company's eligibility under this article or affect its designation as a Tourism Development District.

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§5B-2E-7a. Amount of credit allowed for tourism development expansion project; approved projects.

(a) Approved companies are allowed a credit against the West Virginia consumers sales and service tax imposed by article fifteen, chapter eleven of this code and collected by the approved company on sales generated by or arising from the operations of the tourism development expansion project: *Provided*, That the tourism development expansion project tax credit allowed under this section is separate and distinct from any credit allowed for a tourism development project in accordance with the provisions of section seven of this article: *Provided*, however, That if the consumers sales and service tax collected by the approved company is not solely attributable to sales resulting from the operation of the tourism development expansion project, the credit shall only be applied against that portion of the consumers sales and service tax collected in excess of the base tax revenue amount. The amount of this credit is determined and applied as provided in this article.

(b) The maximum amount of credit allowable in this article is equal to twenty-five percent of the approved company's approved costs as provided in the agreement: *Provided*, That, if the tourism development expansion project site is located within the permit area or an adjacent area of a surface mining operation, as these terms are defined in section three, article three, chapter twenty-two of this code, from which all coal has been or will be extracted prior to the commencement of the tourism development project; or the tourism development expansion project site is a structure that is listed individually in the national register of historic places or is located in a national register historic district and certified by the state historic preservation officer as contributing to the historic significance of the district; or the tourism development project site is located on or with 5 miles of a recreational property owned or leased by the state or federal government and when the project is located on property owned or leased by the state or federal government, the project has received prior approval from the appropriate state or federal agency, the maximum amount of credit allowable is equal to thirty-five percent of the approved company's approved costs as provided in the agreement.

(c) The amount of credit allowable may be taken over a 10-year period, at the rate of one 10th of the amount thereof per taxable year, beginning with the taxable year in which the project is opened to the public, unless the approved company elects to delay the beginning of the 10-year period until the next succeeding taxable year. This election may be made in the first consumers sales and service tax return filed by the approved company following the date the project is opened to the public. Once made, the election cannot be revoked. If any credit remains after application of this initial 10-year period, the approved company may request an additional 15 year credit application period from the Department. If any unused credit remains after the 25th year, the amount thereof is forfeited. No carryback to a prior taxable year is allowed for the amount of any unused portion of any annual credit allowance.

(d) The amount determined under subsection (b) of this section is allowed as a credit against the consumers sales and service tax collected by the approved company on sales from the operation of the tourism development expansion project. The amount determined under said

subsection may be used as a credit against taxes required to be remitted on the approved company's monthly consumers sales and service tax returns that are filed pursuant to section sixteen, article fifteen, chapter eleven of this code. The approved company shall claim the credit by reducing the amount of consumers sales and service tax required to be remitted with its monthly consumers sales and service tax returns by the amount of its aggregate annual credit allowance until such time as the full current year annual credit allowance has been claimed. Once the total credit claimed for the tax year equals the approved company's aggregate annual credit allowance no further reductions to its monthly consumers sales and service tax returns will be permitted.

(e) Notwithstanding any other provision of this code, an approved company may elect not to utilize the tax credit awarded in this article for any reason whatsoever, including, but not limited to, utilizing other tax credits permitted in this code, after the project is completed and placed in use but prior to making an election pursuant to subsection (c) of this section. Any decision not to utilize the tax credit for an approved company in this article may not impact the approved company's eligibility under this article or affect its designation as a Tourism Development District.

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§5B-2E-7b. Credit against taxes.

(a) General. – When a qualified professional services destination facility is located at or adjacent to an existing historic resort hotel with at least five hundred rooms and the qualified professional services destination facility eligible for credit under this section is primarily engaged in furnishing services that are not subject to the tax imposed by article fifteen, chapter eleven of this code, then in lieu of the credits that otherwise would be allowable under section seven or seven-a of this article, the eligible company that complies with the requirements of this section may claim the credit provided in this section: Provided, That the maximum amount of credit allowable under this section is equal to twenty-five percent of the eligible company's qualified investment, as defined in this section.

(b) Definitions. – The following words and phrases when used in this section have the meanings given to them in this subsection unless the context in which used clearly indicates that a different meaning was intended by the Legislature.

(1) “Agreement” means an agreement entered into under subsection (g) of this section.

(2) “Compensation” means wages, salaries, commissions and any other form of remuneration paid to employees for personal services.

(3) “Cost-of-living adjustment” for any calendar year is the percentage, if any, by which the consumer price index for the preceding calendar year exceeds the consumer price index for the calendar year 2015.

(4) “Consumer price index” for any calendar year means the average of the federal consumer price index as of the close of the twelve-month period ending on August 31 of that calendar year.

(5) “Eligible company” for purposes of this section means any corporation, limited liability company, partnership, limited liability partnership, sole proprietorship, business trust, joint venture or any other entity operating a qualified professional services destination facility, whether owned or leased, within the state that: (A) creates at least one hundred twenty-five new jobs in this state within thirty-six months after the date the qualified investment is placed into service or use, and maintains those jobs for the entire ten year life of the tax credit specified in this section, (B) makes available to its full-time employees health insurance coverage and pays at least fifty percent of the premium for the health insurance, (C) generates, within thirty-six months after the date the qualified investment is placed into service or use, not less than $10 million of gross receipts upon which the taxes imposed under article twenty-seven, chapter eleven of this code are paid, and (D) meets the standards, limitations and requirements of this section and of the development office. An eligible company may operate or intend to operate directly or indirectly through a lessee or a contract operator.

(6) “Federal consumer price index” means the most recent consumer price index as of

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August 31 each year for all urban consumers published by the United States Department of Labor.

(7) “Health insurance benefits” means employer-provided coverage for medical expenses of the employee or the employee and his or her family under a group accident or health plan, or employer contributions to an Archer medical savings account, as defined in Section 220 of the Internal Revenue Code of 1986, as amended, or to a health savings account, as defined in Section 223 of the Internal Revenue Code, of the employee when the employer's contribution to any such account is not less than fifty percent of the maximum amount permitted for the year as employer-provided coverage under Section 220 or 223 of the Internal Revenue Code, whichever section is applicable.

(8) “Historic resort hotel” means a resort hotel registered with the United States Department of the Interior on the effective date of this amendment as a national historic landmark in its National Registry of Historic Places having not fewer than five hundred guest rooms.

(9) “New employee” means a person residing and domiciled in this state hired by the taxpayer to fill a position or a job in this state which previously did not exist in the taxpayer's business enterprise in this state prior to the date the application was filed under subsection (c) of this section. In no event may the number of new employees exceed the total net increase in the employer's employment in this state: Provided, That the Tax Commissioner may require that the net increase in the taxpayer's employment in this state be determined and certified for the taxpayer's controlled group as defined in article twenty-four of this chapter. In addition, a person is a “new employee” only if the person's duties are on a regular, full-time and permanent basis:

(A) “Full-time employment” means employment for at least eighty hours per month at a wage not less than the amount specified in subdivision (1), subsection (d) of this section; and

(B) “Permanent employment” does not include employment that is temporary or seasonal and therefore the wages, salaries and other compensation paid to the temporary or seasonal employees will not be considered for purposes of this section even if the compensation paid to the temporary or seasonal employee equals or exceeds the amount specified in paragraph (A) of this subdivision.

(10) “New job” means a job which did not exist in the business of the taxpayer in this state prior to filing the application for benefits under this section, and which is filled by a new employee.

(11) “Professional services” means only those services provided directly by: a physician licensed to practice in this State, a surgeon licensed to practice in this State, a dentist licensed to practice in this State, a podiatrist licensed to practice in this State, an osteopathic physician licensed to practice in this State, a psychologist licensed to practice in this State, an optometrist licensed to practice in this State, a registered nurse licensed to

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practice in this State, a physician assistant licensed to practice in this State, a licensed practical nurse licensed to practice in this State, a dental hygienist licensed to practice in this State, a social worker licensed to practice in this State, or any other health care professional licensed to practice in this State;

(12) "Qualified investment" means one-hundred percent of the cost of property purchased or leased for the construction and equipping of a qualified professional services destination facility which is placed in service or use in this State by an eligible company.

(A) The cost of property purchased for a qualified professional services destination facility is determined under the following rules:

(i) Cost does not include the value of property given in trade or exchange for the property purchased for business expansion.

(ii) If property is damaged or destroyed by fire, flood, storm or other casualty, or is stolen, then the cost of replacement property does not include any insurance proceeds received in compensation for the loss.

(iii) The cost of real property acquired by written lease for a primary term of ten years or longer is one hundred percent of the rent reserved for the primary term of the lease, not to exceed ten years.

(iv) The cost of tangible personal property acquired by written lease for a primary term of not less than four years.

(v) In the case of self-constructed property, the cost thereof is the amount properly charged to the capital account for depreciation in accordance with federal income tax law.

(vi) The cost of property used by the taxpayer out-of-state and then brought into this State, is determined based on the remaining useful life of the property at the time it is placed in service or use in this State, and the cost is the original cost of the property to the taxpayer less straight line depreciation allowable for the tax years or portions thereof the taxpayer used the property outside this State. In the case of leased tangible personal property, cost is based on the period remaining in the primary term of the lease after the property is brought into this State for use in a new or expanded business facility of the taxpayer, and is the rent reserved for the remaining period of the primary term of the lease, not to exceed ten years, or the remaining useful life of the property, determined as aforesaid, whichever is less.

(c) Credit against taxes. – The credit allowed by this section shall be equal to twenty-five percent of the eligible company's qualified investment in the qualified professional services destination facility and shall be taken and applied as provided in this subsection (c). Notwithstanding any other provision of this article to the contrary, no taxpayer or group of taxpayers may gain entitlement to more than $37.5 million total aggregate tax credit under this section and no taxpayer, or group of taxpayers, in the aggregate may apply more than

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$2.5 million of annual credit in any tax year under this section, either in the form of a refund or directly against a tax liability or in any combination thereof. This limitation applies to initial tax credit attributable to qualified investment in a qualified professional services destination facility, and to qualified investment in a follow-up project expansion, so that credit attributable additively and in the aggregate to both may not be applied to exceed $2.5 million annual credit in any tax year.

(1) Application of credit. – The amount of credit allowable under this subsection shall be taken over a ten-year period, at the rate of one tenth of the amount thereof per taxable year, beginning with the taxable year in which the eligible company places the qualified professional services destination facility, or part thereof, in service or use in this state, unless the eligible company elected to delay the beginning of the ten-year period until the next succeeding taxable year. This election shall be made in the annual income tax return filed under chapter eleven of this code for the taxable year in which the qualified professional services destination facility is first placed into service or use by the taxpayer. Once made, the election may not be revoked. The annual credit allowance is taken in the manner prescribed in subdivision (3) of this subsection (c): Provided, That if any credit remains after the initial ten year credit application period, the amount of remaining credit is carried forward to each ensuing tax year until used or until the expiration of the fifth taxable year subsequent to the end of the initial ten year credit application period. If any unused credit remains after expiration of the fifth taxable year subsequent to the end of the initial ten year credit application period, the amount thereof is forfeited. No carryback to a prior taxable year is allowed for the amount of any unused portion of any annual credit allowance.

(2) Placed in service or use. – For purposes of the credit allowed by this subsection (c), qualified investment or qualified investment property is considered placed in service or use in the earlier of the following taxable years:

(A) The taxable year in which, under the eligible company's depreciation practice, the period for depreciation with respect to the property begins; or

(B) The taxable year in which the property is placed in a condition or state of readiness and availability for a specifically assigned function.

(3) Application of annual credit allowance.

(A) In general.- The aggregate annual credit allowance for the current taxable year is an amount equal to the one-tenth part allowed under subdivision (1) of this subsection for qualified investment placed into service or use.

(B) Application of current year annual credit allowance. – The amount determined under this subsection (c) is allowed as a credit against one hundred percent of the eligible company's state tax liabilities applied as provided in paragraphs (C) and (D) of this subdivision (3), and in that order:

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(C) Corporation net income taxes. - The amount of allowable tax credit for the year determined under paragraph (A) of this subdivision (3) shall first be applied to reduce the taxes imposed by article twenty-four, chapter eleven of this code, for the taxable year determined before application of allowable credits against tax.

(D) Personal income taxes. –

(i) If the eligible company is an electing small business corporation, as defined in section 1361 of the United States Internal Revenue Code of 1986, as amended, a partnership, a limited liability company that is treated as a partnership for federal income tax purposes or a sole proprietorship, then any unused credit after application of paragraph (C) of this subdivision (3) is allowed as a credit against the taxes imposed by article twenty-one, chapter eleven of this code on the members, owners, partners or interest holders in the eligible company.

(ii) Electing small business corporations, limited liability companies, partnerships and other unincorporated organizations shall allocate the credit allowed by this article among their members in the same manner as profits and losses are allocated for the taxable year.

(E) No credit is allowed under this subdivision (3) against any employer withholding taxes imposed by article twenty-one, chapter eleven of this code.

(F) The tax credits allowed under articles thirteen-j, thirteen-q, thirteen-s, thirteen-r, thirteen-w, and thirteen-aa of this code may not be applied to offset any tax against which the tax credit allowed under this article is allowed or authorized. No person, entity, company, or eligible company authorized or entitled to any tax credit allowed under this section or any member of the unitary group or any member of the controlled group of which the taxpayer is a member, may gain entitlement to any other economic development tax credit or economic development tax incentive which relates to the investment or activity upon which the credit authorized under this section is based.

(G) (i) In order to effectuate the purposes of this subdivision (3), the Tax Commissioner may propose for promulgation rules, including emergency rules, in accordance with article three, chapter twenty-nine-a of this code.

(ii) The Tax Commissioner may apply any amount of the tax credit otherwise available to a Taxpayer under this article, to pay any delinquent West Virginia state tax liability of the taxpayer, and interest and penalties as applicable.

(iii) Any amount of the tax credit otherwise available to a taxpayer under this article may be applied by the applicable administering agency to pay any outstanding obligation to a Workers' Compensation Fund, as defined in article two-c of chapter twenty-three of this code, or any outstanding obligation under the West Virginia Unemployment Compensation Act.

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(iv) Any amount of the tax credit otherwise available to a taxpayer under this article, may be applied by the applicable administering agency to pay any delinquent or unpaid assessment, fee, fine, civil penalty or monetary imposition imposed by the West Virginia Division of Environmental Protection or the United States Environmental Protection Agency, or any agency charged with enforcing federal, state or local environmental or hazardous waste regulations.

(H) Unused credit, refundable credit. – If any annual credit remains after application of preceding paragraphs of this subdivision (3), the amount thereof shall be refunded annually to the eligible company, and distributed in accordance with the credit distribution specified in this subdivision (3): Provided, That the amount thereof may not exceed the limitation on annual tax credit or the limitation on total aggregate tax credit specified in this section.

(I) Forfeiture of credit. - If any credit remains after expiration of the fifth taxable year subsequent to the end of the initial ten year credit application period, such credit is forfeited, and may not be used to offset any West Virginia tax liability.

(d) Compensation of employees filling new jobs.

(1) The new jobs and new employee criteria which count toward qualification of a taxpayer as an eligible company for purposes of the tax credit allowed by this section shall be subject to the following limitations and requirements. A job counts toward qualification of a taxpayer as an eligible company if the job is a new job, as defined in this section, held by a new employee, as defined in this section, and the new job:

(A) Pays a median wage of at least $37,000 annually. Beginning January 1, 2015, and on January 1 of each year thereafter, the Tax Commissioner shall prescribe an amount that shall apply in lieu of the $37,000 amount for new jobs filled during that calendar year. This amount is prescribed by increasing the $37,000 figure by the cost-of-living adjustment for that calendar year. If any increase under this subdivision is not a multiple of $50, the increase shall be rounded to the next lowest multiple of $50;

(B) Provides health insurance. The employer may, in addition, offer benefits including child care, retirement and other benefits; and

(C) Is a full-time, permanent position, as those terms are defined in this section.

(D) Jobs that pay less than the statewide average nonfarm payroll wage, as determined annually by the West Virginia Bureau of Employment Programs, or that pay that salary, but do not also provide health benefits in addition to the salary, do not count toward qualification of a taxpayer as an eligible company under this section. Jobs that are less than full-time, permanent positions do not count toward qualification of a taxpayer as an eligible company under this section.

(E) The employer having obtained qualification as an eligible company under this section for

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the year in which the new job is filled is not required to raise wages of the employees currently employed in the new jobs upon which the initial qualification as an eligible company under this section was based by reason of the cost-of-living adjustment for new jobs filled in subsequent years provided the employer continues to provide healthcare.

(e) Application and review.

(1) Application. - An eligible company that meets the requirements of this section may apply to the Development Office for entitlement to the tax credit authorized under this section. The application shall be on a form prescribed by the Development Office and shall include all of the following:

(A) The name and address of the applicant;

(B) Documentation that the applicant is a eligible company;

(C) Documentation that the applicant meets the requirements of this section;

(D) Documentation that the applicant does not owe any delinquent taxes or any other amounts to the federal government, this state or any political subdivision of this state;

(E) An affidavit that the applicant has not filed for or publicly announced its intention to file for bankruptcy protection and that the company will not seek bankruptcy protection within the next six calendar months following the date of the application;

(F) A waiver of confidentiality under section five-d, article ten, chapter eleven of this code for information provided in the application; and

(G) Any other information required by the Development Office.

(f) Credit allowable.

(1) Certified multiple year projects.

(A) In general. - A multiple year qualified professional services destination facility project certified by the West Virginia Development Office is eligible for the credit allowable by this article. A project eligible for certification under this section is one where the qualified investment under this article creates at least the required minimum number of new jobs but the qualified investment is placed in service or use over a period of up to three successive tax years: Provided, That the qualified investment is made pursuant to a written business facility development plan of the taxpayer providing for an integrated project for investment at one or more new or expanded business facilities, a copy of which must be attached to the taxpayer's application for project certification and approved by the West Virginia Development Office, and the qualified investment placed in service or use during the first tax year would not have been made without the expectation of making the qualified investment placed in service or use during the next two succeeding tax years.

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(B) Application for certification. - The application for certification of a project under this section shall be filed with and approved by the West Virginia Development Office prior to any credit being claimed or allowed for the project's qualified investment and new jobs created as a direct result of the qualified investment. This application shall be approved in writing and contain the information as the West Virginia Development Office may require to determine whether the project should be certified as eligible for credit under this article.

(C) Review. - Within thirty days of receipt of a complete application, the Development Office, in conjunction with the Tax Division of the Department of Revenue, shall review the application and determine if the applicant is an eligible company and that the requirements of this section have been met. Applications not approved within the thirty days specified in this subdivision are hereby deemed denied.

(D) Approval. - The Development Office may approve or deny the application. Upon approval of an application, the Development Office shall notify the applicant in writing and enter into an agreement with the eligible company for benefits under this section.

(2) Certified follow-up project expansions.

(A) An eligible company that intends to undertake a follow-up project expansion, may apply to the West Virginia Development Office for certification of a single, one-time, follow-up project expansion, and entitlement to an additional tax credit under this section in an amount which is the lesser of twenty-five percent of qualified investment in the follow-up project expansion or $12.5 million. No taxpayer, or group of taxpayers, in the aggregate may apply more than $2.5 million of annual credit in any tax year under this section, either in the form of a refund or directly against a tax liability or in any combination thereof. This limitation applies to initial tax credit attributable to qualified investment in a qualified professional services destination facility, and to qualified investment in a follow-up project expansion, so that credit attributable additively and in the aggregate to both may not be applied to exceed $2.5 million annual credit in any tax year.

(B) The requirements, limitations and qualifications applicable to qualified professional services destination facility projects under this section apply to follow-up project expansions, except for those requirements, limitations and qualifications expressly specified in this subdivision (2).

(C) Requirements for certification of a follow-up project expansion are as follows:

(i) The eligible company, pursuant to certification and authorization for entitlement to tax credit under subsection (1) of this section (f), has placed qualified investment of not less than $80 million into service in a qualified professional services destination facility within an initial period of not more than three tax years;

(ii) The eligible company intends to place additional qualified investment in service or use in the previously certified qualified professional services destination facility project, or an

expansion or extension thereof. In no case shall a follow-up project expansion be certified if the follow-up project expansion property is not contiguous to, or within not more than one mile of, the initial qualified professional services destination facility;

(iii) The eligible company proposes to place the qualified investment in the follow-up project expansion in service or use in the fourth tax year subsequent to the tax year in which qualified investment was first placed into service or use in the initial qualified professional services destination facility project, or under a multiple year project certification, in the fourth, fifth and sixth tax year subsequent to the tax year in which qualified investment was first placed into service or use in the initial qualified professional services destination facility project;

(iv) The follow-up project expansion must create and maintain at least twenty-five net new jobs held by new employees, in addition to the new jobs created by the initial qualified professional services destination facility project. The loss of any West Virginia job at the eligible company will be subtracted from the count of new jobs attributable to the follow-up project expansion;

(v) The West Virginia Development Office shall not issue more than one certification for any follow-up project expansion; and

(vi) The West Virginia Development Office shall not issue certification of a follow-up project expansion unless the applicant provides convincing evidence to show that the follow-up project expansion will result in jobs creation specified in this subdivision, that such jobs will remain and be maintained in West Virginia for at least ten years subsequent to the placement of qualified investment into service or use in the follow-up project expansion, that the follow-up project expansion will not operate to the detriment of other West Virginia businesses or to the detriment of the economy, public welfare or moral character of West Virginia or its people.

(g) Agreement.

(1) The agreement between the eligible company and the Development Office shall be entered into before any benefits may be provided under this section.

(2) The agreement shall do all of the following:

(A) Specify the terms and conditions the eligible company must comply with in order to receive benefits under this section, other than those terms, limitations and conditions specified and mandated by statute or regulation; and

(B) Require the Development Office to certify all of the following to the Tax Division of the Department of Revenue each taxable year an agreement under this section is in effect:

(i) That the eligible company is eligible to receive benefits under this section;

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(ii) The number of new jobs created by the company during each taxable year;

(iii) The amount of gross wages, as determined for purposes of Form W2, as filed with the Internal Revenue Service, being paid to each individual employed in a new job;

(iv) The amount of an eligible company's qualified investment;

(v) The maximum amount of credit allowable to the eligible company under this section; and

(vi) Any other information deemed necessary by the Development Office.

(h) Filing and contents.

(1) Filing. – On or before the due date of the income tax return for each tax year in which the agreement is in effect, an eligible company shall file with the Tax Division of the Department of Revenue a form prescribed by the Tax Commissioner.

(2) Contents. - The form specified under subdivision (1) of this subsection (h) shall request the following information:

(A) The name and Employer Identification Number of the eligible company;

(B) The effective date of the agreement;

(C) The reporting period end date;

(D) Information relating to each individual employed in a new job as required by the Tax Commissioner;

(E) Aggregate gross receipts for the tax period and gross receipts on which tax has been paid under article twenty-seven, chapter eleven of this code for the tax period; and

(F) Any other information required by the Tax Commissioner.

(3) Taking of credit. - The taxpayer, participant or participants claiming the credit for qualified investments in a certified project shall annually file with their income tax returns filed under chapter eleven of this code:

(A) Certification that the taxpayer's or participant's qualified investment property continues to be used in the project and if disposed of during the tax year, was not disposed of prior to expiration of its useful life;

(B) Certification that the new jobs created by the project's qualified investment continue to exist and are filled by persons who are residents of this State; and

(C) Any other information the Tax Commissioner requires to determine continuing eligibility to claim the annual credit allowance for the project's qualified investment.

WV Legislature

(4) Confidentiality.- The contents of the completed form shall be subject to the confidentiality rules set forth in section five-d, article ten, chapter eleven of this code: Provided, That notwithstanding the provisions of section five-d, article ten, chapter eleven of this code, or any other provision of this code, tax returns, tax return information and such other information as may be necessary to administer the tax credits and programs authorized and specified by this article and in this section may be exchanged between the Tax Commissioner and the West Virginia Development Office without restriction.

WV Legislature

§5B-2E-8. Forfeiture of unused tax credits; credit recapture; recapture tax imposed; information required to be submitted annually to development office; transfer of tax credits to successors.

