



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE AND FILING WITH THE LEGISLATIVE RULE-
MAKING REVIEW COMMITTEE**

AGENCY: Development Office

TITLE-SERIES: 145-16

RULE TYPE: Legislative Amendment to Existing Rule: No Repeal of existing rule: No

RULE NAME: 145-16 Tourism Development Districts

PRIMARY CONTACT

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CITE STATUTORY AUTHORITY: 5B-1-9

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

5B-1-9(p) states that the Development Office shall propose rules for legislative approval in accordance with 29A-3-1 et seq.

IS THIS FILING SOLELY FOR THE SUNSET PROVISION REQUIREMENTS IN W. VA. CODE §29A-3-19(e)? No

IF YES, DO YOU CERTIFY THAT THE ONLY CHANGES TO THE RULE ARE THE FILING DATE, EFFECTIVE DATE AND AN EXTENSION OF THE SUNSET DATE? No

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 7/20/2020

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 8/21/2020

COMMENTS RECEIVED: Yes

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

This legislative rule governs the establishment of Tourism Development Districts and establishes the procedures, standards, legal documents, fees and notice applicable to an applicant for the establishment of a Tourism Development District. no changes to the rule were made as a result of the receipt of public comments.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

This rule is legislatively mandated in W. Va. Code 5B-1-9(p).

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

The rule does not impose or result in any foreseeable cost upon the state. An applicant for the establishment of a Tourism Development District is required to submit an application fee (between \$10,000 and \$100,000) to be negotiated between the Development Office and the applicant based upon the anticipated need by the Development Office to secure the services of an outside vendor to assist in the review of the application and the implementation of the rules, regulations, standards, processes and procedures pursuant to the design, acquisition, construction, installation and equipping of the development.

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

None

C. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:

None, but for the anticipated tax revenues generated by the development itself and the personal income taxes that are tied to the facility.

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2020 Increase/Decrease (use "-")	2021 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost			
Personal Services			
Current Expenses			
Repairs and Alterations			
Assets			
Other			
2. Estimated Total Revenues			\$5,000,000

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

The rule requires that the Development Office review, approve and oversee the development of Tourism Development Districts. The cost to the Development Office to undertake these new and additional duties is designed to be absorbed by the developer through a sliding scale application fee designed to compensate the Development Office for the retention of outside vendors to assist in the review, approval, and oversight of the development.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Jack M Rife -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 145
LEGISLATIVE RULE
WEST VIRGINIA