(a) The approved company or eligible company shall forfeit the tourism development project tax credit allowed by section seven of this article, or the tourism development expansion tax credit allowed by section seven-a of this article, or the tax credit allowed by section seven-b of this article, as applicable, with respect to any calendar year and shall pay the recapture tax imposed by subsection (b) of this section, if:

(1) In any year following the first calendar year the project is open to the public, the project fails to attract at least twenty-five percent of its visitors from among persons who are not residents of the state;

(2) In any year following the first year the project is open to the public, the project is not operating and open to the public for at least one hundred days; or

(3) The approved company or eligible company, as of the beginning of each calendar year, has an outstanding obligation under the West Virginia state tax and revenue laws; or

(4) Any company, approved company or eligible company, to which entitlement to the tax credit authorized under section seven-b of this article has been previously established, fails to meet the requirements specified in section seven-b for an eligible company and for a qualified professional services destination facility, including, but not limited to, jobs maintenance, employee wage and employee health benefits, aggregate gross receipts, and gross receipts subject to the tax imposed under article twenty-seven, chapter eleven of this code.

(5) Any company, approved company or eligible company, to which entitlement to the tax credit authorized under section seven-b of this article has been previously established:

(A) Is delinquent in payment of any assessment, fee, fine, civil penalty or monetary imposition imposed by the West Virginia Division of Environmental Protection or the United States Environmental Protection Agency, or any agency charged with enforcing federal, state or local environmental or hazardous waste regulations.

(B) Is delinquent in compliance with any order, injunction, compliance agreement, agreed order, court order, mandamus or other enforcement or compliance instrumentality of the West Virginia Division of Environmental Protection or United States Environmental Protection Agency or any agency charged with enforcing federal, state or local environmental or hazardous waste regulations.

(C) Is out of compliance or not compliant with any citation or order issued by the West Virginia Division of Environmental Protection or the United States Environmental Protection Agency, or any agency charged with enforcing federal, state or local environmental or

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hazardous waste regulations, requiring that a condition be abated or corrected.

(b) In addition to the loss of credit allowed under this article for the calendar year, a credit recapture tax is hereby imposed on any approved company or successor eligible company that forfeits the tourism development project tax credit or the tourism development expansion project credit or the credit authorized under section seven-b of this article, under the provisions of subsection (a) of this section. The credit recapture tax shall apply and the approved company, and successor eligible companies, and any other person or entity that has received the tax credit allowed under this article shall be liable for an amount of recapture tax equal to all previously claimed tourism development project tax credit or tourism development expansion project credit, or the tax credits authorized under section seven-b of this article, and allowed by this article, as applicable, plus interest and penalties applicable in accordance with the Tax Procedure and Administration Act. The recapture tax shall be calculated and paid pursuant to the filing, with the Tax Commissioner of an amended return, and such other forms, schedules and documents as the Tax Commissioner may require, for the prior calendar year, or calendar years, for which credit recapture is required, along with interest, as provided in section seventeen, article ten, chapter eleven of this code: Provided, That the approved company, eligible company, person or entity who previously claimed the tourism development project tax credit, or the tourism development expansion project credit, or the tax credits allowed by section seven-b of this article, as applicable, under this article and successor eligible companies, persons or entities are jointly and severally liable for payment of any recapture tax subsequently imposed under this section. For purposes of this recapture tax, the statute of limitations otherwise applicable under the Tax Procedure and Administration Act shall not begin to run until the eighteenth year subsequent to the earlier of: the year when qualified investment is first placed into service or use, or the year when the application for the tax credit authorized under this article was filed with the West Virginia Development Office.

(c) Within forty-five days after the end of each calendar year during the term of the agreement, the approved company shall supply the development office with all reports and certifications the development office requires demonstrating to the satisfaction of the development office that the approved company is in compliance with applicable provisions of law. Based upon a review of these materials and other documents that are available, the development office shall then certify to the Tax Commissioner that the approved company is in compliance with this section.

(d) The tax credit allowed in this article is transferable, subject to the written consent of the development office, to an eligible successor company that continues to operate the approved project.

WV Legislature

§5B-2E-9. Promulgation of rules.

The executive director of the Development Office may promulgate rules to implement the project application approval process and to describe the criteria and procedures it has established in connection therewith. These rules are not subject to the provisions of chapter twenty-nine-a of this code but shall be filed with the Secretary of State.

WV Legislature

§5B-2E-10. Legislative review.

The Development Office shall report annually to the Joint Commission on Economic Development by December 1 of each year on the number of applications received from eligible companies as provided in this article, the identity of each eligible company, whether the eligible company is seeking the tourism development project credit or the tourism development expansion project credit, or both, a description of the tourism development projects to which the credit may be applied, the status of each application, the number of projects approved, the status of each project, whether the projects are certified multiple year projects, the amount of credit allowed, and the amount of consumers sales and service tax generated by each project.

WV Legislature

§5B-2E-11. Termination.

The Division of Economic Development may not accept any new project application after December 31, 2030, and all applications submitted prior to January 1, 2031, that have not been previously approved or not approved, shall be deemed not approved and shall be null and void as of January 1, 2031.

WV Legislature

§5B-2F-1. Short title.

This article shall be known and cited as the Comprehensive Energy Policy and Development Plan Act of 2026.

WV Legislature

§5B-2F-1a. Definitions.

For purposes of this article:

(1) "Director" means the Director of the West Virginia Office of Energy.

(2) "Office" means the West Virginia Office of Energy.

(3) "Pipeline" or "pipelines" means any actual lines of pipe for the transmission and distribution of natural gas together with all appurtenances, facilities, structures, equipment, machinery and other items related to the transmission and distribution of gas through lines of pipe.

WV Legislature

§5B-2F-2. Purpose; Office of Energy; Development of Comprehensive Energy Policy.

(a) West Virginia and the nation are in need of energy that is reliable, efficient, affordable and locally produced. To meet this need, the Office of Energy shall develop a long-lasting energy solution that embraces all forms of energy including, without limitation, coal, natural gas, nuclear energy, hydropower, hydrogen, and geothermal energy, by developing a comprehensive energy policy that emphasizes:

(1) Increased reliability from stable baseload generation;

(2) Increased efficiency through innovation;

(3) Low-cost energy as the bedrock of economic development; and

(4) Energy independence and security through increased domestic production.

(b) The Office of Energy shall develop an energy policy and shall report the same back to the Governor and the Joint Committee on Government and Finance before December 1, 2026. The energy policy shall set forth the state's energy policies through at least 2050 and shall provide a direction for the private sector. The Office may amend this policy at any time to reflect changes in energy opportunities. Prior to the expiration of the energy policy, the Office of Energy shall begin review of the policy and submit a revised energy policy to the Governor and the Joint Committee on Government and Finance six months before the expiration of the policy.

(c) The Comprehensive Energy Policy developed by the Office of Energy and submitted to the Governor and the Joint Committee on Government and Finance shall provide recommendations that at a minimum:

(1) Prioritize baseload generation over intermittent generation;

(2) Allow the state's existing coal-fired power plants to remain fully operational through at least 2050;

(3) Develop a strategy for developing baseload electricity generating projects throughout the state, including, but not limited to, coal, natural gas, nuclear, hydropower, and hydrogen, geothermal;

(4) Set a goal of;

(A) Increasing the state's current baseload generating capacity from 16 gigawatts to at least 50 gigawatts by 2050; and

(B) Making West Virginia the leading per-capita generator, situs of commercial and industrial users, and exporter of electricity in the nation by 2050;

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(5) Expand the international market for West Virginia coal and develop economical uses for West Virginia coal in addition to its use in electricity generation and steel manufacturing;

(6) Create a robust in-state market for natural gas through increased manufacturing and electricity generation;

(7) Address the need for sufficient electricity transmission lines and natural gas pipelines to support the increase in baseload electricity generation; and

(8) Suggest the placement of natural gas pipelines and electricity transmission lines in locations throughout the state that lack sufficient access to electricity or natural gas and in locations where access to increased supplies of electricity or natural gas will spur manufacturing or other economic development.

WV Legislature

§5B-2F-2a. Comprehensive Energy Plan

(a) The Office of Energy shall prepare and submit a five-year energy development plan to the Governor and the Joint Committee on Government and Finance on or before December 1 of 2026 and every five years thereafter. The development plan shall identify how the office anticipates implementing the state's energy policy during the subsequent five-year period, as well as the policies enacted and actions taken in the previous five-year period in furtherance of said policy. The development plan shall provide direction for the private sector and shall include any recommended legislation. The Department of Environmental Protection and the Public Service Commission, in addition to their other duties prescribed by this code, shall assist the office in the development of an energy policy and related development plans. The energy development plan shall recognize the powers of the office as to development and financing of projects under its jurisdiction and shall make such recommendations as are reasonable and practicable for the exercise of such powers.

(b) The energy policy and development plans required by §5B-2F-1 and §5B-2F-2 of this code shall further identify and report on the energy infrastructure in this state and include without limitation energy infrastructure related to protecting the state's essential data, information systems and critical government services in times of emergency, inoperativeness or disaster. In consultation with the Secretary of the Department of Homeland Security and the Director of the Division of Emergency Management, the office shall encourage the development of energy infrastructure and strategic resources that will ensure the continuity of governmental operations in situations of emergency, inoperativeness or disaster.

(c) In preparing or revising the energy policy and development plan, the office may rely upon internal staff reports or the advice of outside advisors or consultants and may procure such services with the consent of the Secretary of Commerce. The Office of Energy may also involve national, state and local government leadership and energy experts.

(d) Any documentary material, data or other writing made or received by the Office of Energy or other public body for the purposes of preparing the energy policy and development plan is exempt from the Freedom of Information Act under § 29B-1-1 *et seq*. of this code.

WV Legislature

§5B-2F-3. Stakeholder Meetings.

The office may hold regular scheduled meetings with stakeholders including from various industries, policy groups, energy developers, utility companies, mineral owners, and private citizens to receive public input on its energy policies and development plans.

WV Legislature

§5B-2F-4. Rulemaking.

The office may propose rules for legislative approval in accordance with §29A-3-1 et seq. of this code as needed to implement an energy policy and development plan in accordance with the provisions of this chapter.

WV Legislature

§5B-2F-5. Disclosure of energy usage.

[Repealed]

WV Legislature

§5B-2G-1. Short title.

This article shall be known as the Voluntary Rural and Outdoor Heritage Conservation Act.

WV Legislature

§5B-2G-2. Legislative findings and purpose.

Legislative findings and purpose:

(a) The Legislature hereby finds and declares that:

(1) The State of West Virginia's rural character, natural wonders, scenic beauty and recreational opportunities combine to create an exceptional quality of life for its citizens;

(2) West Virginia's landscapes serve as an economic engine supporting vibrant forest products, agricultural, hunting and fishing and tourism industries;

(3) West Virginia's unique and important lands are key to attracting new businesses and knowledge workers who are mobile and capable of doing business anywhere and critical to diversifying the economy of the State of West Virginia;

(4) West Virginia's unique and important lands provide all West Virginians hunting, fishing, rafting, hiking and other recreational opportunities important to their health and well-being;

(5) West Virginia's unique and important lands are critical to the continued health of the state's wildlife habitats and West Virginia's Wildlife Conservation Action Plan, mandated by the United States Congress, recognizes that habitat loss is a key issue confronting conservation of the state's valuable fish and wildlife resources;

(6) The conversion of rural land to developed land in West Virginia doubled between 1982 and 1997;

(7) There is a critical need to invest in the conservation of unique and important wildlife habitat, natural areas, forest lands, farmland and lands for hunting, fishing and recreation; and

(8) It is critical to encourage cooperation and innovative public partnerships among landowners, state agencies, nonprofit organizations and others which must work together in order to conserve West Virginia's most important unique and rural lands.

(b) It is the intent of the Legislature to provide persons and other entities an opportunity to voluntarily conserve land.

(c) Further, it is the intent of the Legislature to establish a West Virginia Outdoor Heritage Conservation Fund, hereinafter "fund", to establish an ongoing funding source to conserve unique and important wildlife habitat, natural areas, forests, working lands, lands for hunting, fishing and recreation and other lands important to West Virginians.

(d) The Legislature finds that an ongoing funding source to conserve unique and important lands will help to ensure that present and future generations of West Virginians are able to enjoy the economic, quality of life, health, recreational, scenic and other benefits of

WV Legislature

conserved lands.

WV Legislature

§5B-2G-3. West Virginia Outdoor Heritage Conservation Fund - Established.

The West Virginia Outdoor Heritage Conservation Fund is established within the Department of Commerce. The fund has the powers and duties provided in this article.

WV Legislature

§5B-2G-4. West Virginia Outdoor Heritage Conservation Fund - Board of trustees.

(a) Composition; chairman; quorum; qualifications. -- The fund shall be governed and administered by a board of trustees composed of the Director of the Division of Natural Resources and the Director of the Division of Forestry, who shall serve as voting ex officio members, and nine voting members to be appointed by the Governor, by and with the advice and consent of the Senate. The ex officio members may appoint designees to serve on the board of trustees. One of the appointed members shall be a representative of the West Virginia Agricultural Land Protection Authority; one of the appointed members shall be a registered forester; three of the appointed members shall be representatives of independent IRC 501(c)(3) land trusts; two of the appointed members shall be recognized professional experts in biology or ecology nominated by the West Virginia Academy of Sciences; one of the appointed members shall have demonstrated expertise in public health or public recreation; and one of the appointed members shall be a representative of sportsmen and sportswomen. A concerted effort shall be made to appoint members who represent a cross-section of the state.

The board shall elect the chair and other officers as necessary from among the nine appointed members. A majority of the members of the board serving at any one time constitutes a quorum for the transaction of business.

If any of the entities to be represented on the board under this section ceases to exist, the Governor shall appoint a representative with similar expertise from an entity with a similar mission.

(b) Terms. --

(1) The Governor, with the advice and consent of the Senate, shall appoint the nine members for the following terms:

(A) Three for a term of four years;

(B) Three for a term of three years; and

(C) Three for a term of two years.

(2) Successors to appointed members whose terms expire shall be appointed for terms of four years. Vacancies shall be filled for the unexpired term. An appointed member may not serve more than two successive terms. Appointment to fill a vacancy may not be considered as one of two terms.

(c) Oath. --

Appointed members shall take the oath of office as prescribed by law.

(d) Recusal. --

WV Legislature

A board member shall recuse himself or herself from any vote in which he or she has a conflict of interest. The provisions of this subsection is in addition to any other provisions of law or applicable rules relating to the ethics of public officers or employees.

(e) Compensation and expenses. --

Members shall not receive compensation. Each member of the board shall receive expense reimbursement from the fund for actual reasonable and necessary expenses incurred while engaged in the discharge of official duties, the actual expenses not to exceed the amount paid for similar reimbursement to members of the Legislature.

WV Legislature

§5B-2G-5. West Virginia Outdoor Heritage Conservation Fund - Powers.

The board has the following general powers on behalf of the fund:

(a) Power to sue. -- To sue and be sued in contractual matters in its own name.

(b) Power to contract. -- To enter into contracts generally and to execute all instruments necessary or appropriate to carry out its purposes.

(c) Power to conserve land. -- To acquire interests in real property for conservation purposes.

(d) Power to transfer. -- To transfer interests in real property for conservation purposes.

(e) Power to disburse grants. -- To act as a granting authority to award grants to eligible grant recipients in accordance with section nine of this article.

(f) Power to seek funding. -- To apply for and receive funding from any and all state, federal and private sources to be used as provided in this chapter.

(g) Power to authorize bond issuance. -- To direct the Economic Development Authority to issue revenue bonds payable from the portion of the recording fee imposed in section ten, article one, chapter fifty-nine of this code to be allocated to the fund and any other special revenue made against to the fund for this purpose in accordance with section eight of this article or other provisions of this code.

WV Legislature

§5B-2G-6. West Virginia Outdoor Heritage Conservation Fund - Duties.

The board shall, on behalf of the fund:

(a) Disseminate information regarding land conservation and promote the conservation of land.

(b) Develop and implement additional guidelines and procedures, consistent with the purposes of this chapter, as necessary to implement this chapter.

(c) Seek and apply for funds from federal, state and private sources to carry out its purpose as provided in this chapter.

(d) From moneys received from the recording fee in accordance with section ten, article one, chapter fifty-nine of this code, to:

(1) Make available to the West Virginia Division of Natural Resources fifty percent of the moneys so received by the fund, for the division to acquire interests in real property for conservation purposes in perpetuity in keeping with the West Virginia Wildlife Conservation Action Plan or other conservation plans developed by the division, provided that the board approves any acquisitions. The division may agree to permit the fund to retain any or all of this fifty percent to remain in the fund to be used as payment of debt service and other costs associated with revenue bonds on the fund's behalf by the Economic Development Authority in accordance with the provisions of this article;

(2) Ensure that the remaining fifty percent of the moneys so received by the fund are used for competitive grants in accordance with this article or used as payment of debt service and other costs associated with revenue bonds on the fund's behalf by the Economic Development Authority in accordance with the provisions of this article, the proceeds of which shall also be used for competitive grants.

(e) Prepare and file electronically with the Governor's office and with the Legislature by the thirty-first day of August of each year a report that accounts for fund receipts and disbursals and sets forth a list and description of all grants approved and all acquisitions of interests in real property obtained with moneys from the fund during the current year, including the recipients of the grants, the amounts and the public benefits of the interests in real property acquired.

(f) Propose legislative rules in accordance with the provisions of article three, chapter twenty-nine-a of this code to carry out its purposes and programs, to include specifically the qualifications and procedures relating to its awarding of grants.

WVLegislature

§5B-2G-7. Definitions.

For purposes of this article, the following terms have the meanings set forth in this section.

(a) “Board” means the board of trustees established in section three of this article.

(b) “Conservation easement” means a nonpossessory interest in real property as defined in section three, article twelve, chapter twenty of this code, except that a conservation easement acquired pursuant to this article shall be held in perpetuity.

(c) “Conservation purposes” means the conservation of land for outdoor recreation by the public, for conservation of natural plant and wildlife habitat or similar ecosystem, for conservation of forestland and other open spaces, for conservation of land of historical or cultural significance or as further defined under conservation criteria developed in this article.

(d) “Eligible grant recipient” means:

(1) The following state agencies:

(A) Division of Natural Resources;

(B) Division of Forestry; or

(2) A charitable corporation, charitable association or charitable trust registered with the Secretary of State and exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986 [Public Law 99-514, 26 U.S.C. §501(c)(3)] or other federal or state statutes or rules, the purposes or powers of which include retaining or protecting the natural, scenic, agricultural or open-space values of real property; assuring the availability of real property for agricultural, forest, recreational or open-space use; protecting natural resources and wildlife; maintaining or enhancing land, air or water quality; or preserving the historical, architectural, archaeological or cultural aspects of real property, as defined in section three, article twelve, chapter twenty of this code, and that has a primary part of its mission to acquire interests in real property for conservation purposes.

(e) “Fund” means the West Virginia Outdoor Heritage Conservation Fund established in this article.

(f) “Land conservation” means acquisition of interests in real property from willing sellers for conservation purposes.

(g) “Stewardship” means the necessary monitoring, maintenance and enforcement of interests in real property for conservation purposes.

WV Legislature

§5B-2G-8. Funding of land conservation; issuance of revenue bonds.

(a) Fund. --

(1) Created. -- The West Virginia Outdoor Heritage Conservation Fund is created for the purposes specified in this article.

(2) Sources. -- The West Virginia Outdoor Heritage Conservation Fund is comprised of:

(A) Any money made available to the fund by general or special fund appropriations;

(B) Any money made available to the fund by grants or transfers from governmental or private sources;

(C) Any money realized by investments, interest, dividends or distributions; and

(D) Any money received from the issuance of revenue bonds in accordance with the provisions of this article; and

(3) Disbursements. -- The Treasurer may not disburse any money from the fund other than:

(A) For costs associated with the staffing, administration and technical and legal duties of the fund;

(B) For reasonable and necessary expenses incurred by the members of the board of trustees of the fund in the performance of official duties;

(C) For costs associated with the acquisition of interests in real property for conservation purposes and for costs associated with stewardship authorized by this article;

(D) For grants to be awarded in accordance with section nine of this article;

(E) For payment of debt service and other costs associated with revenue bonds issued on the fund's behalf by the Economic Development Authority; and

(F) Of revenue received, directly or indirectly, from the recording fee under section ten, article one, chapter fifty-nine of this code and not used for the payment of revenue bonds and expenses associated therewith, for purposes consistent with the duties of the fund set forth in this article.

(4) Money remaining at end of fiscal year. -- Any money remaining in the fund at the end of a fiscal year shall not revert to the General Revenue Fund of the state, but shall remain in the fund to be used for the purposes specified in this article.

(5) Budget. -- The estimated budget of the fund for the next fiscal year shall be included with the budget of the West Virginia Department of Commerce.

WV Legislature

(6) Audit. -- The fund shall be audited annually.

(b) Bonds. --

The Legislature finds and declares that in order to attract new business, commerce and industry to this state, to retain existing business and industry providing the citizens of this state with economic security and to advance the business prosperity of this state and the economic welfare of the citizens of this state, it is necessary to provide public financial support for land conservation as provided in this article.

(1) The West Virginia Economic Development Authority created and provided in article fifteen, chapter thirty-one of this code shall, by resolution, in accordance with the provisions of this article and article fifteen, chapter thirty-one of this code and upon direction of the board of the Outdoor Heritage Conservation Fund, issue revenue bonds of the Economic Development Authority to pay for all or a portion of the cost of the acquisition of interests in real property for conservation purposes authorized under this article or to refund the bonds at the discretion of the fund. The revenue bonds shall mature at a time or times not exceeding thirty years from their respective dates. The principal of, and the interest and redemption premium, if any, on the bonds shall be payable from the moneys deposited in the fund pursuant to section ten, article one, chapter fifty-nine of this code or from other sources identified by the board of the fund.

(2) There is established in the state Treasury a special revenue fund named the Outdoor Heritage Conservation Fund into which shall be deposited on and after July 1, 2008, the amounts to be deposited in the fund as specified in this article. The Outdoor Heritage Conservation Fund shall consist of all such moneys, all appropriations to the fund, all interest earned from investment of the fund and any gifts, grants or contributions received by the fund. All amounts deposited in the fund pursuant to section ten, article one, chapter fifty-nine of this code shall be pledged to the repayment of the principal, interest and redemption premium, if any, on any revenue bonds or refunding revenue bonds authorized by this section, including any and all commercially customary and reasonable costs and expenses which may be incurred in connection with the issuance, refunding, redemption or defeasance thereof. The West Virginia Economic Development Authority may further provide in the resolution and in the trust agreement for priorities on the revenues paid into the Outdoor Heritage Conservation Fund pursuant to section ten, article one, chapter fifty-nine of this code as may be necessary for the protection of the prior rights of the holders of bonds issued at different times under the provisions of this section. The bonds issued pursuant to this subsection shall be separate from all other bonds which may be or have been issued from time to time under the provisions of this article.

(3) Bonds issued under this subsection shall state on their face that the bonds do not constitute a debt of the State of West Virginia; that payment of the bonds, interest and charges thereon cannot become an obligation of the State of West Virginia; and that the bondholders' remedies are limited in all respects to the special revenue fund established in this subsection for the liquidation of the bonds.

WV Legislature

(4) The West Virginia Economic Development Authority shall expend the bond proceeds from the revenue bond issues authorized and directed by this section for projects as certified by the board of the fund under the provisions of this article as serving a public purpose and meeting the criteria established by this article.

(5) If any proceeds from sale of bonds remain after paying costs and making grants as provided in this subsection, the surplus may be used as elsewhere provided in this article.

WV Legislature

§5B-2G-9. Grants for land conservation; application; criteria.

(a) An eligible grant recipient may apply for a grant from the fund to acquire interests in real property for conservation purposes or for stewardship. An application may not be submitted to the fund without the written consent of the owner of the interest in real property identified in the application.

(b) Before applying for a grant, the eligible grant recipient shall notify the owner that is the subject of the grant of the following in writing:

(1) That interests in real property acquired with a grant from the fund result in a permanent conveyance of such interests in real property from the owner to the eligible grant recipient or its assigns; and

(2) That it may be in the owner's interest to retain independent legal counsel, appraisals and other professional advice.

The application shall contain an affirmation that the notice requirement of this subsection has been met.

(c) Grants from the fund shall be awarded based upon the conservation criteria and financial criteria contained in this section. In each application, the eligible grant recipient shall provide information regarding how the proposal meets one or more of these criteria and advances the purposes of this article.

(d) For purposes of this article, conservation criteria include:

(1) Unique or important wildlife habitat as specified in the state Wildlife Conservation Action Plan;

(2) Habitat for rare, threatened or endangered species;

(3) A relatively undisturbed or outstanding example of an ecosystem or natural community indigenous to West Virginia;

(4) An important area for public hunting, fishing or other outdoor recreational uses;

(5) Important recreation lands or important habitats identified in county comprehensive plans;

(6) Riparian habitats, wetlands, water quality, watersheds of significant ecological value or critical aquifer recharge areas;

(7) Forest land or working land that has strategic economic significance;

(8) A larger area containing conserved lands or as a connection between conserved lands;

WV Legislature

(9) Land of unique cultural, historical or archaeological significance;

(10) Degree of threat to land; and

(11) The number of acres of land to be conserved.

(e) For purposes of this article, financial criteria include:

(1) The degree to which the proposal leverages grants from the fund by including funding or in-kind assets or services from other governmental sources; and

(2) The degree to which the proposal leverages grants from the fund by including funding or in-kind assets or services from private or nonprofit sources or charitable donations, including bargain sales of interests in real property for conservation purposes;

(f) The board of the fund shall evaluate each proposal according to the conservation criteria and financial criteria set forth in this section, and shall award grants on the basis of how well proposals meet these two criteria.

(g) If an eligible grant recipient entity is dissolved or ceases to exist as an entity, or if any interests in real property obtained with a grant from the fund are not being utilized strictly for conservation purposes, the real property interest shall vest in the fund upon recording of a notice signed by the chair of the fund and filed with the clerk of the appropriate county and the fund may transfer the interest to an appropriate eligible grant recipient.

WV Legislature

§5B-2H-1. Short Title.

This article shall be known and cited as the "Marcellus Gas and Manufacturing Development Act."

WV Legislature

§5B-2H-2. Legislative findings; declaration of public policy.

(a) The Legislature finds that:

(1) The advent and advancement of new and existing technologies and drilling practices have created the opportunity for the efficient development of natural gas contained in underground shales and other geological formations.

(2) With development of the Marcellus shale comes the opportunity for economic development in related areas of the economy including, but not limited to, manufacturing, transmission of natural gas and related products and the transportation of manufactured products.

(3) It is in the interest of national security to encourage post-production uses of natural gas and its various components as a replacement for oil imported from other countries.

(4) Producers of natural gas, transporters of natural gas and manufacturers of products using natural gas face a significant number of regulatory requirements, some of which may be redundant, inconsistent, or overlapping. Agencies should work together, where practical, to avoid duplication, promote better coordination and reduce these requirements, thus reducing costs, simplifying and harmonizing rules and streamlining regulatory oversight.

(5) In developing regulatory actions and identifying appropriate approaches, agencies should attempt to promote coordination, simplification, and harmonization.

(6) Agencies should also seek to identify, as appropriate, means to achieve regulatory goals that are designed to promote innovation.

(7) Agencies should review their existing significant legislative, interpretive and procedural rules to determine whether any such rules should be modified, streamlined, expanded or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives.

(8) The West Virginia Economic Development Authority established in §31-15-1 *et seq*. of this code the West Virginia Infrastructure and Jobs Development Council created in §31-15a-1 *et seq*. of this code, and the Office of Energy created under §5B-2F-1 *et seq*. of this code, should, where appropriate, provide assistance that grows or sustains this segment of the economy.

(b) The Legislature declares that facilitating the development of business activity directly and indirectly related to development of the Marcellus shale serves the public interest of the citizens of this state by promoting economic development and improving economic opportunities for the citizens of this state.

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§5B-2I-1. Short title.

This article shall be known and cited as the West Virginia Tourism Act of 2017.

WV Legislature

§5B-2I-2. West Virginia Department of Tourism.

The West Virginia Department of Tourism, previously continued from the West Virginia Tourism Office and the Division of Tourism, is hereby continued as a department of the executive branch of state government. All references in this code to the Division of Tourism or to the West Virginia Tourism Office shall be construed as references to the West Virginia Department of Tourism. As used in this article, "department" means the Department of Tourism.

WV Legislature

§5B-2I-3. Office of Secretary of Department of Tourism.

(a) The Secretary of the Department of Tourism is the chief executive officer of the department. The Governor shall appoint the secretary, by and with the advice and consent of the Senate, for the term for which the Governor is elected, and the secretary shall serve at the will and pleasure of the Governor. Any reference in this code to the "Executive Director" or "Commissioner" of the West Virginia Tourism Office means the Secretary of the Department of Tourism. As used in this article, "secretary" means the Secretary of the Department of Tourism.

WV Legislature

§5B-2I-4. Powers and duties of the Department of Tourism.

(a) The Department of Tourism, under the direction and charge of the secretary, shall develop and implement a comprehensive tourism advertising, promotion, and development strategy for West Virginia. "Comprehensive tourism advertising, promotion and development strategy" means a plan that outlines strategies and activities designed to continue, diversify and expand the tourism base of the state as a whole; create tourism jobs; develop a highly skilled tourism workforce; facilitate business access to capital for tourism; advertise and market the resources offered by the state with respect to tourism advertising, promotion and development; facilitate cooperation among local, regional and private tourism enterprises; improve infrastructure on a state, regional and community level in order to facilitate tourism development; improve the tourism business climate generally; and leverage funding from sources other than the state, including local, federal and private sources. In addition to all other power and duties of the department by other provisions of this code, the department shall:

(1) Coordinate media events to promote a positive image of West Virginia and new investment in the state;

(2) Provide comprehensive strategic planning services to existing tourism enterprises;

(3) Promote attractions of West Virginia in other states;

(4) Provide advertising, marketing and communications goods and services, including, without limitation, a cooperative advertising program to facilitate and allow participation in the department’s advertising and marketing campaigns and activities, to state agencies, departments, units of state or local government, private tourism enterprises and other persons, entities, or private enterprises, including, without limitation, convention and visitors’ bureaus;

(5) Distribute West Virginia informational publications and manage the West Virginia Welcome Centers; and

(6) Coordinate programs, initiatives, and production of materials relating to the branding and marketing of the state, and its departments and agencies, and to provide greater coherence in such programs, initiatives, and materials across the departments and agencies of the state.

(b) In developing its strategies, plans and campaigns, the department shall consider the following:

(1) Improvement and expansion of existing tourism marketing and promotion activities;

(2) Promotion of cooperation among municipalities, counties and the West Virginia Infrastructure and Jobs Development Council in funding physical infrastructure to enhance the potential for tourism development.

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(c) The Department of Tourism shall have the following powers and duties:

(1) To acquire for the state in the name of the department by purchase, lease, or agreement, or to accept or reject for the state, in the name of the department, gifts, donations, contributions, bequests or devises of money, security or property, both real and personal, and any interest in such property, to effectuate or support the purposes of this article;

(2) To make recommendations to the Governor and the Legislature of any legislation deemed necessary to facilitate the carrying out of any of the foregoing powers and duties and to exercise any other power that may be necessary or proper for the orderly conduct of the business of the department and the effective discharge of the duties of the department;

(3) To cooperate and assist in the production of motion pictures and television and other communications;

(4) To purchase advertising time or space in or upon any medium generally engaged or employed for said purpose to advertise and market the resources of the state or to inform the public at large or any specifically targeted group or industry about the benefits of living in, investing in, producing in, buying from, contracting with, or in any other way related to, the State of West Virginia or any business, industry, agency, institution, or other entity therein;

(5) To promote and disseminate information related to the attractions of the state through the operation of the state's telemarketing initiative, which telemarketing initiative shall include a centralized reservation and information system for state parks and recreational facilities;

(6) To take such additional actions as may be necessary to carry out the powers, duties and programs described in this article; and

(7) To provide assistance to and assist with retention and expansion of existing tourism-related enterprises in the state and to recruit or assist in the recruitment of new tourism-related enterprises to the state.

(d) The Department of Tourism may contract with the Division of Highways to sell advertising space on the WV511 website to promote in-state tourism and raise capital for technological improvements to the website: *Provided*, That 50 percent of the money collected for sale of advertising space is deposited into the Tourism Promotion Fund and the other 50 percent of the money collected from the sale of advertising space is remitted to the Division of Highways pursuant to the contract.

(e) The Department of Tourism may charge and collect reasonable fees for goods and services it provides to state agencies, departments, units of state or local government or other person, entity, or enterprise. All moneys collected by the department shall be deposited in the Tourism Promotion Fund and used in accordance with the provisions of this

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article.

(f) The Department of Tourism may engage and retain one or more advertising and marketing agencies, consultants, enterprises, firms, or persons, as deemed by the secretary, in his or her sole discretion, necessary or advisable to assist the department in carrying out its powers and duties as set forth in this article. In the procurement of advertising agencies, consultants, enterprises, or persons, from time to time, estimated to cost $250,000 or more, the secretary shall encourage such advertising and marketing agencies, consultants, enterprises, firms, or persons to submit an expression of interest, which shall include a statement of qualifications, including anticipated concepts and proposed advertising, marketing and advertising campaigns. All potential contracts shall be announced by public notice published as a Class II legal advertisement in compliance with §59-3-3 of this code. A committee of three to five representatives of the department or the Tourism Advisory Council, as selected by the secretary, shall evaluate the statements of qualifications and other materials submitted by interested firms and select three firms which, in their opinion, are best qualified to perform the desired service. The committee shall then rank, in order of preference, the three firms selected and shall commence scope of service and price negotiations with the first-ranked firm. If the department is unable to negotiate a satisfactory contract with the first-ranked firm, at a fee determined to be fair and reasonable, price negotiations with the firm of second choice shall commence. Failing accord with the second-ranked firm, the committee shall undertake price negotiations with the third-ranked firm. If the department is unable to negotiate a satisfactory contract with any of the selected firms, the office shall select additional firms in order of their competence and qualifications and it shall continue negotiations in accordance with this section until an agreement is reached.

If the procurement of the services is estimated by the secretary to cost less than $250,000, the department shall conduct discussions with three or more firms solicited on the basis of known or submitted qualifications for the assignment prior to the awarding of any contract: *Provided*, That if a judgment is made that special circumstances exist and that seeking competition is not practical, the department may select a firm on the basis of previous satisfactory performance and knowledge of the department's needs. After selection, the department and selected firm shall develop the scope of desired services and negotiate a contract.

(g) The secretary of the Department of Tourism may, in order to carry out the powers and duties of the department described in this article, employ necessary personnel, contract with professional or technical experts or consultants and purchase or contract for the necessary equipment or supplies.

(h) The secretary of the Department of Tourism may designate, in writing, a list of positions within the department that shall be exempt from coverage under the state's classified service: *Provided*, That beginning on July 1, 2025, all employees of the Department of Tourism shall be exempt from the state grievance procedures as set forth in §6C-2-1 *et seq*. of this code and from the classified civil service system under §29-6-1 *et seq*. of this code

except that:

(1) All employees of the Department of Tourism who are currently members of the classified civil service system shall retain their status as long as they remain in their current position, and all employees of the Department of Tourism who currently have recourse to the state grievance procedures will continue to have access to the state grievance procedures as long as they remain in their current position; and

(2) Any employee of the Department of Tourism that leaves his or her position and remains an employee within the Department of Tourism shall, at that time, be transferred to the classified-exempt service system as defined in §29-6-2(g) of this code and be exempted from the state grievance procedures as set forth in §6C-2-1 *et seq*. of this code.

(i) The secretary shall have the authority to designate certain employees' status under the classified civil service system and grievance procedures as may be deemed necessary to comply with federal regulation, or the requirements for receipt of federal funding or assistance.

(j) Nothing in this article shall prevent a person, at the secretary's discretion, from serving in multiple positions within the Department of Tourism.

(k) Subsection (h) of this section shall not apply to any position appointed by the Governor.

(l) Nothing in this section shall exempt the Department of Tourism from the provisions of this code prohibiting nepotism, favoritism, discrimination, or unethical practices related to the promotion, transfer, layoff, removal, discipline, and compensation of state employees.

(m) The Department of Tourism shall submit a report annually to the Governor and the Legislature about the development of the tourism industry in the state and the necessary funding required by the state to continue the development of the tourism industry.

(n) The Department of Tourism and the secretary shall engage, collaborate, assist, and cooperate with the Department of Economic Development, when and as appropriate, to facilitate retention, expansion, recruitment, and location of existing and new tourism-related enterprises.

(o) The Department of Tourism shall utilize, to the fullest extent practicable and efficient, existing resources of the Department of Commerce for functions necessary for the operation of the department but which functions are not directly related to the purposes of the department listed above. The Department of Tourism may enter into such agreements with the Department of Commerce or other agencies of this state as may be necessary or advisable to utilize existing resources of this state.

(p) The Department of Tourism shall be exempt from §5A-3-1 *et seq*. of this code.

WV Legislature

§5B-2I-5. Public-private partnerships.

(a) The Department of Tourism may enter into contractual or joint venture agreements with one or more nonprofit corporations organized pursuant to the corporate laws of the state, organized to permit qualification pursuant to Section 501(c) of the Internal Revenue Code and organized for purposes of the promotion and development of tourism in West Virginia, and funded from sources other than the state. Members of the Tourism Advisory Council provided in this article are authorized to sit on the board of directors of such private nonprofit corporations.

(b) From time to time the department may enter into joint ventures wherein the Department of Economic Development and one or more said nonprofit corporations share in the development and funding of tourism advertising, promotion and development programs and campaigns.

(c) All contracts and joint venture agreements entered into pursuant to this section for longer than one fiscal year shall contain, in substance, a provision that the contract shall be considered canceled without further obligation on the part of the state if the Legislature, or, where appropriate, the federal government shall fail to appropriate sufficient funds therefor or shall act to impair the contract or cause it to be canceled.

WV Legislature

§5B-2I-6. Tourism Promotion Fund; use of funds.

(a) There is continued in the State Treasury the special revenue fund known as the Tourism Promotion Fund created under prior enactment of §5B-1-9 of this code.

(b) Moneys deposited in the fund each year shall be used solely for marketing, direct advertising, business development and public relations promoting travel and tourism within the state or the state's image and brand identity at the discretion and direction of the secretary of the Department of Tourism. "Direct advertising" means advertising which includes, but is not limited to, television, radio, mailings, newspaper, magazines, digital marketing, including the Internet and social media, and outdoor billboards or any combination thereof. Any balance remaining at the end of any fiscal year does not revert to the General Revenue Fund, but shall remain in the fund for expenditures in accordance with this section.

(c) Effective July 1, 2017, the Tourism Advertising Partnership Program and all related legislative or procedural rules shall cease, except as necessary for the Tourism Advisory Council to settle, finalize and conclude all outstanding advertising grants or other financial obligations of the Tourism Advisory Council respecting funds in the Tourism Promotion Fund previously approved, expended or obligated by the Tourism Advisory Council as of the effective date of this article pursuant to §5B-2I-7(e) (2) of this code and be replaced by a cooperative advertising program to be created and established by the Department of Tourism, under and pursuant to §5B-2I-4 of this code, to offer, facilitate and allow participation in the department's advertising and marketing campaigns and activities, to state agencies, departments, units of state or local government, private tourism enterprises and other persons, entities or private enterprises, including, without limitation, convention and visitors' bureaus. The secretary of the Department of Tourism shall establish and publish a fee schedule, which shall include a match of state funds to program participant's funds, for participation in the cooperative advertising program.

WV Legislature

§5B-2I-7. Tourism Advisory Council; members, appointment, and expenses.

(a) There is continued within the Department of Tourism an independent Tourism Advisory Council.

(b) The Tourism Advisory Council consists of the following 11 members:

(1) The Director of the Department of Economic Development or his or her designee, ex officio;

(2) The Secretary of Transportation or his or her designee, ex officio; and

(3) Nine members appointed by the Governor, with the advice and consent of the Senate, representing participants in the state's tourism industry.

(c) Each member appointed by the Governor serves a staggered term of four years. Any member whose term has expired serves until his or her successor has been appointed. Any person appointed to fill a vacancy serves only for the unexpired term. Any member is eligible for reappointment. In case of a vacancy in the office of a member, the vacancy shall be filled by the Governor in the same manner as the original appointment.

(d) The chair of the Tourism Advisory Council shall be appointed by the Governor from members then serving on the commission, and serves at the will and pleasure of the Governor.

(e) The Tourism Advisory Council shall:

(1) Advise the secretary of the Department of Tourism in the development and implementation of the state's comprehensive tourism advertising, marketing, promotion, and development strategy; and

(2) Take all actions, in consultation with the secretary, necessary to settle, finalize, and conclude all outstanding advertising grants or other financial obligations of the Tourism Advisory Council respecting funds in the Tourism Promotion Fund previously approved, expended, or obligated by the Tourism Advisory Council as of the effective date of this article.

(f) Members of the Tourism Advisory Council are not entitled to compensation for services performed as members. Each member is entitled to reimbursement for reasonable expenses incurred in the discharge of their official duties. All expenses incurred by members from the private sector shall be paid in a manner consistent with guidelines of the Travel Management Office of the Department of Administration and are payable solely from the funds of the Department of Tourism or from funds appropriated for that purpose by the Legislature. Liability or obligation is not incurred by the Department of Tourism beyond the extent to which moneys are available from funds of the authority or from the appropriations.

WV Legislature

(g) Members shall meet at least quarterly as designated by the chair.

WV Legislature

§5B-2I-8. Confidentiality.

Any documentary material, data or other writing made or received by the Department of Tourism, the West Virginia Department of Economic Development, or the Tourism Advisory Council, for the purpose of furnishing assistance to a new or existing business, or of developing or implementing a comprehensive tourism advertising, promotion, and development strategy pursuant to §5B-2I-4 of this code, are exempt from §29B-1-1 *et seq*. of this code: *Provided*, That any agreement entered into or signed by the Department of Tourism or the Department of Economic Development which obligates public funds is subject to inspection and copying pursuant to §29B-1-1 *et seq*. of this code as of the date the agreement is entered into, signed or otherwise made public.

WV Legislature

§5B-2J-1. Short Title.

This article shall be known and cited as the “Natural Gas Liquids Economic Development Act.”

WV Legislature

§5B-2J-2. Legislative findings; declaration of public policy.

(a) The Legislature finds that:

(1) The advent and advancement of new and existing technologies and drilling practices have created the opportunity for the efficient development of natural gas, including natural gas liquids such as ethane, propane, butane, isobutane and pentanes, contained in underground shales and other geological formations.

(2) With the development of natural gas liquids from shales and other geological formations comes the opportunity for economic development in related areas of the economy including, but not limited to, manufacturing, transmission and storage of natural gas liquids and related products, the use of such products in manufacturing, the consumption of such products, and the transportation of manufactured products.

(3) Producers of natural gas liquids, transporters and storers of natural gas liquids, and manufacturers of products using natural gas liquids face a significant number of regulatory requirements, some of which may be redundant, inconsistent, or overlapping. Agencies should work together, where practical, to avoid duplication, promote better coordination and reduce these requirements, thus reducing costs, simplifying and harmonizing rules, and streamlining regulatory oversight.

(4) In developing regulatory actions and identifying appropriate approaches, agencies should attempt to promote coordination, simplification, and harmonization.

(5) Agencies should also seek to identify, as appropriate, means to achieve regulatory goals that are designed to promote innovation.

(6) Agencies should review their existing significant legislative, interpretive and procedural rules to determine whether any such rules should be modified, streamlined, expanded or repealed so as to make the agency's regulatory program more effective and less burdensome in achieving the regulatory objectives.

(7) The West Virginia Economic Development Authority established in §31-15-1 *et seq*. of this code, the West Virginia Infrastructure and Jobs Development Council created in §31-15a-1 et seq., of this code and the Office of Energy created under § 5B-2F-1 et seq. of this code, should, where appropriate, provide assistance that grows or sustains the natural gas liquids segment of the economy.

(b) The Legislature declares that facilitating the development of business activity directly and indirectly related to development, transportation, storage and use of the natural gas liquids serves the public interest of the citizens of this state by promoting economic development and improving economic opportunities for the citizens of this state.

WV Legislature

§5B-2K-1. Short title.

This article shall be known as the Coalfield Grant Facilitation Act of 2022.

WV Legislature

§5B-2K-2. Legislative Findings.

The Legislature finds that the historical coal field communities of this state that were once thriving and vital parts of the state have seen decades of decline as changes in coal mining technologies and mining practices and the decline in the market for coal have resulted in a steady decline in the populations and economic vitality of the coal mining regions of our state; and every effort made to revitalize these areas is an important and necessary component of the success and advancement of the economy of this state.

Many funding initiatives available to these areas in the form of matching grants from federal and private sources have become a significant and important opportunity for access to capital to initiate revitalization, but limitations of funds to match grants and having the resources to apply for and facilitate receipt of these grants has encumbered the utilization of these resources.

The Legislature, by enactment of this article, intends to initiate mechanisms to facilitate the access to such capital, by establishing a commission to administer state funds to provide to eligible local entities the required local matching portion for certain grants; and to facilitate assistance to these local entities by providing access to grant writing expertise and support by utilizing our state university and colleges to assist in the development of successful grant writing resources for local entities to maximize their success in rebuilding their communities.

WV Legislature

§5B-2K-3. Coalfield Community Grant Facilitation Commission created.

(a) The Coalfield Community Grant Facilitation Commission is hereby created as an independent body corporate. The commission shall consist of 12 members, who shall be residents and citizens of the state. Commission members shall be appointed by the Governor, by and with the advice and consent of the Senate. The commission shall consist of the following members:

(1) The Secretary of the Department of Economic Development, or his or her designee, who shall serve as chairperson of the commission;

(2) A representative of county governments of this state;

(3) A representative of large municipalities of this state;

(4) A representative of small municipalities of this state;

(5) Two representatives of a foundation, nonprofit, or other organization that provides grants for public interest projects in this state and who has expertise in grant issuance or administration;

(6) Two representatives of institutions of higher education with specialized knowledge in economic development;

(7) A representative from businesses and industries within the state; and

(8) Three members at large appointed from regions and counties within coalfield areas of the state who have knowledge and experience in local issues, economic development, or other areas of expertise within the directive of the commission.

(b) Each member shall serve a term of five years. Of the members first appointed, five shall be appointed for a term ending December 31, 2023, and three each for terms ending one and two years thereafter. Commission members may be reappointed to additional terms, and although their terms may have expired shall continue to serve until their successor has been appointed.

(c) It is the duty of the commission:

(1) To establish a process for timely review of applications and approval of awards of funds needed as a required match to receive federal, state, or private grants with the goal to assure the greatest possibility that a grant being applied for is received;

(2) To award grants of commission funds, as available, in an efficient and fair manner to provide a match for local entities that would otherwise qualify for a federal, state, or private grant but are unable to fulfill the grant’s matching fund requirements;

wv Legislature

(3) To provide grant applicants with technical assistance and support; and

(4) To disseminate information for the purpose of educating persons and entities as to the existence and functions of the commission and as to the availability of state, federal, and nongovernmental resources.

(d) The Department of Economic Development shall assist the commission in its functions and operations including, but not limited to, providing administrative, clerical, and technical support.

(e) Members of the commission are not entitled to compensation for services performed as members. Each member is entitled to reimbursement for reasonable expenses incurred in the discharge of their official duties. All expenses incurred by members shall be paid in a manner consistent with guidelines of the Travel Management Office of the Department of Administration and are payable solely from the funds of the Department of Economic Development or from funds appropriated for that purpose by the Legislature.

(f) No liability or obligation is incurred by the commission beyond the extent to which moneys are awarded for grant acquisition facilitation.

(g) Members shall meet as designated and scheduled by the chairperson. The presence of a majority of commission members, in person or by real-time electronic communication, constitutes a quorum to conduct business at a meeting.

(h) The commission shall prioritize the locations for grant funding assistance by utilizing the designation of priority communities established by the "Interagency Working Group on Coal and Power Plant Communities and Economic Revitalization" established by presidential executive order 14008, issued on January 21, 2021. The commission may not certify a project unless it finds that the proposal is in the public interest and the grant will be used for a public purpose. For purposes of this article, projects in the public interest and for a public purpose can provide private benefit, if the commission, in its judgment determines that: (1) the project will enhance a local community or region; (2) the granting entity for which the commission's matching grant is being used requires a public purpose for grant eligibility; and (3) the commission in its judgment concludes the proposal will enhance the quality of life or services of a community or region. A public purpose includes, but is not limited to, proposals that:

(1) Enhance economic vitality, including revitalization of structures that have public purpose or benefit;

(2) Promote or develop an artistic or philanthropic purpose;

(3) Improve traditional infrastructure, such as water and wastewater treatment facilities, transmission lines, transportation facilities, and flood and wastewater management;

(4) Create or enhance telecommunications infrastructure including cellular towers, fiber

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optic expansion and technology infrastructure;

(5) Promote agricultural activities and development;

(6) Enhance development of previously mined areas or areas previously used by the coal industry and other industrial activities into uses that diversify the local economy;

(7) Create or expand recreational facilities, such as walking, hiking, all-terrain vehicle, bike trails, picnic facilities, restrooms, boat docking and fishing piers, and athletic facilities;

(8) Are used for acquisition of private property for local public purposes that promote economic vitality and housing development and enhancement;

(9) Preserve or enhance buildings that are of local historic or economic interest;

(10) Restore or create retail facilities, including related service, parking, and transportation facilities, to revitalize decaying downtown areas;

(11) Are the construction or expansion of other facilities that promote or enhance economic development or tourism opportunities thereby promoting the general welfare of local residents;

(12) Provide facilities and activities that provide resources for local residences that enhance quality of life including, but not limited to, childcare access and public transportation;

(13) Provide vocational and entrepreneurial training for displaced miners and other persons that have lost jobs or have been unable to find employment or business opportunities in the region;

(14) Make investments in coal field communities housing stock removal and remediation to facilitate community preservation and aesthetics; and

(15) Create drug and substance abuse rehabilitation programs and facilities.

(i) Prior to making any matching grant award, the commission may conduct a public hearing to assess local public support. If a public hearing is to be held, notice of the time, place, date, and purpose of the hearing shall be published in at least one newspaper in the county where the proposed grant project is located at least 14 days prior to the hearing date.

(j) When a member of the commission must recuse himself or herself because of a perceived or actual conflict of interest regarding a proposed grant assistance award, a majority of the remaining members of the commission without a conflict shall be sufficient for the conduct of commission business.

WV Legislature

§5B-2K-4. Coalfield Community Grant Facilitation Special Revenue Account.

A special revenue fund to be known as the Coalfield Community Grant Facilitation Fund is hereby created which shall consist of all moneys made available for the purposes of this article and include any amounts to be deposited in the fund, including all appropriations to the fund, all interest earned from investment of the fund, and any gifts, grants, or contributions received by the fund. All amounts deposited in the fund shall be awarded by the commission as provided pursuant to the provisions of this article to local governmental units and private and public entities for purposes provided for in this article.

WV Legislature

§5B-2K-5. Facilitation of grant submissions by higher education institutions.

To maximize the resources of the state and to create a resource for entities and persons interested in applying for grants that need assistance with grant proposal and applications, the commission shall coordinate and administer a specialized subcommittee of the commission made up of representatives of West Virginia University, Marshall University, the Alliance for Economic Development of Southern West Virginia, and all institutions of higher learning in the coal field counties and regions of this state to provide assistance in the development of grants and grant applications by persons or entities that need assistance in designing, preparing, or implementing a grant proposal submission to a governmental or private entity providing grants. This assistance shall include:

(1) Training of persons to have expertise in developing, applying for, and administering grants;

(2) Providing technical assistance to the commission on administration and facilitation of grant assistance applications; and

(3) Any other actions or initiatives that assist the commission and promote the goals of this article.

WV Legislature

§5B-2K-6. Report to the Legislature.

The commission shall provide by December first of each year to the Joint Committee on Government and Finance an annual electronic report that provides the following:

(1) A summary of grant assistance applications received and relevant statistics relating to actions taken by the commission and grants awarded;

(2) An analysis of types of grants or public, private and nonprofit grants available but not applied for that if received could be utilized to benefit coal field communities;

(3) Recommendations regarding appropriations to the Coalfield Community Grant Facilitation Fund for the upcoming fiscal year; and

(4) Any recommended legislation or policy actions needed to facilitate greater receipt of grant funding to coalfield communities.

WV Legislature

Part I. General

§5B-2L-1. Short title.

This article shall be known as the BUILD WV Act.

WV Legislature

§5B-2L-2. Legislative findings and purpose.

(a) The Legislature hereby finds that reasonably priced residential housing for graduate, post-graduate and professional job holders, technical workers, and entrepreneurs for targeted businesses in key geographical regions of this state is an essential component of West Virginia's comprehensive economic development. Highly meritorious measures have been undertaken under both federal law and state law for the construction of low-income housing, direct loan support, rent assistance, supportive housing for elderly citizens and citizens with disabilities, public housing programs, business location incentives and incentives for capital formation, and entrepreneurial innovation in economically depressed areas. The Legislature finds that key geographic areas of this state are on the verge of a burgeoning expansion for economic development, accompanied by unprecedented technical innovation, creation of expansive new businesses in unexplored commercial and industrial markets, with individual opportunities for employment, entrepreneurship, personal success, and personal development for the people of West Virginia.

(b) The Legislature finds that a significant constraint upon this expansion is the lack of housing for graduate, post-graduate, professional, and technical personnel whose participation is vital to the economic success of West Virginia, and to the economic, cultural, and social betterment of West Virginia. Support for low-income housing and the other assistance, enumerated above, has the firm support of the Legislature. However, support for middle income housing and middle market housing needs in these key geographic areas is lacking. Such support is crucial for expansion of technical, industrial, and commercial markets expected for West Virginia.

(c) Therefore, the Legislature hereby establishes the BUILD WV Act, with the intent to remove this constraint and provide the stimuli and incentives necessary for these developments to go forward.

WV Legislature

§5B-2L-3. Definitions.

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

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

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

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

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

(A) Included costs:

(i) Obligations incurred for labor and to vendors, contractors, subcontractors, builders, 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

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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 automatically disqualify the remainder of the costs of the project;

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

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

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

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

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

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

(7) "Corporation" or "C corporation" means a corporation that is taxed separately from its owners for federal income tax purposes under subchapter C of the Internal Revenue Code

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and 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

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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 USC 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) “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) “Tax year” or “taxable year” means the tax year of the taxpayer for federal income tax purposes.

(20) “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.

(21) “Unitary business” means a unitary business as defined in §11-24-3a of this code.

WV Legislature

§5B-2L-4. Rule-making.

(a) In order to effectuate the purposes of this article, the Tax Commissioner may promulgate procedural rules, interpretive rules and legislative rules, including emergency rules, or any combination thereof in accordance with §29A-3-1 *et seq*. of this code.

(b) In order to effectuate the purposes of this article, the Department of Economic Development or any agency, division, or subdivision thereof, may promulgate procedural rules, interpretive rules, and legislative rules, including emergency rules, or any combination thereof in accordance with §29A-3-1 *et seq*. of this code.

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§5B-2L-5. Application of the West Virginia Tax Procedure and Administration Act and West Virginia Tax Crimes and Penalties Act.

The provisions of this article are subject to the West Virginia Tax Procedure and Administration Act, set forth in §11-10-1 *et seq*. of this code, and the West Virginia Tax Crimes and Penalties Act, set forth in §11-9-1 *et seq*. of this code, as if the provisions thereof were set forth in extenso in this article.

WV Legislature

§5B-2L-6. Effective date, expiration date and required reporting.

(a) Effective July 1, 2024, and annually thereafter, the Department of Economic Development shall submit a report to the Joint Committee on Government and Finance. The report shall provide:

(1) The number and location of all projects approved pursuant to this article;

(2) The geographic distribution of the projects approved;

(3) The total number of new housing units approved over the preceding year;

(4) The total number of housing units completed oved the preceding year;

(5) The total amount of exemptions granted pursuant to §5B-2L-7 of this article;

(6) The total amount of property value adjustment tax credits allowed pursuant to §5B-2L-10 of this article; and

(7) Any other information requested by the Joint Committee on Government and Finance.

(b) Any property value adjustment tax credit authorized by this article shall be effective for corporate net income tax years and personal income tax years beginning on and after January 1, 2023.

(c) Effective January 1, 2028, the provisions of this article shall expire and have no further force or effect: *Provided*, That any tax exemption or property value adjustment tax credit authorized pursuant to this article prior to January 1, 2028, shall continue to be valid and eligible for redemption pursuant to procedures provided herein.

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Part II. Sales and Use Tax Exemption for Purchases of Tangible Personal Property and Services Directly Used in Construction, Repair, Maintenance and Refurbishment of Certified BUILD WV Housing.

§5B-2L-7. Consumers sales and service tax and use tax exemption for construction contractors.

(a) Notwithstanding the provisions of §11-15-1 *et seq.*, §11-15A-1 *et seq.*, and §11-15-8d of this code or any other provision of this code, purchases of building materials, tangible personal property, and services by a construction contractor or construction subcontractor directly used in construction of a certified BUILD WV project property certified pursuant to the provisions of this article are exempt from the taxes imposed by §11-15-1 et seq. and §11-15A-1 *et seq*. of this code.

(b) Purchases of services, materials, and tangible personal property for repairs, maintenance, and refurbishment of certified BUILD WV project property are exempt from the taxes imposed by §11-15-1 *et seq*. and §11-15A-1 *et seq*. of this code.

(c) The exemptions authorized under this section also apply to exempt purchases enumerated herein from the municipal consumers sales and service tax and use tax and special district excise tax: *Provided*, That exemptions authorized under this section do not apply to purchases subject to a special district excise tax that was imposed and effective under §7-22-12 or §8-38-12 of this code, as applicable, prior to the effective date of this section.

(d) The exemptions authorized under this section are limited to purchases of building materials and tangible personal property directly incorporated into certified project residential buildings and structures, common areas, and infrastructure during construction, repair, maintenance, and refurbishment of certified BUILD WV project property; including common areas, infrastructure, and services directly used in construction, repair, maintenance, and refurbishment of certified BUILD WV project property: *Provided*, That the following purchases are not exempt under the provisions of this section:

(1) Purchases of gasoline and special fuel or any other fuel or means of power for a motor vehicle or any other machine, apparatus, or engine; or

(2) Purchases subject to the consumers sales and service tax and use tax under the provisions of §11-15-3c of this code.

Part III. Authorization for Municipal Business and Occupation Tax Exemption

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Part III. Authorization for Municipal Business and Occupation Tax Exemption

§5B-2L-8. Municipal authority to exempt business and occupation tax.

Notwithstanding any other provision of this code, a municipality that imposes the municipal business and occupation tax pursuant to the provisions of §8-13-5 of this code, may authorize by ordinance, a municipal business and occupation tax exemption for gross income from rents, royalties, fees, or other remuneration derived by a lessor or landlord from the furnishing, leasing, or renting of any certified BUILD WV project property to a lessee or occupant.

WV Legislature

Part IV. BUILD WV Property Value Adjustment Credit.

§5B-2L-9. Eligibility for property value adjustment tax credit.

There shall be allowed to every eligible taxpayer a property value adjustment tax credit against the taxes imposed under §11-21-1 *et seq*. or §11-24-1 *et seq*. of this code, as determined under this article.

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§5B-2L-10. Amount of property value adjustment tax credit allowed.

(a) Amount of credit.

(1) The amount of total property value adjustment tax credit allowed to an eligible taxpayer is the final product of the mathematical steps specified in paragraphs (A), (B) and (C) of this subdivision.

(A) Approved costs, as certified by the Department of Economic Development multiplied by 60 percent.

(B) The product of the multiplication set forth in paragraph (A) of this subdivision, multiplied by the statewide average class III property tax rate of this state for the tax year in which construction of project property is completed, as certified by the Department of Economic Development.

(C) The product of the multiplication set forth in paragraph (B) of this subdivision, multiplied by 10.

(b) *Annual credit* — The property value adjustment tax credit shall be applied annually as specified in this article in the amount of one-tenth thereof per year for a period of 10 consecutive years beginning in the tax year in which construction of project property is completed, as certified by the Department of Economic Development. The property value adjustment tax credit shall not be carried back to any preceding tax year, nor carried forward to any succeeding tax year. However, the refundable property value adjustment tax credit may be applied in accordance with the provisions of this article. The property value adjustment tax credit shall not be transferable. Any amount of annual property value adjustment tax credit not used during the personal income tax or corporation net income tax taxable year, as applicable, (1) as a direct offset of income tax, plus (2) any refundable credit applied, as allowed under this article, is forfeited.

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§5B-2L-11. Application of annual credit allowance.

(a) *Application of annual property value adjustment tax credit against personal income tax or corporate net income tax*. — The amount of the property value adjustment tax credit shall be taken against the tax liabilities of the eligible taxpayer for the current taxable year imposed by §11-21-1 *et seq*. or §11-24-1 *et seq*. of this code, as applicable, to offset tax liabilities imposed on net income for each taxable year, beginning in the eligible taxpayer's tax year in which construction of project property is completed, as certified by the Department of Economic Development, and ending at the end of the eligible taxpayer's 10th taxable year subsequent to the tax year in which construction of project property is completed, as certified by the Department of Economic Development.

(1) *Personal income tax*. – The amount of the annual property value adjustment tax credit shall be taken against the tax liabilities of the eligible taxpayer for the current taxable year imposed by §11-21-1 *et seq*. of this code.

(2) *Corporation net income tax*. – The amount of the annual property value adjustment tax credit shall be taken against the tax liabilities of the eligible taxpayer for the current taxable year imposed by §11-24-1 *et seq*. of this code. 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.

(3) *Refundable portion of annual property value adjustment tax credit*. —

(A) If annual property value adjustment tax credit allowed under this article exceeds the amount of personal income tax or corporation net income tax, as applicable, subject to offset under this article in any taxable year, the eligible taxpayer may claim, for that taxable year, the excess amount as a refundable tax credit, not to exceed $100,000 per project.

(B) The $100,000 property value adjustment tax credit refundable credit limitation applies on a per project basis, so that:

(i) If there is a single eligible taxpayer that has developed property comprising a certified BUILD WV project that is entitled to a refundable portion of the tax credit, then the $100,000 refundable credit limitation applies to that single taxpayer; or

(ii) If there are multiple eligible taxpayers that have developed of property comprising a certified BUILD WV project that are entitled to a refundable portion of the tax credit, then the $100,000 refundable credit limitation applies to, and is shared among, those multiple eligible taxpayers in such proportion as the Department of Economic Development may approve, and in no case shall the aggregate amount of refundable tax credit taken by all

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such multiple eligible taxpayers in total exceed $100,000 for the tax year.

(C) Application of the property value adjustment tax credit, as a refundable 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. Only that single entity shall be entitled to claim excess credit for the taxable year, if applicable, as refundable 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. Any property value adjustment tax credit remaining after application of this subdivision for the taxable year is forfeited.

(b) *Pass-through entities*. –

(1) The annual property value adjustment tax credit allowed under this article for the year shall flow through to the equity owners of the pass-through entity in the same manner as distributive share of income flows through to the equity owners.

(2) *Personal income tax — application of annual property value adjustment tax credit against personal income tax on income from pass-through entities*. – The property value adjustment tax credit authorized by this article may be applied against the tax imposed under §11-21-1 *et seq*. of this code, on flow-through income of an individual partner, owner, interest holder or S Corporation shareholder, which is directly and solely derived from and limited to the net income of the flow-through entity that is an eligible taxpayer that has developed certified project property. If annual property value adjustment tax credit allowed under this article exceeds the amount of personal income tax of a particular owner, interest holder, partner or S Corporation shareholder or other owner of a flow-through entity that is an approved company, subject to offset by the property value adjustment tax credit under this article in any taxable year, the particular owner, interest holder, partner, S Corporation shareholder, or other owner of the flow-through entity may claim, for that taxable year, the excess amount as a refundable tax credit. The $100,000 limitation is determined at the flow-through entity level and applies as the total aggregate limit on all refundable credit available to all partners, owners, interest holders, or S Corporation shareholders that receive a distributive share of flow through income from the flow-through entity. The refundable credit amount shall be divided and distributed among the individual partners, owners, interest holders, or S Corporation shareholders, in the same manner and in the same proportions as the distributive share of income flows through to the equity owners: *Provided*, That in the case of multiple approved companies that have developed project property, the $100,000 limitation applies on a per project basis, as specified herein.

(3) *Corporation net income tax — application of annual property value adjustment tax credit against corporation net income tax on income from pass-through entities*. – The property value adjustment tax credit authorized by this article may be applied against the tax imposed under §11-24-1 *et seq*. of this code, on flow-through income of a C corporation that is a partner, owner, interest holder, or S Corporation shareholder, which is directly and solely

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derived from and limited to the net income of the flow-through entity that is the eligible taxpayer that developed certified project property. If annual property value adjustment tax credit allowed under this article exceeds the amount of corporation net income tax of a particular owner, interest holder, partner, S Corporation shareholder, or other owner of a flow-through entity that is an approved company, subject to offset by the property value adjustment tax credit under this article in any taxable year, the particular owner, interest holder, partner, S Corporation shareholder, or other owner of the flow-through entity may claim, for that taxable year, the excess amount as a refundable tax credit. The $100,000 limitation is determined at the flow-through entity level and applies as the total aggregate limit on all refundable credit available to all partners, owners, interest holders or S Corporation shareholders that receive a distributive share of flow-through income from the flow-through entity. The refundable credit amount shall be divided and distributed among the partners, owners, interest holders or S Corporation shareholders, in the same manner and in the same proportions as the distributive share of income flows through to the equity owners: *Provided*, That in the case of multiple eligible taxpayers that have developed project property, the $100,000 limitation applies on a per project basis, as specified herein.

(c) The property value adjustment tax credit shall not apply against the ad valorem property tax. The property value adjustment tax credit shall not apply against any withholding tax or payroll tax of any taxpayer or employer.

(d) *Annual schedule*. – For purposes of asserting the property value adjustment tax credit allowed under this article against tax, the taxpayer must prepare and file an annual schedule showing the amount of tax paid for the taxable year and the amount of credit allowed under this article, and such other information as the Tax Commissioner may require. The annual schedule shall set forth the information and be in the form prescribed by the Tax Commissioner.

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§5B-2L-12. Property value adjustment tax credit entitlement is retained by eligible taxpayers that have developed project property, transfer of credit to transferees of project property is prohibited.

(a) *Transfer or sale of assets*. —

(1) Where there has been a sale or transfer of the certified BUILD WV project assets from an eligible taxpayer to any other person or entity, the eligible taxpayer retains entitlement to the property value adjustment tax credit. Credit entitlement shall not be transferred to the transferee of project property.

(b) *Stock purchases*. – Where a corporation which is an eligible taxpayer entitled to the property value adjustment tax credit under this article is purchased through a stock purchase by a new owner, where such corporation remains a legal entity so as to retain its corporate identity, the entitlement of that corporation to the property value adjustment tax credit allowed under this article will not be affected by the ownership change: *Provided*, That the corporation otherwise remains in compliance with the requirements of this article for entitlement to the property value adjustment tax credit.

(c) *Mergers*. —

(1) Where a corporation or other entity that is an eligible taxpayer entitled to the property value adjustment tax credit under this article is merged with another corporation or entity, the surviving corporation or entity is entitled to the property value adjustment tax credit to which the predecessor eligible taxpayer was originally entitled: *Provided*, That the surviving corporation or entity otherwise complies with the provisions of this article.

(2) The amount of property value adjustment tax credit available in any taxable year during which a merger occurs shall be apportioned between the predecessor eligible taxpayer and the successor eligible taxpayer based on the number of days during the taxable year that each owned the transferred certified BUILD WV project business assets.

(d) No provision of this section or of this article may be construed to allow sales, assignment, or other transfers of the property value adjustment tax credit allowed under this article. The property value adjustment tax credit allowed under this article can be redesignated as useable by a taxpayer or entity other than the original entity entitled to the credit, only in circumstances where there is a valid successorship as described under this section.

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§5B-2L-13. Credit recapture; interest; penalties; additions to tax; statute of limitations.

(a) If it appears upon audit or otherwise that any person or entity has taken the property value adjustment tax credit against tax and was not entitled to take the credit, then the credit improperly taken shall be recaptured. Amended returns shall be filed for any tax year for which the credit was improperly taken. Any additional taxes due under §11-21-1 *et seq*. or §11-24-1 et *seq*., or any other provision of this code shall be remitted with the amended return or returns filed with the Tax Commissioner, along with interest, as provided in §11-10-1 *et seq*. of this code and such other penalties and additions to tax as may be applicable pursuant to the provisions of §11-10-1 et seq. of this code.

(b) Notwithstanding the provisions of §11-10-1 *et seq*. of this code to the contrary, penalties and additions to tax imposed under that article may be waived at the discretion of the Tax Commissioner: Provided, That interest is not subject to waiver.

(c) Notwithstanding the provisions of §11-10-1 *et seq*. of this code to the contrary, the statute of limitations for the issuance of an assessment of tax by the Tax Commissioner is five years from the date of filing of any tax return on which the property value adjustment tax credit was taken or five years from the date of payment of any tax liability calculated pursuant to the assertion of the property value adjustment tax credit allowed under this article, or five years from the date of payment of any refundable tax credit calculated pursuant to the assertion of the property value adjustment tax credit allowed under this article, whichever is later.

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§5B-2L-14. Designation of a certified district.

(a) A certified BUILD WV district may be designated upon the agreement, in writing, of the following officials: the Secretary of the Department of Economic Development, the Secretary of the Department of Tourism, and the Secretary of the Department of Commerce.

(b) A certified district shall be designated by the identification of a municipality, attraction, landmark, or other point of interest. The certified district may extend, as determined by the designation, up to 20 square miles from that municipality, attraction, landmark, or other point of interest.

(c) The following criteria shall be considered when determining whether to designate a certified district:

(1) The housing and employment needs within the certified district;

(2) Whether the certified district will have a significant and positive economic impact on the state;

(3) Whether there is substantial and credible evidence that designating the certified district will result in one or more certified projects likely to be started and completed in a timely fashion;

(4) Whether the certified district 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;

(5) Whether the certified district will, directly or indirectly, assist in the creation of additional employment opportunities in the area or assist in the filling of currently available jobs;

(6) Whether the certified district helps to diversify the local economy;

(7) Whether the certified district is consistent with the goals of this article; and

(8) Any other relevant and reasonable criteria determined by the designating officials.

(d) The number of districts within the state shall be determined within the discretion of the Secretary of the Department of Economic Development, the Secretary of the Department of Tourism, and the Secretary of the Department of Commerce by their agreement, subject to the $150 million limitation on aggregate sum of approved costs for all projects for any fiscal year as set forth in §5B-2L-16(c) of this code.

(e) A certified district may be decertified at any time upon agreement, in writing, of the designated officials provided for in subsection (a) of this section. In no case may any BUILD WV district be certified for any time period longer than 10 calendar years, unless

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redesignated in the same manner as provided for designation.

(f) In no case may a proposed BUILD WV project be certified in any geographic area that is not a certified BUILD WV district.

(g) The designation made pursuant to this section as to the designation of a certified district, refusal to designate a certified district, decertification, or revocation of certification of a BUILD WV district is final.

WV Legislature

§5B-2L-15. Project administration and certification.

(a) The Department of Economic Development has the following powers and duties necessary to carry out the purposes of this article, including, but not limited to:

(1) To issue approval of and certify all applications for projects and enter into agreements pertaining to certified BUILD WV projects with approved companies;

(2) To employ fiscal consultants, attorneys, appraisers, and other agents as the Secretary of the Department of Economic Development finds necessary or convenient for the preparation and administration of agreements and documents necessary or incidental to any project;

(3) To impose and collect fees and charges in connection with any transaction;

(4) To impose and collect from the applicant a nonrefundable application fee in the amount of $5,000 to be paid to the Department of Economic Development when the application is filed;

(5) To issue approval of and certify all certified BUILD WV project residential housing units; and

(6) To decertify, refuse to certify or revoke certification of any proposed or certified BUILD WV project, upon a finding that any person or entity involved therein, or any approved company, or any eligible taxpayer, has failed to comply with the requirements of this article, or upon a finding that residential housing units, common areas or infrastructure of a certified BUILD WV project have been constructed with shoddy workmanship or materials, or that the approved company or eligible taxpayer has failed to maintain or repair certified BUILD WV project property in a manner consistent with accepted standards or standards prescribed by the Department of Economic Development, or that any aspect of the undertaking has been the result of, or involved, fraud, malfeasance, bribery, embezzlement, corruption, intimidation or gross misconduct. Upon revocation, all tax credit authorized under this article shall be null and void and of no further force, or effect. No company, entity, or person shall apply or use any tax credit to offset tax on or after the date of revocation. The Tax Commissioner may apply credit recapture, and tax assessment and collection actions as may be appropriate under the West Virginia Tax Procedure and Administration Act and may seek criminal sanctions, as appropriate, under West Virginia Tax Crimes and Penalties Act.

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§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 file a written application for approval and certification of the project with the Department of Economic Development.

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

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

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

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

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

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

(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;

(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;

WV Legislature

(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 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 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 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 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 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

WV Legislature

certification of a proposed project, refusal to certify a proposed project, decertification, or revocation of certification of a project is final.

WV Legislature

§5B-2L-17. Agreement between Department of Economic Development and approved company or approved group of multiple party project participants.

(a) The Department of Economic Development, upon final approval of an application by the Secretary, may enter into an agreement with any approved company or group of multiple party project participants with respect to a project.

(b) The Department of Economic Development may, at the discretion of the Secretary of the Department of Economic Development, approve an application for project certification constituting a single company application or a multiple party project application. The Secretary of the Department of Economic Development may certify a multiple party project, and may enter into an agreement with the principals thereof. For purposes of this article, a multiple party project participant must be an eligible company as defined in this article. The terms and provisions of each agreement shall include, but not be limited to:

(1) Total projected approved costs.

(2) Within three months of the completion date, the approved company or group of multiple party project participants shall document:

(A) The actual cost of the project through a certification of the costs to the Department of Economic Development by an independent certified public accountant acceptable to the Department of Economic Development; and

(B) A date certain by which the approved company or group of multiple party project participants shall have completed and opened the certified project for occupancy.

(3) Any approved company or group of multiple party project participants, having received final approval may request, and the Department of Economic Development may grant, an extension of time or change to the expected timeline. However, in no event shall the extension exceed three years from the date of certification to the completion date specified in the agreement with the approved company or group of multiple party project participants.

(c) Although adjacent properties may be developed and expanded upon by approved companies or others, and certified BUILD WV project property may itself be developed and expanded upon, in such cases, the certified BUILD WV project designation and the tax incentives and benefits of this article shall not apply with relation to such noncertified developments or expansions, except upon the issuance of a subsequent certification by the Department of Economic Development for such development or expansion. In no case may a certified project be augmented, enlarged, extended or expanded, except pursuant to issuance of an additional and separate certification of a new and distinct project. Any augmentation, enlargement, extension or expansion may only be approved and certified pursuant to the submission of a new request for project approval, with full payment of all associated fees, and submission of full documentation as required under this article for a new project.

WVLegislature

§5B-2M-1. Policy.

It is the policy of this state to promote the development of a network of vertiports that will provide equitable access to citizens of this state who may benefit from advanced air mobility operations for cargo and passenger service, and to avoid any vertiport monopolization or discrimination, by: (i) Funding the planning for and construction of public-use vertiports, with any funding appropriated by the Legislature; (ii) encouraging local zoning and other land use authorities to ensure an adequate number and a varied location of vertiports to serve citizens throughout the state; and (iii) promoting competition and equity of access by prohibiting the grant of an exclusive right to one or more vertiport owners and operators or to vertiport operators at one or more vertiports.

WV Legislature

§5B-2M-2. Definitions.

For purposes of this article, “vertiport” means infrastructure or a system with supporting services and equipment intended for landing, ground-handling, and take-off of manned or unmanned vertical take-off and landing (VTOL) aircraft.

WV Legislature

§5B-2M-3. Applicability.

This article applies to any vertiport that is available for public use by any advanced air mobility operator authorized by the U.S. Department of Transportation or Federal Aviation Administration to engage in passenger and/or cargo services in scheduled or non-scheduled service in or affecting interstate commerce.

WV Legislature

§5B-2M-4. Vertiport safety.

(a) *Vertiport Design*. – Each vertiport subject to this article shall comply with any Federal Aviation Administration published rule or advisory circular containing standards for vertiport design and performance characteristics.

(b) *Vertiport Layout Plan*. – Each vertiport subject to this article shall submit a vertiport layout plan to the administrator of the Federal Aviation Administration in the form and manner determined by the administrator, and no operations may be conducted at the vertiport until such layout plan is approved.

WV Legislature

§5B-2M-5. Exclusionary and discriminatory zoning prohibited.

A political subdivision of this state shall not exercise its zoning and land use authority to grant or permit an exclusive right to one or more vertiport owners or operators and shall use such authority to promote reasonable access to advanced air mobility operators at public-use vertiports within the jurisdiction of the subdivision.

WV Legislature

§5B-2M-6. Harmonization.

The provisions of this article are intended to supplement any provision of federal law pertaining to the design, construction, operations, or maintenance of a vertiport designed or constructed with a grant under 49 U.S.C. § 47101 *et seq*., and any provision of this article found in conflict with or otherwise preempted by federal law shall be null and void, without invalidating any other provision of this article.

WV Legislature

§5B-2N-1. Short title.

This article shall be known and cited as the Comprehensive Grid Stabilization and Energy Security Act of 2026.

WV Legislature

§5B-2N-1a. Definitions.

For the purpose of this article:

"Company" means a for-profit sole proprietorship, organization, association, corporation, limited liability partnership, limited liability company, including a wholly owned subsidiary, majority owned subsidiary, parent company, or affiliate of those entities or business associations that exist to make a profit.

"Critical Energy Infrastructure" means a communication infrastructure system, cybersecurity system, electric grid, hazardous waste treatment system or water treatment facility that directly or indirectly affects the ability to generate, transmit, transport or distribute electricity, coal, oil and natural gas, or hydrogen within the state.

"Cybersecurity means the measure taken to protect a computer, computer network, computer system or other technology infrastructure against unauthorized use or access.

"Director" means the Director of the West Virginia Office of Energy.

"Office" means the West Virginia Office of Energy.

WV Legislature

§5B-2N-2. Legislative findings; declaration of public policy.

(a) The Legislature finds that:

(1) The advent and advancement of new and existing technologies and practices have created the opportunity for efficient use of coal, geothermal, hydrogen, hydropower, natural gas, and nuclear in West Virginia, including opportunities for the production of electricity;

(2) Production of electricity utilizing coal, geothermal, hydrogen, hydropower, natural gas, and nuclear produced in West Virginia is highly underdeveloped in comparison to nearby states with which West Virginia competes for economically beneficial projects. Coal, geothermal, hydrogen, hydropower, natural gas, and nuclear electric generation projects have been undermined by existing regulatory requirements and related time delays;

(3) In developing regulatory actions and identifying appropriate approaches to encourage development of coal, geothermal, hydrogen, hydropower, natural gas, and nuclear electric generation projects, agencies should attempt to promote coordination, simplification, and harmonization. Agencies should also seek to identify appropriate means to achieve regulatory goals that are designed to promote innovation and enhance West Virginia's competitiveness with surrounding states;

(4) Agencies should review their existing legislative and procedural rules to determine whether any such rules should be modified, streamlined, expanded, or repealed to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives related to coal, geothermal, hydrogen, hydropower, natural gas, and nuclear electric generation projects. Agencies should also evaluate the data that they have to determine what information might be useful to prompt permitting and approving coal, geothermal, hydrogen, hydropower, natural gas, and nuclear generated electricity; and

(5) The Office of Energy is responsible for implementing this Grid Stabilization and Security Act of 2026 and providing as much assistance as possible to grow and sustain the coal, geothermal, hydrogen, hydropower, natural gas, and nuclear electric generation segment of the economy.

(b) The Legislature declares that facilitating the development of business activity directly and indirectly related to coal, geothermal, hydrogen, hydropower, natural gas, and nuclear electric generation development, transportation, storage, and use serves the public interest of the citizens of this state by promoting economic development, improving economic opportunities for the citizens of this state, and providing additional opportunities to stabilize the price of electricity while increasing its reliability and availability.

WV Legislature

§5B-2N-2a. Creating the Electric Grid Stabilization and Security Fund.

(a) The Electric Grid Stabilization and Security Fund is hereby created. The fund shall be administered by the Department of Commerce and shall consist of all moneys made available for the purposes and from the sources set forth in this section of the code.

(b) The fund consists of moneys received from the following sources:

(1) All moneys received pursuant to §11-6N-4(b)(4)(C) of this code;

(2) All appropriations provided by the Legislature;

(3) Any moneys available from external sources; and

(4) All interest and other income earned from investment of moneys in the fund.

(c) The Department of Commerce shall use moneys in the fund to provide support for electric grid stabilization for regulated utilities and grid security, including development, efficiency, and environmental upgrades, but not decommissioning and replacement of existing facilities; maintenance of utility owned and operated coal and natural gas electric generation, regardless of unit or plant ownership by different regulatory jurisdictions; and transmission resources which solely serve West Virginia rate payers.

(d) Any balance, including accrued interest and any other returns, in the Electric Grid Stabilization and Security Fund at the end of each fiscal year may not expire to the General Revenue Fund but remain in the fund and be expended for the purposes provided by this section.

(e) Fund balances may be invested with the state’s Consolidated Investment Fund. Earnings on the investments shall be used solely for the purposes defined in §5B-2-16(c) of this code.

(f) In order to effectuate the purposes of this section, the Department of Commerce may promulgate legislative rules, including emergency rules, in accordance with §29A-3-1 *et seq*. of this code.

WV Legislature

§5B-2N-2b. Strategy for Developing Coal, Geothermal, Hydrogen, Hydropower, Natural Gas, and Nuclear Energy.

(a) The Office of Energy shall develop a recommended strategy to the Governor and Secretary of Commerce for developing coal, geothermal, hydrogen, hydropower, natural gas, and nuclear fueled energy in West Virginia's economy and energy infrastructure.

(b) Such strategy shall include, without limitation:

(1) A review of regulations and legislation needed to guide the development and achievement of economies of scale for the energy ecosystem in the state;

(2) Recommendations for post-secondary education or workforce initiatives to prepare the state's workforce for coal, geothermal, hydrogen, hydropower, natural gas, and nuclear fueled energy-related jobs;

(3) Recommendations, legislation, and policies to support coal, geothermal, hydrogen, hydropower, natural gas, and nuclear fueled energy facilities at sites throughout West Virginia;

(4) Recommendations regarding funding sources for developing coal, geothermal, hydrogen, hydropower, natural gas, and nuclear fueled energy programs and infrastructure; and

(5) Recommendations for potential end uses of coal, geothermal, hydrogen, hydropower, natural gas, and nuclear fueled energy.

WV Legislature

§5B-2N-3. Identification of suitable sites for coal, geothermal, hydrogen, hydropower, natural gas, or nuclear electric generation projects.

(a) The Director of the Office of Energy is authorized and directed to identify economically viable sites within the state that are:

(1) Located near a convenient and sufficient supply of coal, geothermal, hydrogen, hydropower, natural gas, or nuclear energy; and

(2) Likely to create economically viable coal, geothermal, hydrogen, hydropower, natural gas, or nuclear electric generation projects that provide economic benefits to the local and state governmental units and the citizens of the state; and

(3) Optimally located to provide a convenient supply of the generated electricity to consumers; and

(b) The Director of the Office of Energy shall use the following criteria in identifying economically viable sites for electric generation projects:

(1) Geographic locations near coal deposits, geothermal resources, hydrogen projects, hydropower resources, producing natural gas wells, or pipelines carrying natural gas or hydrogen produced in the state, or nuclear electric generation facilities, capable of supplying and sustaining one or more electric generation facilities for the economic life of the facilities;

(2) Geographic locations near existing electric transmission infrastructure capable of transmitting the generated electricity to wholesale markets by one or more coal, geothermal, hydrogen, hydropower, natural gas, or nuclear electric generation facilities for the economic life of the facilities;

(3) Geographic locations that fulfill the air quality conditions imposed by the Division of Air Quality of the West Virginia Department of Environmental Protection the electric generation facilities; and

(4) Geographic locations that can demonstrate that allowable emission increases from one or more generation facilities, in conjunction with all other applicable emission increases or reductions (including secondary emissions), would not cause or contribute to air pollution in violation of:

(A) Any national or West Virginia ambient air quality standard in any air quality control region; or

(B) Any applicable maximum allowable increase over the baseline concentration in any area.

WV Legislature

§5B-2N-4. Designation of sites suitable for electric generation projects.

(a) Following identification of economically viable sites that may be suitable for electric generation projects, the Director of the Office of Energy shall identify and designate each site it has determined to be suitable for coal, geothermal, hydrogen, hydropower, natural gas, or nuclear electric generation projects as a "designated site", and shall communicate the designated sites to the West Virginia Department of Environmental Protection's Division of Air Quality and the West Virginia Public Service Commission as sites suitable for the construction and operation of coal, geothermal, hydrogen, hydropower, natural gas, or nuclear electric generation projects.

(b) Any application for a siting certificate pursuant to §24-2-11c of this code filed with the Public Service Commission to construct or to construct and operate a coal, geothermal, hydrogen, hydropower, natural gas, or nuclear electric generation project at a designated site shall be adjudicated, inclusive of public hearings, and a final order issued by the Public Service Commission, within 270 calendar days after the date of the filing of the application, notwithstanding the requirements of any other provision of this code.

(c) Nothing in this section is intended to preclude, modify, or establish new Public Service Commission jurisdiction over:

(1) Any exercise of powers, duties, and obligations pursuant to the West Virginia Public Energy Authority Act;

(2) The right of end-user consumers of electricity to develop, invest in, or otherwise contract for on-site electric self-generation or cogeneration facilities, including those utilizing natural gas as a fuel source;

(3) This section does not alter, modify, or cancel any existing cogeneration tariffs authorized by the Public Service Commission; and

(4) This section does not authorize the sale of electricity to end-users in the state.

(d) Where a designated site has been identified, in accordance with §22-5-11b(b) of this code, as a location where additional data would be helpful for modeling or other evaluation of the potential emission of a coal, geothermal, hydrogen, hydropower, natural gas, or nuclear electric generation project, the Office of Energy may consult with or retain such experts as are necessary to acquire such data.

WV Legislature

§5B-2N-4a. Energy-Ready Community Designation; Criteria; Application Process; Award Process.

(a) The Office of Energy shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq*. of this code to establish a procedure and criteria for awarding a coal, geothermal, hydrogen, hydropower, natural gas, or nuclear-ready community designation to demonstrate a community's voluntary readiness to welcome electric generation-related development. The procedure and criteria to attain the designation shall include:

(1) The holding of local public educational meetings, by a county or municipality, to educate the community on coal, geothermal, hydrogen, hydropower, natural gas, or nuclear electric generation technologies, the related ecosystem, and the role that energy-related development could play in the community;

(2) The availability of at least one site within the community that has been designated by the Office of Energy as a "Designated Site" suitable for a coal, geothermal, hydrogen, hydropower, natural gas, or nuclear electric generation project; and

(3) The adoption of resolutions from the county or the municipalities within the designation area requesting a designation of the community's readiness for energy-related projects to be developed and sited there.

(b) Communities may voluntarily apply to the Office of Energy for an energy-ready community designation in the form and manner as the office may require, and the office shall evaluate the application and award the designation based on the criteria established under subsection (a) of this section.

WV Legislature

§5B-2N-5. Development of State Energy Security Plan.

(a) The Office of Energy shall develop a State Energy Security Plan and shall submit a report of its plan to the Governor and the Joint Committee on Government and Finance before on or before December 1, 2026, and every five years thereafter. The State Security Energy Plan shall at a minimum:

(1) Provide a state energy profile, including an assessment of energy production, transmission, distribution and end-use;

(2) Identify all energy sources and regulated and unregulated energy providers;

(3) Address potential hazards to each energy sector or system, including physical threats, cybersecurity threats and vulnerabilities;

(4) Provide a risk assessment of energy infrastructure and cross-sector interdependencies;

(5) Provide a risk-mitigation approach to enhance reliability and end-use resilience;

(6) Identify existing legislation and institutions responsible for energy security in West Virginia, including federal and state agencies and emergency response procedures;

(7) Address coordination between state agencies, local governments and energy providers; and

(8) Describe response processes and responsible authorities for energy emergencies.

(b) Nothing in this section is intended to preclude, modify or interfere with other state agencies in the performance of their duties and obligations during an energy emergency.

(c) Any plan and any information obtained or developed by the Office of Energy pursuant to this section shall be kept confidential and exempt from disclosure under the Freedom of Information Act under §29B-1-1 *et seq.*, of this code.

WV Legislature

§5B-2N-6. Biennial Energy Emergency Exercise.

(a) The Office of Energy shall conduct an energy emergency exercise by no later than July 1, 2027. It shall conduct additional energy emergency exercises every two years thereafter. The office shall invite representatives from the following entities to participate in the energy emergency exercise and shall provide said representatives with at least 30-days advance written notice of the energy emergency exercise:

(1) All electric utilities regulated by the West Virginia Public Service Commission;

(2) West Virginia Public Service Commission;

(3) West Virginia Office of Technology;

(4) West Virginia Governor's Office;

(5) West Virginia Legislature;

(6) West Virginia Fusion Center;

(7) West Virginia Department of Homeland Security;

(8) West Virginia Emergency Management Division;

(9) West Virginia National Guard;

(10) West Virginia Department of Transportation;

(11) West Virginia Department of Environmental Protection;

(12) Federal Emergency Management Administration;

(13) United States Department of Energy, Office of Cybersecurity, Energy Security and Emergency Response;

(14) United States Department of Homeland Security;

(15) United States Cybersecurity and Infrastructure Security Agency;

(16) West Virginia University; and

(17) Marshall University.

(b) The Office of Energy shall conduct the energy emergency exercise so as to allow the various participating state and federal agencies and other entities to access their energy emergency preparedness in a risk-free environment.

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(c) Within 30 days of completing the energy emergency exercise, the office shall provide a strictly confidential report to the Governor and the Joint Committee on Government and Finance. The report shall:

(1) Address whether the State Energy Security Plan properly delineates the roles and responsibilities of the various entities participating in the exercise and provide recommendations for improving the State Energy Security Plan; and

(2) Recommend improvements in the communication protocols among state agencies, the federal government, the private sector, other participating entities and the public.

(d) Any plan and any information obtained or developed by the Office of Energy pursuant to this section shall be kept confidential and exempt from disclosure under the Freedom of Information Act under §29B-1-1 *et seq.*, of this code.

WV Legislature

§5B-2O-1. Short title.

[Repealed.]

WV Legislature

§5B-2O-2. Legislative findings; declaration of public policy.

[Repealed.]

WV Legislature

§5B-2O-3. Identification of suitable sites for coal electric generation projects.

[Repealed.]

WV Legislature

§5B-2O-4. Designation of sites suitable for coal electric generation projects.

[Repealed.]

WV Legislature

§5B-2P-1. Definitions; Office of Entrepreneurship; duties; information; response to inquiries; annual report.

(a) Definitions:

(1) "Business" means any company, cooperative, corporation, partnership, sole proprietorship, or other legal entity organized or operating for pecuniary or nonpecuniary benefit.

(2) "Entrepreneur" means an individual who initiates or leads the formation or growth of a business.

(3) "Entrepreneurial support organization" means an entity, including public, private, and academic institutions, that is established, in whole or in part, to provide funding, mentorship, programming, resources, support, or training to entrepreneurs, startups, or scale-ups.

(4) "Scale-up" means a startup business that has changed scale to achieve more growth, innovation, and drive job creation, after demonstrating long-term viability of a proven business model evidenced by one or more of the following factors: Substantially increased revenues, an established cash flow, a streamlined marketing and sales operation, or a growth rate of at least 20 percent over a three-year period.

(5) "Startup" means a business that has been organized for five years or less.

(6) "State agency" means an agency of West Virginia including, but not limited to, a board, bureau, commission, department, institution, office, and any other government entity or public body in West Virginia. This term excludes the legislative and judicial branches of state government.

(b) There is created the Office of Entrepreneurship within the Office of the Secretary of State. Employees of the Office of Entrepreneurship report to the Secretary of State.

(c) The Office of Entrepreneurship shall:

(1) Serve as the liaison between entrepreneurs, startups, scale-ups, state agencies, and organizations that support entrepreneurship, to facilitate the navigation and coordination between government requirements and processes, referrals to the appropriate state agencies, and identifying systemic barriers and intergovernmental solutions for purposes set forth in this article;

(2) Coordinate with entrepreneurs, startups, and scale-ups to facilitate the efficient completion of state agency prerequisites to starting, conducting, and growing a business in West Virginia;

(3) Foster working relationships between government and non-government entities

WV Legislature

including, but not limited to, the Small Business Development Center, the Department of Commerce, the Economic Development Authority, and entrepreneurial support organizations, when appropriate, to establish a growth-positive foundation for business growth and financial stability;

(4) Support the growth of entrepreneurship in the state, including across demographic segments and geographic areas, through the creation of programs, policies, and events; and

(5) Be knowledgeable of and make available to entrepreneurs, startups, and scale-ups resources, programs, and opportunities from state agencies and non-governmental entities to support economic growth and business viability.

(d) State agencies are authorized to and may provide the Office of Entrepreneurship with data, information, and materials, including, but not limited to, educational information, limited system access, records, reports, resources, statistics, and any other necessary access, information, or materials to fulfil the duties and functions of the Office of Entrepreneurship.

(1) A state agency may require a confidentiality agreement between the state agency and the Office of the Secretary of State prior to fulfilling a request by the Office of Entrepreneurship, upon such terms and conditions as the state agency requires.

(2) All such data, reports, records, resources, educational items, and other information or materials obtained by the Office of Entrepreneurship under this section shall be exempt from public disclosure under §29B-1-4(a)(5): *Provided*, That such exemption is intended to balance confidentiality with accountability and entrepreneurial utility by exempting proprietary or sensitive information but allowing publication of de-identified data in materials, reports, and statistics.

(3) Reports, summaries, statistics, and materials developed by the Office of Entrepreneurship in whole or in part with data, reports, records, resources, educational items, and other information or materials provided to the Office of Entrepreneurship may be made available to entrepreneurs, startups, scale-ups, state agencies, and entrepreneurial support organizations for the purposes set forth in this article.

(e) Once established, the Office of Entrepreneurship shall provide entrepreneurs, startups, and scale-ups with a response to inquiries or requests for assistance within its purview no later than 48 hours of receipt, or by the close of the next business day therefrom: *Provided*, That for inquiries or requests for assistance that objectively require a longer response time due to complexity or subject matter, the office shall provide an initial response with an estimate of the delivery date for the final response.

(f) A state agency may designate an individual as the point of contact for all inquiries by the Office of Entrepreneurship, along with that individual’s name, email address, and direct phone number.

WV Legislature

(g) On or before November 1 of each year beginning two years after the creation of the Office of Entrepreneurship, and annually thereafter, the Office of Entrepreneurship shall provide a report to the Joint Standing Committee on Economic Development that includes:

(1) A summary of work accomplished in support of growing entrepreneurship in the state, which shall include a report on where West Virginia falls in national entrepreneurial and startup rankings, a comparison of peer states based on population and geography, and identification of drivers of performance;

(2) A summary of events hosted and attended to promote entrepreneurship and business growth in collaboration with state agencies and entrepreneurial support organizations;

(3) The number of startups and other relevant business organizations with associated data regarding their operations, activities, and likelihood of viability in the state;

(4) Policy recommendations for improving entrepreneurship in the state, including identifying regional challenges to entrepreneurship and solutions to increase the viability of startups in the state in coordination with state agencies and entrepreneurial support organizations; and

(5) Any additional information deemed necessary to provide an accurate depiction of the condition of entrepreneurship in the state.

(h) The Office of Entrepreneurship shall develop a first-year implementation plan outlining the intake, referral, and tracking processes with the assistance of government and non-government entities including, but not limited to, the Small Business Development Center, West Virginia One Stop Business Center, and entrepreneurial support organizations.

(i) The Office of Entrepreneurship created herein is intended to fulfill a complimentary role to existing state agencies and nothing in this article shall be construed to duplicate or supplant existing statutory duties or responsibilities of any state agency.

WV Legislature

§5B-2P-2. Office of Entrepreneurship Fund; appropriations; revenue generation; rule-making authorization.

(a) There is created in the State Treasury a special revenue account to be designated the West Virginia Office of Entrepreneurship Fund administered by the Secretary of State. Expenditures from the fund are to be made in accordance with the purposes provided in this article.

(b) The Office of Entrepreneurship is authorized to design and offer events, publications, products, programs, and services at reasonable fees to generate revenue to fund the activities of the Office of Entrepreneurship: *Provided*, That government liaison services shall remain available to all entrepreneurs, startups, and scale-ups at no cost.

(c) The Secretary of State may propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq*. of this code to implement the provisions of this article.

WV Legislature

§5B-2Q-1. Short title.

This article may be cited as the West Virginia Youth Summer Employment and Career Readiness Act.

WV Legislature

§5B-2Q-2. Purpose; legislative findings and declarations.

(a) The purpose of this article is to establish a statewide summer employment program for West Virginia's students and young adults that:

(1) Provides paid work experience, career exposure, and skill development through public and private partnerships;

(2) Supports emerging employment sectors and entrepreneurship in the state;

(3) Grows the state's workforce; and

(4) Attracts new businesses in search of prepared and job-ready young adults to the state.

(b) The Legislature hereby finds and declares the following:

(1) Early paid work experience improves educational attainment and workforce outcomes for students and young adults in the state.

(2) West Virginia faces persistent workforce shortages and youth out-migration, and preparing students and young adults for careers within the state is a valuable tool not only for the retention of the state's youth but also to prepare them for successful careers at a critical juncture in their lives.

(3) The creation of a paid summer employment program in the state will aid in retaining the state's youngest citizens and will further boost the state's economic vitality by helping to build a robust workforce that will incentivize businesses to locate in the state.

(4) Such a program will enhance West Virginia's workforce with motivated and career-ready young citizens, reduce dependence on governmental assistance and services, help to carry the state forward toward economic prosperity, and is therefore one of the most valuable investments that can be made for the future of the state.

WV Legislature

§5B-2Q-3. Definitions.

For purposes of this article:

(1) "Department" means the Department of Commerce.

(2) "Priority youth population" means youth who are at least 14 and not more than 20 years of age at the time of participation in the program.

(3) "Employer partner" means a private business, nonprofit organization, local or state agency or government, or public agency that provides paid work placements under the program.

(4) "Matching contribution" means a monetary or documented in-kind contribution from an employer partner or non-state entity.

(5) "Program" means the West Virginia Youth Summer Employment and Career Readiness Program created by this article and administered by the Division of Workforce Development within the Department of Commerce.

WV Legislature

§5B-2Q-4. Creation of West Virginia Youth Summer Employment and Career Readiness Program.

(a) Program created. – The West Virginia Youth Summer Employment and Career Readiness Program is hereby established within the Department of Commerce's Division of Workforce Development. The department shall administer the program to provide youth who are at least 14 and not more than 20 years of age at the time of participation in the program with paid summer employment, structured work-based learning, and career exploration opportunities aligned with workforce needs of the State of West Virginia.

(b) Grant placements. – In awarding grants and approving placements in the program, the department shall direct funding across all regions of the state and shall emphasize training and exposure to employment opportunities that include apprenticeships, internships, and paid employment experiences that prepare participating youth for emerging and essential job growth sectors.

(c) Program design. – The department shall, in administering the program, prioritize the facilitation of work experiences that emphasize:

(1) High-demand and emerging industries identified through labor market data and workforce development plans;

(2) Opportunities that provide foundational skills for long-term employment and career advancement;

(3) Public service opportunities that provide participating youth with the chance to assist and improve their local community and to be exposed to the rewards and benefits of public service;

(4) Exposure to entrepreneurship, self-employment, and small business development, including skills relevant to starting and operating a business; and

(5) Career pathways that align with regional economic development strategies.

(d) Coordination. – In administering the program and awarding grants, the department shall coordinate with the West Virginia Department of Education and with individual county boards of education to identify the types of training opportunities currently being provided in the state and in individual counties. The department shall further coordinate with the Division of Labor and with its economic development partners to identify emerging job growth trends and to communicate those trends to employer partners and program participants. The department shall actively engage with employers, industry associations, public and private educational institutions, and economic development partners to identify current and projected employment trends and to inform, recruit, and encourage employer partners to offer placements aligned with those trends.

(e) Participation. – In administering the program, the department shall provide equal access

WV Legislature

to all eligible youth.

WV Legislature

§5B-2Q-5. Employer partnerships and matching requirements.

Program funds shall be awarded by the department through state grants to private and public employer partners. Each employer partner shall apply grant contributions toward participant wages, supervision, training, or related costs. The department shall establish, by legislative rule, minimum matching requirements, participant eligibility criteria, valuation of in-kind contributions, and criteria for waivers or reductions for small employers or nonprofit agencies and organizations.

WV Legislature

§5B-2Q-6. Eligible activities and participant protections.

(a) Program funds received by employer partners may be used only for wage subsidies, payroll-related costs, training, transportation, equipment, supportive services, and reasonable administrative expenses, all of which must be related to youth participants hired by the employer partner under the program.

(b) Youth participants in the program shall be paid by employer partners not less than the applicable minimum wage established by §21-5C-2 of this code.

(c) An employer partner's participation in the program shall not directly result in the displacement of the employer partner's existing employees or a reduction in the wages or hours of said employees.

WV Legislature

§5B-2Q-7. Reporting and accountability.

On or before December 1, 2026, and annually thereafter, the department shall submit a report to the Governor and the Joint Committee on Government and Finance detailing implementation of the program, participant outcomes, expenditures, and leveraged matching contributions.

WV Legislature

§5B-2Q-8. Rulemaking authority.

The department shall propose legislative rules in accordance with §29A-3-1 *et seq*. of this code and may promulgate any emergency rules necessary to effectuate the provisions of this article.

WV Legislature

§5B-2Q-9. Funding.

(a) The department may receive private and public grants and donations, and appropriations from the Legislature, to fund the program. All moneys collected shall be deposited in a special revenue account in the State Treasury to be known as the "West Virginia Youth Summer Employment and Career Readiness Fund", which is hereby created and shall administered by the Secretary of the Department of Commerce. Expenditures from the fund shall be for the purposes set forth in this article and are not authorized from collections but are to be made only in accordance with appropriations by the Legislature and in accordance with the provisions of §12-3-1 *et seq*. of this code and upon fulfillment of the provisions of §11B-2-1 *et seq*. of this code: Provided, That for the fiscal years ending June 30, 2026 and June 30, 2027, expenditures are authorized from collections rather than pursuant to appropriations by the Legislature.

(b) The department shall make applications for any available federal, public, non-profit or private grants and donations in support of the program. The department may, if it is a condition of such grant or donation, direct the grant or donation toward any portion of a priority youth population to which the grant or donation is directed.

WV Legislature

§5B-2Q-10. Immunities.

Any employer partner, and any officer, employee, or agent of an employer partner, who in good faith participates in the program and complies with the provisions of this article and any rules promulgated thereunder is immune from any civil, criminal, or administrative liability arising from the employer partner's hiring of a youth participant who is under 18 years of age for a work placement under the program, unless the employer partner or its officers, employees, or agents acted with a malicious purpose.

WV Legislature

§5B-2R-1. Short title.

This article shall be known and may be cited as the "Recharge West Virginia Act."

WV Legislature

§5B-2R-2. Definitions.

The words defined in this section have the meanings given to them for purposes of this article unless the context clearly requires otherwise.

"Base wage" means an employee's average gross weekly wage (or, if paid on a salary basis, the equivalent weekly wage) earned during the six calendar months immediately preceding the commencement of any eligible training pursuant to the Recharge West Virginia Program.

"Department" means the Department of Commerce.

"Division" means the Division of Economic Development.

"Eligible employee" means any person currently employed by a qualifying employer, except for an independent contractor, who:

1. Has resided in West Virginia for the previous six months; and
2. Has had full-time employment for the previous six months.

"Eligible training" means upskilling training that the division determines is eligible for reimbursement under the program.

"New wage" means the employee's average gross weekly wage (or, if paid on a salary basis, the equivalent weekly wage) earned during the first two full calendar months immediately following completion of the upskilling training.

"Program" means the Recharge West Virginia Program established pursuant to this article.

"Public body" means the State of West Virginia and every officer, agency, department, including the executive, legislative and judicial departments, division, bureau, political subdivision, board and commission thereof; every county and city governing body, school district, special district, municipal corporation, and any board, department, commission, council, or agency thereof; and any other body which is created by state or local authority or which is primarily funded by the state or local authority.

"Qualifying employer" means any employer in this state, except for an employer who is a public body, which is:

(1) Registered with the Secretary of State, except that an employer registered as a foreign nonprofit corporation is not eligible;

(2) Compliant with the West Virginia Unemployment Compensation Law, as evidenced by a letter of good standing from WorkForce West Virginia; and

3. Physically located in West Virginia.

WV Legislature

"Qualifying wage increase" means a new wage that is:

(1) At least 25% greater than the base wage; and

(2) Above the average weekly wage in West Virginia, as determined and published by the

United States Bureau of Labor Statistics.

"Upskill credential" means an industry-recognized credential, or any other credential indicated by a qualifying employer as necessary for improving the skill level of an eligible employee, that:

(1) Verifies an individual’s qualification or competence;

(2) Is issued by an entity with the authority to issue such credential; and

(3) Is obtained as a result of upskilling training received pursuant to the program.

"Upskilling" or "Upskilling training" means specialized technical training to increase the skill levels of an eligible employee to enable the employee to retain employment or advance to a higher level of employment within a company. The term includes, but is not limited to, cross-training, reskilling, leadership development, train-the-trainer programs, and registered apprenticeships.

WV Legislature

§5B-2R-3. Recharge West Virginia Program established.

(a) There is hereby created the Recharge West Virginia Program, to be administered by the Division of Economic Development, to facilitate the upskilling of West Virginia workers; support companies that invest in upskilling their workforces; and recognize and reward companies that train, retain, and advance talent from within.

(b) In any fiscal year in which the Legislature appropriates money for the program, the division may, in accordance with the provisions of this article, reimburse a qualifying employer for the costs of providing upskilling training to an eligible employee who obtains an upskill credential and receives a qualifying wage increase: *Provided*, That a qualifying employer may not be reimbursed more than $10,000 for training provided to any individual employee: *Provided, however,* That no qualifying employer may receive more than $100,000 in any fiscal year pursuant to the provisions of this article.

(c) The division shall design an application form for qualifying employers to apply for an award for reimbursement. The application form shall contain all information that the division deems necessary to fulfill the provisions of this article.

(d) A qualified employer shall complete and submit the application form to be eligible for reimbursement. Each applicant shall include with its application the following:

(1) A proposed upskilling training plan;

(2) A detailed job description and salary range for the position targeted for training;

(3) Proof of the employee's eligibility;

(4) Proof of the eligible employee's current base wage;

(5) The anticipated average gross weekly wage the employee would receive upon completing the proposed upskilling training and obtaining an upskill credential; and

(6) Any other information or documents required by the division.

(e) An employer may participate in and receive reimbursements under both this program and the West Virginia Guaranteed Work Force Program established by §5B-2D-1 *et seq.* of this code, subject to the following limitations:

(1) No employer shall receive reimbursement under both programs for the same training expenditure;

(2) No training program or course for which reimbursement has been made, or for which reimbursement is sought, under one program shall be eligible for reimbursement under the other program for the same cost or portion thereof;

WV Legislature

(3) As a condition of receiving reimbursement under this program, the employer shall certify, in a form provided by the division, that no claim for reimbursement has been or will be made under another state-funded reimbursement program for the same training expenditure; and

(4) If the division determines that an employer has received duplicate reimbursement in violation of this subsection, the employer shall repay the amount of the duplicate reimbursement, and may be subject to any additional penalties or remedies provided by law.

(f) Applications shall be evaluated by the division at the close of the application period, as determined by the division, and may not be awarded on a first-come, first-served basis. The division may make preliminary awards for reimbursement only after the application period has closed. The division shall evaluate all applications submitted by qualifying employers on a competitive basis using the following criteria:

(1) The pledged wage increase the employee will realize after obtaining the upskill credential in relation to the cost of obtaining the upskill credential;

(2) The level of economic distress in the qualifying employer's region and the balance of awards made to the various regions of the state;

(3) The contribution made by the qualifying employer toward the cost of obtaining the upskill credential; and

(4) Employer actions relating to prior awards granted pursuant to this article and described in subsection (k) of this section.

(g) Upon the division determining to grant an employer a preliminary award for reimbursement, the division shall provide the employer with a training agreement, designed by the division, which shall serve as the formal grant agreement. An employer must sign and return this agreement to remain eligible to receive reimbursement.

(h) Upon being given a preliminary award for reimbursement under this section, each qualifying employer shall sponsor a current employee to obtain an upskill credential within six months of the preliminary award. A current employee shall not commence the process of obtaining the upskill credential until after a preliminary award has been made.

(i) To receive the reimbursement, the qualifying employer shall provide to the division proof of the following:

(1) The date on which the approved upskilling training began;

(2) The date on which the approved upskilling training ended;

(3) The upskill credential received by the employee;

WV Legislature

(4) The total cost of providing the upskilling training to the eligible employee;

(5) The amount paid by the qualifying employer toward the cost of obtaining the upskill credential; and

(6) Payroll records verifying that the employee received a qualifying wage increase after obtaining the upskill credential.

(j) If the division is satisfied that the eligible employee has obtained the upskill credential and that all requirements of this section have been met, then the division shall grant the qualifying employer the reimbursement indicated in the preliminary award.

(k) For two years after the date on which a reimbursement award is received, the employer that has received reimbursement shall notify the division if the employer subsequently reduces the wages of the employee who had received the qualifying wage increase. The employer must explain, to the extent permitted by law, the reason for the wage reduction to the division. If the division determines that an employer has reduced wages without a legitimate justification, then the division may take that determination into consideration if that employer subsequently submits another application for reimbursement.

WV Legislature

§5B-2R-4. Rulemaking.

(a) In order to effectuate the purposes of this article, the division shall promulgate procedural rules, interpretive rules, and legislative rules, including emergency rules, or any combination thereof in accordance with §29A-3-1 *et seq.* of this code.

(b) Within 90 days of the effective date of this article, the division shall promulgate emergency rules pursuant to the provisions of §29-3-15 of this code providing the following:

(1) Procedures and guidelines related to applying for awards of reimbursement;

(2) Explanations of the criteria to be considered when determining which applicants are selected to receive preliminary awards of reimbursement;

(3) Provisions governing the obligations of any party to a training agreement entered into pursuant to this article; and

(4) Any other provisions the division determines are necessary to implement the program.

WV Legislature

§5B-2R-5. Record-keeping requirements and protections.

(a) Employers that receive an award pursuant to this article must retain the following records for a period of no less than five years and provide copies of the same to the department or the division upon request:

(1) A copy of the training curriculum;

(2) A copy of the certification or documentation for any specialized company training provided to the trainee;

(3) Documentation of training completion;

(4) Payroll records verifying that the employee has received a qualifying wage increase; and

(5) With regard to each eligible employee who receives upskilling training pursuant to the program:

(A) Employee's name;

(B) Last four digits of employee's social security number;

(C) Employee's date of birth;

(D) Proof of employee's eligibility;

(E) Employee's hire date;

(F) Employee's occupation and position;

(G) Name of training provided;

(H) Date on which training period started;

(I) Wage information for the six months immediately preceding commencement of the eligible training and the two months immediately succeeding completion of the eligible training; and

(J) Cost of training the employee.

(b) Records and information provided by an employer to the division or the department pursuant to the program are exempt from disclosure under §29B-1-1 *et seq*. of this code.

WV Legislature

§5B-3-1. Legislative intent.

(a) West Virginia: A shared vision statement. -- West Virginia's strong commitment to future generations has created a vibrant and diverse economy balancing quality jobs and the state's irreplaceable natural beauty. West Virginia has a highly skilled and educated workforce, is a leader in innovation and offers an excellent quality of life for all residents.

(b) "West Virginia: A vision shared" vision statement is meant to be used as a touchstone to ensure that actions being undertaken are in line and on course.

(c) It is the intent of the Legislature to set economic development goals for the state and that the joint commission on economic development, created in this article, use the goals in bringing all agencies performing economic development and workforce investment activities together to improve the economic situation in this state.

(d) Furthermore, it is the intent of the Legislature that the state work toward accomplishing three overall goals:

(1) The development of a comprehensive statewide economic development strategy;

(2) The effective statewide coordination of economic development programs; and

(3) The development of meaningful agency and program benchmarks and performance-based evaluations.

WV Legislature

§5B-3-2. The Joint Commission on Economic Development.

(a) The joint commission on economic development is hereby continued. The commission shall be comprised of an equal number of senators and delegates, as appointed by the President of the Senate and the Speaker of the House of Delegates.

The commission may explore how West Virginia can:

(1) Invest in systems that build workforce skills and promote lifelong learning to ensure a competitive workforce;

(2) Enhance the infrastructure, communications and transportation needed to support the knowledge-based industries and electronic commerce;

(3) Reorganize government to deliver services more efficiently, using technology, privatization and partnerships with the private sector;

(4) Align state tax systems to meet the demands of the twenty-first century economy;

(5) Develop more uniform regulatory and tax systems to reduce complexity, eliminate market distortions and better protect consumers;

(6) Support entrepreneurs by streamlining business regulations, providing timely decisions and assisting firms in their search for venture capital;

(7) Promote university policies that encourage research and development and build intellectual infrastructure;

(8) Address quality-of-life concerns to attract new businesses and workers; and

(9) Accomplish the goals set forth in this article and any other goal related to economic development or workforce investment that the commission considers important.

(b) The commission may propose legislation necessary to accomplish its goals.

WV Legislature

§5B-3-3. Reexamination of vision and goals.

Every fourth year after January 1, 2001, the joint commission on economic development, established pursuant to this article, shall conduct a thorough examination of the vision and goals set forth in this article and may recommend legislation relating to the vision and goals to the Legislature.

WV Legislature

§5B-3-4. Commission review of procedural rules, interpretive rules and existing legislative rules.

(a) The Joint Commission on Economic Development may review any procedural rule, interpretive rule or existing legislative rule and make recommendations concerning the rules to the Legislature.

(b) The Development Office and the Tourism Commission established pursuant to article two of this chapter, the Economic Development Authority established pursuant to article fifteen, chapter thirty-one of this code, the Bureau of Employment Programs established pursuant to article four, chapter twenty-one-a of this code, the Workers' Compensation Commission established pursuant to article one, chapter twenty-three of this code, the Workforce Investment Commission established pursuant to article two-c of this chapter, West Virginia Jobs Investment Trust, regional planning and development councils, West Virginia Rural Development Council, Office of Technology and West Virginia Clearinghouse for Workforce Education shall each file a copy of its legislative rules with the Commission as provided for in this section. Each agency that proposes legislative rules in accordance to the provisions of article three, three-a or three-b, chapter twenty-nine-a of this code relating to economic development or workforce development shall file the rules with the Joint Commission at the time the rules are filed with the Secretary of State prior to the public comment period or public hearing required in said chapter.

WV Legislature

§5B-3-5. Joint Commission on Economic Development Studies.

(a) The Joint Commission on Economic Development shall study the following:

(1) The feasibility of establishing common regional configurations for local workforce investment areas, regional educational service agencies and for all other purposes the Commission considers feasible. The study should review the existing levels of cooperation between state and local economic developers, complete an analysis of possible regional configurations and outline examples of other successful regional systems or networks found throughout the world. If the study determines that the common regional configurations are feasible, the Commission shall recommend legislation establishing common regional designations for all feasible purposes. In making the designation of regional areas, the study shall take into consideration, but not be limited to, the following:

(A) Geographic areas served by local educational agencies and intermediate educational agencies;

(B) Geographic areas served by post-secondary educational institutions and area vocational education schools;

(C) The extent to which the local areas are consistent with labor market areas;

(D) The distance that individuals will need to travel to receive services provided in the local areas; and

(E) The resources of the local areas that are available to effectively administer the activities or programs;

(2) The effectiveness and fiscal impact of incentives for attracting and growing businesses, especially technology-intensive companies; and

(3) A comprehensive review of West Virginia's existing economic and community development resources and the recommendation of an organizational structure, including, but not limited to, the reorganization of the Department of Commerce and the Development Office that would allow the state to successfully compete in the new global economy.

(b) In order to effectuate in the most cost-effective and efficient manner the studies required in this article, it is necessary for the Joint Commission to assemble and compile a tremendous amount of information. The Development Office will assist the Joint Commission in the collection and analysis of this information. The Tourism Commission established pursuant to article two of this chapter, the Economic Development Authority established pursuant to article fifteen, chapter thirty-one of this code, the Bureau of Employment Programs established pursuant to article four, chapter twenty-one-a of this code, the Workers' Compensation Commission established pursuant to article one, chapter twenty-three of this code, the Workforce Investment Commission established pursuant to article two-c of this chapter, West Virginia Jobs Investment Trust, Regional Planning and

WV Legislature

Development Councils, West Virginia Rural Development Council, Office of Technology and West Virginia Clearinghouse for Workforce Education shall provide a copy of their annual reports as submitted to the Governor in accordance with the requirements set forth in section twenty, article one, chapter five of this code to the West Virginia Development Office. The Development Office shall review, analyze and summarize the data contained in the reports, including its own annual report, and annually submit its findings to the Joint Commission on or before December 31.

(c) The Legislative Auditor shall provide to the Joint Commission a copy of any and all reports on agencies listed in subsection (b) of this section, which are required under article ten, chapter four of this code.

(d) The Joint Commission shall complete the studies set forth in this section and any other studies the Joint Commission determines to undertake prior to December 1, of each year and may make recommendations, including recommended legislation for introduction during the regular session of the Legislature.

WV Legislature

§5B-4-1.

Repealed.

Acts, 1995 Reg. Sess., Ch. 142.

WV Legislature

§5B-5-1.

Repealed.

Acts, 1993 Reg. Sess., Ch. 42.

WV Legislature

§5B-6-1.

Repealed.

Acts, 1993 Reg. Sess., Ch. 42.

WV Legislature

§5B-7-1. Definitions.

Unless the context clearly indicates otherwise, as used in this article:

(1) "Economic Development Authority" or "authority" means the West Virginia Economic Development Authority as continued in section five, article fifteen, chapter thirty-one of this code.

(2) "Recovery zone bonds" means recovery zone economic development bonds and recovery zone facility bonds, authorized under Section 1401 of Title I of Subtitle B of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009), that may be issued by states, counties, certain municipalities and other qualified issuers within each state before January 1, 2011.

(3) "Recovery zone economic development bond" means the term as defined in 26 U.S.C. §1400U-2.

(4) "Recovery zone facility bond" means the term as defined in 26 U.S.C. §1400U-3.

(5) "Volume cap" means the recovery zone bond volume limitation allocated to each state and to counties and municipalities within each state in accordance with 26 U.S.C. §1400U-1.

WV Legislature

§5B-7-2. Allocation of volume cap for recovery zone bonds; obligations not debt of state.

Pursuant to 26 U.S.C. §1400U-1(a)(3)(A), the State of West Virginia shall allocate the volume cap among the counties of the state in the same manner as described in Section 6.04 of Internal Revenue Service Notice 2009-50. Bonds, notes and other obligations issued pursuant to this article shall not constitute a debt or a pledge of the faith and credit or taxing power of this state and the holders and owners thereof shall have no right to have taxes levied by the Legislature for the payment of the principal thereof or interest thereon, but such bonds, notes and other obligations shall be payable solely from revenues and funds pledged for their payment as established in the authorizing orders, ordinances and resolutions of such issuers. All such bonds and notes, and all documents evidencing any other obligation, shall contain on the face thereof a statement to the effect that the bonds, notes or such other obligation as to both principal and interest, are not debts of the state but are payable solely from revenues and funds pledged for their payment.

WV Legislature

§5B-7-3. Certification and waiver of volume cap allocation.

(a) Preliminary certification. --

(1) Each county allocated volume cap in accordance with this article shall submit a preliminary certification to the Governor that includes:

(A) The amount of volume cap the county intends to use;

(B) The entity issuing each series of recovery zone bonds. If the county has suballocated volume cap to an entity, the certification shall include a copy of an order, ordinance or resolution of the county commission authorizing the suballocation;

(C) The projects, including, but not limited to, road transportation projects, to be financed by the issuance of each series of recovery zone bonds; and

(D) The financing plan for each series of recovery zone bonds, including the source of payment of the debt service of each series of recovery zone bonds.

(2) Preliminary certifications for recovery zone economic development bonds shall be submitted to the Governor on or before January 31, 2010.

(3) Preliminary certifications for recovery zone facility bonds shall be submitted to the Governor on or before February 28, 2010.

(4) Any portion of volume cap allocated to a county that is not certified for use by the county in accordance with this subsection is considered waived.

(5) A county may waive its allocation of volume cap by providing written notice of such waiver to the Governor on or before January 31, 2010, in the case of volume cap for recovery zone economic development bonds, or on or before February 28, 2010, in the case of volume cap for recovery zone facility bonds.

(b) Final certification. --

(1) Each county that has submitted a preliminary certification to the Governor shall submit a final certification to the Governor on or before July 31, 2010. The final certification shall establish: (i) That the county or other entity receiving a suballocation from the county has closed on each series of recovery zone bonds or has entered into a bond purchase agreement that requires closing on each series of recovery zone bonds prior to August 31, 2010; and (ii) the amount of volume cap used by the county.

(2) Any portion of volume cap allocated to a county that is not certified as used in accordance with this subsection is considered waived. However, if an entity receiving a suballocation from a county submits a timely certification pursuant to section five of this article, that suballocated portion of the county's volume cap is not considered waived.

WV Legislature

(3) If, after submitting a preliminary certification to the Governor, a county determines to waive any portion of its allocation of volume cap, it may waive its allocation of such portion by notifying the Governor in writing on or before July 31, 2010.

(c) Notice of waiver. -- The Governor shall provide timely written notice to the Economic Development Authority of any written volume cap waiver submitted by a county.

WV Legislature

§5B-7-4. Reallocation of volume cap.

(a) The Economic Development Authority shall reallocate volume cap that has been waived pursuant to this article. The authority may reallocate the volume cap to the state, state agencies, counties, municipalities or any other political subdivisions or any other eligible issuer authorized to issue recovery zone bonds pursuant to Section 5.04 of Internal Revenue Service Notice 2009-50.

(b) As soon as reasonably possible after the effective date of this section the authority shall adopt a procedure for the solicitation and receipt of applications, on a form and in a manner prescribed by the authority, for eligible issuers seeking reallocated volume cap.

(c) Within ninety days of receipt of written notice from the Governor the authority shall reallocate any amount of volume cap waived by a county pursuant to this article. The authority shall provide written notice of any reallocation to the entity receiving the reallocation.

WV Legislature

§5B-7-5. Suballocation of volume cap by counties; counties authorized to take action to issue recovery zone bonds.

Counties allocated volume cap pursuant to this article may, by order, ordinance or resolution of the county commission, suballocate such allocation to municipalities or any other eligible issuers authorized to issue recovery zone bonds pursuant to Section 5.04 of Internal Revenue Service Notice 2009-50. Each county that suballocates volume cap shall attach a copy of the order, ordinance or resolution authorizing the suballocation to the preliminary certification required in section three of this article. Entities receiving a suballocation pursuant to this section shall certify to the county and to the Governor no later than July 31, 2010, that the entity has closed on the recovery zone bonds using the volume cap suballocation or has entered into a bond purchase agreement that requires a closing on the recovery zone bonds prior to August 31, 2010. Counties shall be authorized to take any other action required by Internal Revenue Service Notice 2009-50 to issue recovery zone bonds.

WV Legislature

§5B-8-1. Definitions.

When used in this article:

"Department" means the West Virginia Department of Economic Development.

"SBIR" means the Small Business Innovation Research Program enacted under the Small Business Innovation Development Act of 1982, Pub. L. 97-219, 15 U.S.C. § 638.

"STTR" means the Small Business Technology Transfer Program enacted under the Small Business Technology Transfer Act of 1992, Pub. L. 102-564, 15 U.S.C § 638.

"Small business" means a corporation, partnership, limited liability company, statutory or common law business trust, sole proprietorship, or individual, operating a business for profit, which qualifies as a small business and otherwise meets the requirements of the SBIR or STTR programs.

"West Virginia-based business" means a business that has its principal place of business in this state.

WV Legislature

§5B-8-2. Creating a matching program.

The West Virginia Small Business Innovation Research and Small Business Technology Transfer Matching Funds Program is established. It shall be administered by the department which is hereby authorized to promulgate legislative rules governing the program. In order to foster job creation and economic development in the state, the department may provide grants to eligible small businesses to match funds they receive from Small Business Innovation Research or Small Business Technology Transfer Phase I and Phase II awards. The department will pay the grants from the fund known as the "Entrepreneurship and Innovation Investment Fund" created pursuant to §5B-2-16 of this code.

WV Legislature

§5B-8-3. Eligibility.

In order to be eligible for a grant under this article, a small business must satisfy all of the following conditions:

(1) The small business must be a for-profit, West Virginia-based business;

(2) For the Phase I and/or Phase II Matching program the small business must have received a SBIR/STTR Phase I or SBIR/STTR Phase II award from a participating federal agency in response to a specific federal solicitation. To receive the full match for the Phase I award, the small business must also have submitted a final Phase I report, demonstrated that the sponsoring agency has an interest in a Phase II proposal, and submitted a Phase II proposal to the agency; To receive the Phase II match, the small business must have submitted the final progress report to the funding agency;

(3) The small business must satisfy all federal SBIR/STTR requirements;

(4) The small business shall not receive concurrent funding support from other sources that duplicates the purpose of this article;

(5) The small business must certify that at least 51 percent of the research described or to be described in the federal SBIR/STTR Phase II proposal will be conducted in this state and that the small business will remain a West Virginia-based business for the duration of the SBIR/STTR Phase II project; and

(6) The small business must demonstrate its ability to conduct research in its SBIR/STTR Phase II proposal.

WV Legislature

§5B-8-4. Application process.

(a) A small business shall apply, under oath, to the department on forms prescribed by the department that include at least the following:

(1) The name of the small business, the form of business organization under which it is operated, and the names and addresses of the principals and management of the small business;

(2) For matching awards, notice of award from the funding agency of the SBIR/STTR Phase I or Phase II award;

(3) For matching awards, study section evaluation and comments; and

(4) Any other information necessary for the department to evaluate the application.

(b) The department shall review the application, determine whether the applicant satisfies the eligibility requirements, and determine whether to award matching grants.

WV Legislature

§5B-8-5. Grant terms.

(a) The department may award a "WV Phase Zero Grant" of $2500 upon submission of a Phase I SBIR/STTR proposal or Fast track SBIR/STTR proposal. The WV Phase Zero grant shall be remitted to the small business upon notification from the granting agency of the receipt of a submission for an SBIR/STTR Phase I or SBIR/STTR fast track application. The small business must provide satisfactory evidence to the department of the notification of receipt. A small business may receive only one WV Phase Zero Grant per year. A small business may receive only one WV Phase Zero Grant with respect to each federal proposal submission; resubmissions of unsuccessful applications are not eligible. Over its lifetime, a small business may receive a maximum of five WV Phase Zero awards. A grant recipient may assign an award only upon the prior written consent of the department.

(b) The department may award grants to match funds received by a small business through a SBIR/STTR Phase I proposal up to a maximum of $100,000 paid in two remittances. Fifty percent of the award under this subsection shall be remitted to the small business upon receipt of the SBIR/STTR Phase I award and an application to the department for the funds. The remaining fifty percent of the award under this subsection shall be remitted to the small business upon submission by the small business of a Phase II application to the funding agency, acceptance of the Phase I report by the funding agency, and application to the department for the funds. A small business may receive only one grant under this subsection per year. A small business may receive only one grant under this subsection with respect to each federal proposal submission. Over its lifetime, a small business may receive a maximum of five awards under this subsection. A grant recipient may assign the award only upon the prior written consent of the department.

(c) The department may award grants to match the funds received by a small business through a SBIR/STTR Phase II proposal up to a maximum of $100,000 per year for up to two years, after application to the department. The second remittance may be made to the small business on the one-year anniversary of the first matching remittance under this subsection, if applicant applies for the funds with documentation from the agency indicating that the grant is to continue for a second year. A small business may receive only one grant under this subsection per year. A small business may receive only one award under this subsection with respect to each federal proposal submission. Over its lifetime, a small business may receive a maximum of five awards under this subsection. A grant recipient may assign the award only upon the prior written consent of the department.

WV Legislature

§5B-9-1. Flatwater Trail Commission; members, appointment, and expenses.

(a) The Flatwater Trail Commission is hereby created as an independent body corporate. It shall be a commission advisory to the secretary and to the Department of Commerce.

(b) The Flatwater Trail Commission shall consist of five members, who shall be residents and citizens of the state. The commission members shall be appointed by the Governor, by and with the advice and consent of the Senate. Throughout the operation of the commission, at least two of the members shall have knowledge of and experience with nonmotorized watercraft recreation, and at least two members shall have knowledge of and experience with motorized watercraft recreation. Each member shall serve a term of five years. Of the members first appointed, two shall be appointed for a term ending December 31, 2021, and one each for terms ending one, two, and three years thereafter. Commission members may be reappointed to additional terms.

(c) The chair of the Flatwater Trail Commission shall be appointed by the Governor from members then serving on the commission and serves at the will and pleasure of the Governor.

(d) It is the duty of the commission:

(1) To unify and coordinate efforts to develop and establish successful flatwater trails in this state;

(2) To standardize procedures, programs, research, and support for the development and establishment of flatwater trails;

(3) To disseminate information for the purpose of educating the public as to the existence and functions of the commission and as to the availability of state, federal, and nongovernmental resources and support for the development and establishment of flatwater trails; and

(4) To advise, consult, and cooperate with other offices of the Department of Commerce and other agencies of state government, and to receive assistance therefrom in the development of activities and programs of beneficial interest to water recreation and flatwater trails.

(e) The Department of Commerce shall assist the commission in its functions and operations, including, but not limited to, providing administrative, clerical, and technical support, publishing materials developed by the commission, and preparation of proposed legislation to further the purposes of the commission.

(f) Members of the Flatwater Trail Commission are not entitled to compensation for services performed as members. Each member is entitled to reimbursement for reasonable expenses incurred in the discharge of their official duties. All expenses incurred by members shall be paid in a manner consistent with guidelines of the Travel Management Office of the Department of Administration and are payable solely from the funds of the Department of

WV Legislature

Commerce or from funds appropriated for that purpose by the Legislature. Liability or obligation is not incurred by the commission beyond the extent to which moneys are available from funds of the authority or from the appropriations.

(g) Members shall meet at least quarterly as designated and scheduled by the chair. The presence of three members, in person or by real-time electronic communication, constitutes a quorum to conduct business at a meeting.

WV Legislature

§5B-10-1. Short title.

This article shall be known and cited as the “West Virginia Development Achievements Transparency Act” or the “West Virginia DATA Act”.

WV Legislature

§5B-10-2. Purpose and findings.

(a) The Legislature finds that public tax dollars are expended annually, whether directly in the form of grants or indirectly in the form of tax credits and incentives, for the purpose of developing and improving economic industries within the State of West Virginia.

(b) The Legislature further finds that the State of West Virginia should inform state taxpayers about these direct or indirect expenditures, the objectives of the expenditures, and whether the state met the intended objectives of the expenditures.

(c) The Legislature further finds that any funds deposited into the Grant Recovery Fund pursuant to §12-4-14(e)(10) of this code should be appropriated by the Legislature to the granting body that originally granted the funds to a grantee or subgrantee.

WV Legislature

§5B-10-3. Definitions.

For the purpose of this article:

“Auditor” means the State Auditor of West Virginia, by himself or herself, or by any person appointed, designated, or approved by the State Auditor to perform the service.

“Business type” means the legal form of organization of a corporate parent or recipient corporation, including, but not limited to, a corporation, partnership, sole proprietorship, or limited liability company.

“Corporate parent” means any person, association, corporation, joint venture, partnership, or other entity that owns or controls 50 percent or more of a recipient corporation.

“Confidential information” means any internal, deliberative, preliminary, proprietary, personal, or protected economic development or taxpayer information as defined in §5B-10-6 of this code, §11-10-5d of this code, or Chapter 29B of this code, that is exempt from public disclosure.

“Date of subsidy” means the date that a granting body provides the initial monetary value of a development subsidy to a recipient corporation: *Provided*, That where the subsidy is for the installation of new equipment, such date shall be the date the recipient corporation puts the equipment into service: *Provided, however*, That where the subsidy is for improvements to property, such date shall be the date the improvements are finished, or the date the recipient corporation occupies the property, whichever is earlier.

“Development subsidy” means any financial transaction of public funds with an aggregate value of at least $10,000 for the purpose of stimulating economic development within the state, including, but not limited to, bonds, grants, loans, loan guarantees, enterprise zones, empowerment zones, tax increment financing, sponsorships, fee waivers, land price subsidies, matching funds, tax abatements, tax exemptions, and tax credits.

“Duration of subsidy” means as many years as a subsidy benefits a recipient corporation, such as the time period of a grant, the number of years a tax credit may be claimed and/or carried forward, the number of years or term length of a loan, or the number of years a property tax reduction applies.

“Full-time job” means a job in which an individual is employed by a recipient corporation for at least 35 hours per week.

“Granting body” means any agency, board, office, public-private partnership, public benefit corporation or authority of the state or local government that provides a development subsidy to a recipient corporation.

“NAICS code” means the assigned code maintained by the North American Industry Classification System which describes a particular industry.

WV Legislature

"New Employee" means a full-time employee who represents a net increase in the number of individuals employed by the recipient corporation in the state. "New employee" does not include an employee who performs a job that was previously performed by another employee of the recipient corporation if that job existed for at least six months before hiring the employee.

"Official report" means a formal, written report prepared by a granting body delivered to a third party, including, but not limited to, the Joint Committee on Government and Finance, Governor's Office, or the public.

"Part-time job" means a job in which an individual is employed by a recipient corporation for less than 35 hours per week.

"Project site" means the site of a project for which any development subsidy is provided, as specified by street address, city name, and zip code.

"Recipient corporation" means any person, association, corporation, joint venture, partnership or other entity that receives a development subsidy.

"Subsidy type" means the classification of a development subsidy transaction, including, but not limited to, bonds, grants, loans, loan guarantees, enterprise zones, empowerment zones, tax increment financing, grants, fee waivers, land price subsidies, matching funds, tax abatements, tax exemptions, and tax credits.

"Subsidy value" means the face value of any and all development subsidies provided to a recipient corporation. The face value of a loan means the amount of the loan.

"Temporary job" means a job in which an individual is hired for a season or for a limited period of time.

WV Legislature

§5B-10-4. Reporting requirements.

(a) Within 30 days of the end of the fiscal year, each granting body shall provide the Auditor with the information required in §5B-10-6 of this code for each development subsidy provided to a recipient corporation by a granting body: *Provided*, That no development subsidy approved and legally obligated by the State of West Virginia shall be exempt from disclosure under this article.

(b) The Auditor shall provide guidance to each granting body regarding the standard and manner of reporting specified in this section.

(c) The Auditor may accept one or multiple official reports of a granting body to satisfy the requirements of this section provided the information provided in the official reports discloses the information required by §5B-10-6 of this code.

(d) The West Virginia Department of Economic Development may fulfill the requirements of this section on behalf of any granting bodies.

(e) The West Virginia Department of Economic Development may fulfill the requirements of this section by providing any agreements entered into or signed by the West Virginia Department of Economic Development which obligates public funds as of the date the agreement is entered into, signed or otherwise made public.

WV Legislature

§5B-10-5. Auditor's searchable economic development website created.

No later than January 1, 2022, the Auditor shall develop and make publicly available a searchable financial transparency website containing the information specified in §5B-10-6 of this code.

WV Legislature

§5B-10-6. Contents of the searchable website.

(a) The Auditor shall include as part of the searchable economic development transparency website the following content for each fiscal year and the previous three fiscal years:

(1) The name of the recipient corporation of a development subsidy: *Provided*, That if a name of a recipient corporation of a development subsidy be considered confidential information, the granting body shall provide the business type of the recipient corporation instead of the name;

(2) The name of the corporate parent of the recipient corporation, if applicable: *Provided*, That should a name of a corporate parent of a recipient corporation of a development subsidy be considered confidential information, the granting body shall provide the business type of the corporate parent instead of the name;

(3) The project site: *Provided*, That should the project site be considered confidential information, the granting body shall provide the city, state, and zip code, but not the street address;

(4) The NAICS code or codes of the recipient corporation;

(5) The date of subsidy;

(6) The subsidy value;

(7) The duration of subsidy;

(8) The subsidy type;

(9) The number of new employees the development subsidy is expected to create within the duration of subsidy, classified by full-time jobs, part-time jobs, and temporary jobs;

(10) The number of new employees the development subsidy has actually created within the duration of subsidy, classified by full-time jobs, part-time jobs, and temporary jobs: *Provided*, That this number may be estimated if an accurate count is not available, but the granting body shall clearly disclose that the reported number is an estimate;

(11) Any other direct or indirect benefits to the state the granting body intends the development subsidy to achieve, including, but not limited to, creation of public infrastructure, vocational training, apprenticeships, workforce development, or state tourism visitor or permanent resident population increases;

(12) Any other direct or indirect benefit to the state actually achieved by the development subsidy, including, but not limited to, creation of public infrastructure, vocational training, apprenticeships, workforce development, or state tourism visitor or permanent resident population increases; and

WV Legislature

(13) The name or names of the granting body or bodies providing the development subsidy.

WV Legislature

§5B-10-7. Confidentiality.

(a) Nothing in this article may be construed as requiring the West Virginia Department of Economic Development or the West Virginia Tax Department to release confidential information as defined in this article.

(b) If information regarding a development subsidy is confidential information, a granting body shall redact only those confidential items but shall disclose any other information pertaining to a development subsidy that is not confidential information.

(c) The Auditor may consult with the granting body to determine the confidentiality of development subsidy data required in §5B-10-6 of this code and determine the appropriate disclosures on the searchable economic development website created in §5B-10-5 of this code to preserve confidentiality.

(d) The Auditor shall identify any redacted items not appearing on the searchable economic development transparency website and the justification as to why the items were redacted.

WV Legislature

§5B-10-8. Source and accuracy of information; failure to report.

(a) To fulfill the requirements of this article, a granting body may independently compile the information required in §5B-10-6 of this code or request the information from a recipient corporation.

(b) A granting body shall review information received from a recipient corporation to ensure it is reasonably accurate but is not required to audit or certify the accuracy of the information.

(c) The Auditor shall publish a list on the searchable economic development transparency website detailing any granting body or recipient corporation who fails to comply with the requirements of this article.

(d) The Auditor shall publish a list on the searchable economic development transparency website detailing any granting body or recipient corporation who intentionally submits false, misleading, or fraudulent information: *Provided*, That the Auditor shall notify the Joint Committee on Government and Finance of any granting body or recipient corporation who intentionally submits false, misleading, or fraudulent information to the Auditor.

WV Legislature

§5B-10-9. Public hearings.

The Auditor may conduct public hearings or training sessions to assist any recipient corporation or granting body in complying with the requirements of this article.

WV Legislature

§5B-11-1. Legislative findings.

The Legislature finds that the Advanced Energy and Economic Corridor, once known as Tug-Ohio-Levisa-Sandy Improvement Association (TOLSIA) and the King Coal Highway, which runs through the counties of McDowell, Mercer, Mingo, Wayne, and Wyoming has undergone significant challenges owing to widespread changes in the national and global economies; and every effort should be made to assist the transformation of these regional economies by providing guidance to local governments, businesses, and industries to maximize economic development and diversification of those economies. As part of the National Highway System's I-73/74 corridor from northern Michigan to eastern South Carolina, the Advanced Energy and Economic Corridor, will not only foster greater transportation efficiencies, but will also provide vital connectivity to bourgeoning markets, resulting in both job creation and economic expansion in southern West Virginia.

The economic development agencies along this corridor are aligning efforts to embrace the expansion of the energy and economic development policies adopted by the West Virginia Legislature as a tool for economic development and are focused on efforts to transform and revitalize the region by fostering partnerships and initiatives which are complementary and supportive of existing successful industries in West Virginia.

The Legislature, by enactment of this article, intends to facilitate implementation of critical and time-sensitive opportunities for economic development along the Advanced Energy and Economic Corridor by establishing an authority, known as the West Virginia Advanced Energy and Economic Corridor Authority (authority), to facilitate assistance to these local entities comprised of the economic development agencies of McDowell, Mercer, Mingo, and Wayne counties.

WV Legislature

§5B-11-2. Advanced Energy and Economic Corridor Authority created; membership; terms; meetings; quorum; compensation and expenses; assistance from Department of Economic Development.

(a) The Advanced Energy and Economic Corridor Authority (authority) is hereby created as an independent body corporate. It shall consist of the following 15 members who are involved in economic, commercial, or industrial development in the geographic region of the authority:

(1) A representative of the economic development agency of McDowell County;

(2) A representative of the economic development agency of Mercer County;

(3) A representative of the economic development agency of Mingo County;

(4) A representative of the economic development agency of Wayne County;

(5) A representative of the economic development agency of Wyoming County;

(6) A representative of the Region 1 Planning and Development Council;

(7) A representative of the Region 2 Planning and Development Council; and

(8) The following seven members appointed by the Governor, or his or her designee:

(A) A representative from businesses and industries located in the state;

(B) An economic development representative from a utility company that provides service to the corridor region;

(C) Four private sector representatives from the technology, energy, advanced manufacturing, and aviation, aerospace, or advanced air mobility sectors in the corridor region; and

(D) Two at-large members from regions and counties along the corridor who have knowledge and experience in local issues, economic development, and other areas of expertise.

(b) Each member shall serve a term of five years. Members may be reappointed to additional terms and, upon expiration of their respective terms, shall continue to serve until their successor has been appointed. The chair, vice-chair, and officers shall be selected annually by majority vote of the members. The chair shall schedule meetings and set the agenda for each meeting.

(c) A majority of members, in person or by real-time electronic communication, constitutes a quorum to conduct business at a meeting.

(d) If a member of the authority must recuse himself or herself because of a perceived or

WV Legislature

actual conflict of interest, a majority of the remaining members of the authority without a conflict shall be sufficient for the conduct of authority business.

(e) Members are not entitled to compensation for services performed as members.

WV Legislature

§5B-11-3. Powers and duties of the authority.

(a) The authority shall have, but not be limited to, the following powers and duties:

(1) Set specific tactical goals and demonstrable objectives via input from member counties and communities;

(2) Maintain an inclusive, rather than constraining, geographic focus on economic development;

(3) Seek out private-public partnerships to achieve its vision;

(4) Foster partnerships with groups in other states that follow the I-73/74 corridor to help build broad support for the economic development and infrastructure projects undertaken;

(5) Propose legislation for bonding and tax credits to facilitate economic development along the corridor;

(6) Seek governmental engagement for guidance on local, state, regional or national

initiatives to achieve economic development objectives;

(7) Utilize cutting-edge technologies and innovation platforms where their applications will be most beneficial;

(8) Propose legislation to allow regulatory flexibility along corridor expanded boundaries;

(9) Develop a memorandum of understanding with the Appalachian Regional Commission in areas of economic development, transportation, tourism, infrastructure, technology, and other areas beneficial to the member counties and communities, and the state; and

(10) Develop economic and tourism asset portfolios for inclusion of the authority’s vision; and

(11) Apply for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code.

(b) The authority may also exercise all powers necessary or appropriate to carry out the purposes of this article including, but not limited to, the following:

(1) Acquire, own, hold, and dispose of property, real and personal, tangible and intangible;

(2) Lease property, whether as lessee or lessor, and to acquire or grant through easement, license, or other appropriate legal form, the right to develop and use property and open it to the use of the public;

(3) Mortgage or otherwise grant security interests on its property;

WV Legislature

(4) Procure insurance against any losses in connection with its property, license or easements, contracts, including hold-harmless agreements, operations, or assets in such amounts and from such insurers as the authority considers desirable;

(5) Maintain such sinking funds and reserves as the authority determines appropriate for the purposes of meeting future monetary obligations and needs of the Authority;

(6) Contract for the provision of legal services by private counsel and, notwithstanding any other provision of the code to the contrary, the counsel may, in addition to the provisions of other legal services, represent the authority in court, negotiate contracts and other agreements on behalf of the authority, render advice to the authority on any matter relating to the authority, prepare contracts and other agreements, and provide such other legal services as may be requested by the authority;

(7) Appoint officers, agents, and employees and to contract for and engage the services of consultants;

(8) Make contracts of every kind and nature and to execute all instruments necessary or convenient for carrying on its business, including contracts with any other governmental agency of this state or of the federal government or with any person, individual, partnership, or corporation to effect any or all of the purposes of this article;

(9) Without in any way limiting any other provision of this section, accept grants and loans from, and enter into contracts and other transactions with, any federal agency; and

(10) Accept gifts or grants of property, funds, security interests, money, materials, labor, supplies, or services from the federal government or from any governmental unit or any person, firm, or corporation and to carry out the terms or provisions of or make agreements with respect to or pledge any gifts or grants and to do any and all things necessary, useful, desirable, or convenient in connection with the procuring, acceptance, or disposition of gifts or grants.

(c) No liability or obligation is incurred by the authority beyond the extent to which money is awarded for grant acquisition facilitation.

WV Legislature

§5B-11-4. Report to the Legislature.

On or before December 1, 2024, and annually thereafter, the authority shall prepare and submit to the Joint Committee on Government and Finance a written report, which may be transmitted electronically, detailing its undertakings for the past year, including, but not limited to, all projects and any private-public partnerships entered into, as well as any recommended legislation or policy actions needed to facilitate greater economic development along the Advanced Energy and Economic Corridor.

WV Legislature

§5B-12-1. Title.

The provisions of this article shall be known as, and may be cited as, the WV First Small Business Growth Act.

WV Legislature

§5B-12-2. Definitions.

(a) Any term used in this article has the meaning ascribed by this section unless a different meaning is clearly required by the context of its use or by definition in this article.

(b) For purposes of this article, the term:

"Affiliate" means an entity that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under the common control with another entity. An entity is controlled by another entity if the controlling entity holds, directly or indirectly, the majority of voting or ownership interest in the controlled entity or has control over day-to-day operations of the controlled entity by contract or by law.

"Applicable percentage" means zero percent for the first two credit allowance dates, and 15 percent for the next four credit allowance dates.

"Capital investment" means any equity investment in a growth fund by a growth investor which:

(A) Is acquired after the effective date of this article at its original issuance solely in exchange for cash;

(B) Has 100 percent of its cash purchase price used by the growth fund to make qualified investments in eligible businesses located in this state by the third anniversary of the initial credit allowance date; and

(C) Is designated by the growth fund as a capital investment under this article and is certified by the department under the provisions of §5B-12-3 of this code.

(D) This term shall include any capital investment that does not meet the criteria provided under paragraph (A) of this subdivision, if such investment was a capital investment in the hands of a prior holder.

"Credit allowance date" means the date on which the department certifies a growth fund's capital investment and each of the five anniversary dates of such date thereafter.

"Department" means the West Virginia Department of Commerce.

"Eligible business" means a business that, at the time of the initial qualified investment in the business has fewer than 250 employees and has its principal business operations in West Virginia: *Provided*, That any business which is classified as an eligible business at the time of the initial investment in such business by a growth fund shall remain classified as an eligible business and may receive follow-on investments from any growth fund, and such follow-on investments shall be qualified investments even though such business may not meet the definition of an eligible business at the time of such follow-on investment.

WV Legislature

"Growth fund" means an entity certified by the department under the provisions of §5B-12-3 of this code and is a person who has developed a business plan to invest in business concerns in this state under this article and has successfully solicited one or more growth investors to make capital investments in the growth fund under this article in support of the plan.

"Growth investor" means any entity that makes a capital investment in a growth fund.

"Principal business operations" means the location where at least 60 percent of a business's employees work or the location where employees who are paid at least 60 percent of such business's payroll work. A business that has agreed to relocate employees using the proceeds of a qualified investment to establish its principal business operations in a new location shall be deemed to have its principal business operations in such new location if it satisfied the requirements of this subdivision no later than 180 days after receiving a qualified investment.

"Purchase price" means the amount paid to the growth fund that issues a capital investment which shall not exceed the amount of capital investment authority certified under the provisions of §5B-12-3 of this code.

"Qualified investment" means any investment in an eligible business or any loan to an eligible business with a stated maturity date of at least one year after the date of issuance, excluding revolving lines of credit and senior-secured debt unless the chief executive or similar officer of the eligible business certifies that the eligible business sought and was denied similar financing from a depository institution, by a growth fund: *Provided*, That with respect to any one eligible business, the maximum amount of investments made in such business by one or more growth funds, on a collective basis with all of the businesses' affiliates, with the proceeds of the capital investments, shall be the greater of 20 percent of the growth fund's capital investment authority or $7.5 million, exclusive of investments made with repaid or redeemed investments or interest or profits realized thereon.

"Senior-secured debt" means any loan that is secured by a first mortgage on real estate with a loan-to-value ratio of less than 80 percent.

"State tax liability" means the tax imposed by §33-314, §33-3-14a, §33-3-16, or §33-3-17 of this code, or any other insurance premium or retaliatory tax imposed on an insurance company by the state: *Provided*, That if the tax liability imposed under these sections is eliminated or reduced, the term "state tax liability" shall also include any tax liability imposed by this state on an insurance company or other person that had premium tax liability under the laws of this state for the purpose of making up tax revenue lost by the state as a result of the elimination or reduction of the taxes imposed under said sections: *Provided, however*, That no provision of this article may be construed or operate to reduce distributions or allocations otherwise required to be made for purposes other than for deposit in the general revenue fund, if applicable, under §33-3-14, §33-3-14a, §33-3-14d, §33-3-14e, and §33-3-33 of this code. An insurance company claiming a credit against state

WV Legislature

premium tax or retaliatory tax shall not be required to pay any additional premium tax, retaliatory tax, fee, charge, or other penalty or tax imposed on an insurer as a result of applying for or claiming the credit authorized by this article. The credit may fully offset any retaliatory tax imposed by this state.

WV Legislature

§5B-12-3. Program established; application.

(a) There is hereby created the WV First Small Business Growth Program, to be administered by the Department of Commerce.

(b) A growth fund that seeks to have an equity investment certified as a capital investment eligible for credits authorized under the provisions of this article shall apply to the department. The department shall begin accepting applications within 90 days of the effective date of this article. The application shall include:

(1) The amount of capital investment requested;

(2) A copy of the growth fund applicant's or an affiliate of the growth fund applicant's licenses as a rural business investment company under 7 U.S.C. § 2009cc or as a small business investment company under 15 U.S.C. § 681, and a certificate executed by an executive officer of the growth fund applicant attesting that such license remains in effect and has not been revoked;

(3) Evidence that, as of the date the application is submitted, the growth fund applicant or affiliates of the growth fund applicant have invested at least $100 million in nonpublic companies located in counties within the United States with a population of less than 75,000 according to the 2020 Federal Decennial Census of the United States; such evidence may be in the form of a list containing the names of the companies, their location and the amounts invested by the growth fund applicant or affiliates of the applicant, provided that an officer of the growth fund applicant certifies such list;

(4) A business plan that includes a revenue-impact assessment projecting state and local tax revenue to be generated by the growth fund applicant's proposed qualified investments, prepared by a nationally recognized, third-party, independent economic forecasting firm using a dynamic economic forecasting model that analyzes the growth fund applicant's business plan over the 10 years following the date that the application is submitted to the department. Such plan shall include an estimate of the number of jobs created and jobs retained in this state as a result of the growth fund applicant's qualified investments; and

(5) A nonrefundable application fee of $5,000 payable to the department.

(c) Within 30 days after the receipt of a completed application, the department shall grant or deny the application in full or in part. The department shall deny the application if:

(1) The growth fund applicant does not satisfy all the criteria provided by subsection (b) of this section;

(2) The revenue-impact assessment submitted with the application does not demonstrate that the growth fund applicant's business plan will result in a positive fiscal impact on the state over a 10-year period that exceeds the cumulative amount of credits that would be issued to the growth fund applicant if the application was approved; or

WV Legislature

(3) The department has already approved the maximum amount of capital investment authority under §5B-12-4 of this code.

(d) If the department denies any part of the application, it shall inform the growth fund applicant of the grounds for such denial. If the growth fund applicant provides any additional information required by the department or otherwise completes its application within 15 days of the notice of denial, the application shall be considered complete as of the original date of submission. If the growth fund applicant fails to provide the information or fails to complete its application within the 15-day period, the application shall remain denied and must be resubmitted with a new submission date and a new application fee.

(e) Upon approval of an application, the department shall certify the proposed equity investment as a capital investment eligible for credits under this article, subject to limitations laid out in §5B-12-4 of this code. The department shall provide written notice of the certification to the growth fund applicant which shall include the amount of the growth fund applicant's capital investment authority and a schedule of credits by year and amount related to the capital investment authority. The department shall certify capital investments in the order that the application is received by the department. Applications received on the same day shall be deemed to have been received simultaneously. For applications that are complete and received on the same day, the department shall certify applications in proportionate percentages based upon the ratio of the amount of capital investment authority requested in all applications.

WV Legislature

§5B-12-4. Certification.

(a) The department shall certify capital investment authority under the provisions of this article in amounts that would not authorize more than $15 million in credits to be claimed against state tax liability in any calendar year, excluding any credit amounts carried forward as provided under §5B-12-5(a) of this code. Within 90 days of the growth fund applicant receiving notice of certification, the growth fund shall issue the capital investment authority to and receive cash in the amount of the certified amount from a growth investor. At least 10 percent of the growth fund's capital investment shall be composed of capital raised by the growth fund directly or indirectly from sources including directors, members, employees, officers, and affiliates of the growth fund, other than the amount invested by the allocatee claiming the credits in exchange for such allocation of credits. The growth fund shall provide the department with evidence of the receipt of the cash investment within 95 days of the growth fund applicant receiving notice of certification.

(b) If the growth fund does not receive the cash investment and issue the capital investment within such time period following receipt of the certificate notice, the certification shall lapse and the growth fund shall not issue the capital investment without reapplying to the department for certification. Lapsed certifications shall revert to the department and shall be reissued pro rata to any growth fund applicant whose capital investment allocations were reduced in accordance with the application process provided under §5B-12-3(e) of this code.

WV Legislature

§5B-12-5. Tax credit established; recapture provisions.

(a) Upon making a capital investment in a growth fund, a growth investor shall have an earned and vested right to credits against such entity's state tax liability that may be utilized on each credit allowance date of such capital investment in an amount equal to the applicable percentage for such credit allowance date multiplied by the purchase price paid to the growth fund for the capital investment. The amount of the credit claimed by a growth investor or its allocatee shall not exceed the amount of such entity's state tax liability for the tax year for which the credit is claimed. No credit may be claimed under this article against a growth investor's state tax liability for any investor's tax year that begins prior to calendar year 2029. Any amount of credit that a growth investor or its allocatee is prohibited from claiming in a tax year as a result of this section may be carried forward for use in any of the five subsequent tax years, but shall not be carried back to prior tax years. It is the intent of this article that a growth investor claiming a credit under this article is not required to pay any additional tax that may arise as a result of claiming such credit.

(b) No credit claimed under this section shall be refundable or saleable on the open market. Credits earned by or allocated to a partnership, limited liability company, or S corporation may be allocated to the partners, members, or shareholders of such entity for their use in accordance with the provisions of any agreement among such partners, members, or shareholders, and any such entity shall notify the department of the names of the entities that are eligible to utilize such credit. Such allocation shall not be considered a sale for the purpose of state law. An insurer allocated a credit in accordance with this section may transfer a credit under this section to an affiliate of the insurer that is subject to state tax liability if the insurer notifies the department of the transfer and includes with that notification a copy of the transfer documents.

(c) The department may recapture credits from a taxpayer that claimed a credit authorized under this section if:

(1) The growth fund does not invest 100 percent of its capital investment authority in qualified investments in this state within three years of the initial credit allowance date;

(2) The growth fund fails to maintain qualified investments equal to 100 percent of its capital investment authority from the third anniversary until the sixth anniversary of the credit allowance date. For the purposes of this subsection, a qualified investment is considered maintained even if the qualified investment was sold or repaid so long as the growth fund reinvests an amount equal to the capital returned or recovered or repaid by the growth fund from the original investment, exclusive of any profits realized, in other qualified investments in this state within 12 months of receipt of such capital. Amounts received periodically by a growth fund shall be treated as maintained in qualified investments if the amounts are reinvested in one or more qualified investments by the end of the following calendar year. A growth fund shall not be required to reinvest capital returned from qualified investments after the fifth anniversary of the credit allowance date, and such qualified investments shall be considered maintained by the growth fund through the sixth anniversary of the credit

WV Legislature

allowance date;

(3) Prior to the earlier of exiting the program in accordance with this article or 30 days after the sixth anniversary of the credit allowance date, the growth fund makes a distribution or payment that results in the growth fund having less than 100 percent of its capital investment authority invested in qualified investments in the state or held in cash or other marketable securities; or

(4) The growth fund violates the provisions of §5B-12-6 of this code, in which case the department may recapture an amount equal to the amount of the growth fund's capital investment authority found to be in violation of such provisions.

(d) Recaptured credits and related capital investment authority shall revert to the department and shall be reissued pro rata to growth fund applicants whose capital investment allocations were reduced in accordance with the application process provided under §5B-12-3(e) of this code.

(e) No recapture shall occur until the growth fund has been given notice of noncompliance and afforded six months from the date of such notice to cure the noncompliance.

(f) A growth fund, before making a qualified investment, may request from the department a written opinion as to whether the business in which it proposes to invest is an eligible business. The department, no later than 15 business days after the date of receipt of such request, shall notify the growth fund of its determination. If the department fails to notify the growth fund of its determination by the 20th business day, the business in which the growth fund proposes to invest shall be deemed an eligible business.

WV Legislature

§5B-12-6. Investment prohibitions

No eligible business that receives a qualified investment under the provisions of this article, or any affiliates of such eligible business, shall directly or indirectly:

(1) Own or have the right to acquire an ownership interest in a growth fund or member or affiliate of a growth fund including, but not limited to, a holder of a capital investment issued by a growth fund; or

(2) Loan to or invest in a growth fund or any member or affiliate of a growth fund including, but not limited to, a holder of capital investment issued by a growth fund, where the proceeds of such loan or investment are directly or indirectly used to fund or refinance the purchase of capital investments under this article.

WV Legislature

§5B-12-7. Annual reporting.

(a) Growth funds shall submit a report to the department by June 30 of each calendar year during the compliance period. The report following the third anniversary of the initial credit allowance date shall provide documentation as to the investment of 100 percent of the purchase price of such capital investment in qualified investments. Unless previously reported pursuant to this subsection, such reports shall also include:

(1) The name and location of each eligible business receiving a qualified investment;

(2) Bank statements of such growth fund evidencing each qualified investment;

(3) A copy of the written opinion of the department, as provided in §5B-12-5(f) of this code, or evidence that such business was an eligible business at the time of such qualified investment, as applicable;

(4) The number of jobs created and jobs retained as a result of each qualified investment;

(5) The average salary of positions described in subdivision (4) of this subsection; and

(6) Such other information as required by the department.

(b) For all subsequent years, growth funds shall submit an annual report to the department by June 30 of each calendar year during the compliance period. The report shall include, but is not limited to, the following:

(1) The number of jobs created and jobs retained as a result of qualified investments;

(2) The average annual salary of positions described in subdivision (1) of this subsection; and

(3) Such other information as required by the department.

(c) On or following the sixth anniversary of the credit allowance date, a growth fund may apply to the department to exit the program and no longer be subject to the regulation hereunder. The department shall respond to the exit application within 15 days of receipt. In evaluating the exit application, the fact that no credits have been recaptured and that the growth fund has not received a notice of recapture that has not been cured pursuant to §5B-12-5(e) of this code shall be sufficient evidence to prove that the growth fund is eligible for exit. The department shall not unreasonably deny an exit application submitted under this section. If an exit application is denied, the notice shall include the reasons for the determination.

WV Legislature

§5B-13-1. Definitions.

For purposes of this article:

(1) "High-skill industry sector or occupation" means an industry sector or occupation identified as such by the West Virginia Workforce Development Board pursuant to the Carl D. Perkins Career and Technical Education Act under 20 U.S.C. § 2342 and that requires postsecondary education, experience, or training beyond a high school diploma.

(2) "High-wage industry sector or occupation" means an industry sector or occupation identified as such by the West Virginia Workforce Development Board pursuant to the Carl D. Perkins Career and Technical Education Act under 20 U.S.C. § 2342 and with median earnings above 150 percent of the federal poverty level for individual earners.

(3) "In-demand industry sector or occupation" means:

(A) An industry sector that has a substantial current or potential impact (including through jobs that lead to economic self-sufficiency and opportunities for advancement) on the state economy and that contributes to the growth or stability of other supporting businesses, or the growth of other industry sectors; or

(B) An occupation that currently has or is projected to have a number of positions (including positions that lead to economic self-sufficiency and opportunities for advancement) in an industry sector as to have a significant impact on the state economy.

(4) “Short-term workforce training program” means a workforce training program, offered by an institution eligible for federal Pell Grants pursuant to 20 U.S.C. § 1070a, of at least 150 clock hours of instruction, but less than 600 clock hours of instruction, or an equivalent number of credit hours during a minimum of eight weeks, but less than 15 weeks.

(5) “Workforce Pell Grant program” means the Workforce Pell Grant program administered by the United States Department of Education pursuant to the provisions of H.R. 1, Public Law 119-21, Title VIII, Sec. 83002 (2025).

WV Legislature

§5B-13-2. Approval of eligible workforce training programs.

(a) Upon application by an eligible institution that offers a short-term workforce training program, the Governor shall, in consultation with the West Virginia Workforce Development Board, approve the short-term workforce training program for eligibility for the Workforce Pell Grant program if the program satisfies all the requirements set forth at 20 U.S.C. § 1088(b)(3)(A)(iii), including that it:

(1) Provides an education aligned with the requirements of:

(A) A high-skill industry sector or occupation;

(B) A high-wage industry sector or occupation; or

(C) An in-demand industry sector or occupation;

(2) Meets the hiring requirements of employers or potential employers in the state in high-skill, high-wage, or in-demand industry sectors or occupations;

(3) Either:

(A) Leads to a recognized postsecondary credential that is stackable and portable across more than one employer; or

(B) Prepares students enrolled in the program for employment in an occupation for which there is only one recognized postsecondary credential and provides students with such a credential upon completion of the program;

(4) Prepares students to pursue one or more related certificate or degree programs at one or more institutions of higher education (which may include the eligible institution providing the program), including by ensuring that a student, upon completion of the program and enrollment in such a related certificate or degree program, will receive academic credit for the Workforce Pell Grant program that will be accepted toward meeting such certificate or degree program requirements; and

(5) Meets any other requirements for eligibility for the Workforce Pell Grant program established by applicable federal regulations promulgated pursuant to the provisions of H.R. 1, Public Law 119-21, Title VIII, Sec. 83002 (2025).

(b) Eligible institutions offering short-term workforce training programs that are approved for Workforce Pell Grant program eligibility pursuant to this section and which have students receiving Workforce Pell Grants shall report annually to the board concerning program completion rates, job placement rates, and earnings, as provided in §5B-13-3 of this code.

WV Legislature

§5B-13-3. Duties of the Workforce Development Board.

In consulting with the Governor in administering the Workforce Pell Grant program, and in collaboration with Workforce West Virginia, the West Virginia Workforce Development Board shall:

(1) Establish an application process for eligible institutions offering short-term workforce training programs to apply for approval for eligibility for the Workforce Pell Grant program;

(2) Coordinate the approval of short-term workforce training programs with other state and federal workforce programs, including state programs established under this chapter, pursuant to the Workforce Innovation and Opportunity Act, 29 U.S.C. § 3101 *et seq.*, and the Carl D. Perkins Career and Technical Education Act under 20 U.S.C. § 2301 *et seq.*;

(3) Require short-term workforce training programs approved pursuant to §5B-13-2 of this code to report annually to the board on verifiable data, as determined by Workforce West Virginia, demonstrating program outcomes, including completion rates, job placement rates, and earnings; and

(4) Review, on an annual basis, each short-term workforce training program approved for eligibility for the Workforce Pell Grant program to determine whether the program continues to align with current labor market needs and to satisfy the criteria set forth in §5B-13-2 of this code necessary for continued eligibility.

WV Legislature

§5B-13-4. Consistency with applicable federal law.

The provisions of this article shall be construed in a manner consistent with the provisions of H.R. 1, Public Law 119-21, Title VIII, Sec. 83002 (2025), and any applicable federal regulations promulgated thereunder. In the case of an inconsistency between the provisions of this article and applicable federal law, the federal requirement shall control.

WV Legislature

§5B-13-5. Rulemaking.

Workforce West Virginia, in collaboration with the West Virginia Workforce Development Board, shall propose rules necessary to implement the provisions of this article for legislative approval pursuant to §29A-3-1 *et seq.* of this code.

WV Legislature

§5B-13-6. Effective date.

The provisions of this article shall be effective July 1, 2026.

WV Legislature

§5B-14-1. Short title.

This article is and may be cited as the Strategic and Critical Resources Act.

WV Legislature

§5B-14-2. Legislative findings and purpose.

(a) The Legislature finds that certain minerals and materials are essential to national security, the welfare of this state, energy reliability, critical infrastructure, and economic stability, and that their availability is vulnerable to supply disruptions.

(b) The purpose of this article is to:

(1) Promote the development and availability of strategic and critical resources through uniform statewide regulation;

(2) Reserve regulatory authority to the state and federal governments; and

(3) Preempt local regulation, except as expressly provided.

WV Legislature

§5B-14-3. Definitions.

As used in this article:

"Extraction" means the mining, removal, production, or recovery of a strategic and critical resource by a person lawfully entitled to do so;

"Strategic and critical resource" means any of the following items, to the extent intended to be or actually extracted, mined, withdrawn, removed, harvested, or produced from within or upon land, including, but not limited to:

(1) Aluminum, aluminum oxide fused crude, antimony, arsenic, barite, beryllium, beryl ore, bismuth, boron, cadmium, cerium, cesium, chromium, cobalt, copper, dysprosium, erbium, europium, ferrochromium, ferromanganese, fluorine, fluorspar, gadolinium, gallium, germanium, graphite, hafnium, holmium, indium, iridium, lanthanum, lead, lithium, lutetium, magnesium, manganese, mercury, molybdenum, neodymium, nickel, niobium, palladium, phosphate, platinum, potash, praseodymium, rhenium, rhodium, rubber (natural), rubidium, ruthenium, samarium, scandium, selenium, silicon, silver, strontium, tantalum, tellurium, terbium, thulium, tin, titanium, tungsten, uranium, vanadium, ytterbium, yttrium, zinc, and zirconium;

(2) Any other mineral, element, compound, substance, or material listed on, or designated after, January 1, 2025, pursuant to:

(A) The U.S. Defense Logistics Agency Strategic Materials List;

(B) The U.S. Department of Energy Critical Materials List;

(C) The Defense Production Act of 1950 (50 U.S.C. § 4501 *et seq.*);

(D) The Energy Act of 2020 (30 U.S.C. § 1606); or

(E) U.S. Geological Survey List of Critical Minerals.

(3) Any other mineral, element, compound, substance, or material with respect to which the President of the United States makes a presidential determination or executive order after January 1, 2025, specifying that item as essential to the national defense pursuant to Section 303(a)(5) of the federal Defense Production Act of 1950, as amended (50 U.S.C. § 4533(a)(5)); and

(4) Any host material from which a strategic or critical resource is intended to be economically recovered as a byproduct; and

"Strategic and critical resource facility" means land, structures, equipment, or infrastructure reasonably necessary for the extraction or processing of a strategic and critical resource.

WV Legislature

§5B-14-4. State preemption of local regulation.

(a) Except as provided in this section, a county or municipality may not enact nor enforce any ordinance, regulation, resolution, administrative act, or other local law that prohibits, restricts, limits, or otherwise regulates the extraction of any strategic and critical resource outside municipal or urban areas.

(b) Except as provided in this section, a county or municipality may not enact nor enforce any ordinance, regulation, resolution, administrative act, or other local law that prohibits, restricts, limits, or otherwise regulates the acquisition, siting, development, construction, equipping, use, operation, expansion, repair, or maintenance of any strategic and critical resource facility outside municipal or urban areas.

(c) This article does not exempt an owner or operator from compliance with generally applicable business licenses, ad valorem property taxation, municipal sales or use taxes, utility rates and service charges, municipal service fees, or the State Building Code.

WV Legislature

§5B-14-5. Federal and state law unaffected.

(a) This article does not limit the applicability of any federal law governing environmental protection, natural resources, or public health, nor any state statute or legislative rule enacted pursuant to such a federal law.

(b) Except as expressly set forth in this article, this article is not intended to and does not affect or otherwise limit the applicability of any federal law or state statute or legislative rule applicable to any item designated a strategic and critical resource in this article.

WV Legislature

§5B-14-6. Rules.

(a) The Office of Energy shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code to implement the provisions of this article.

WV Legislature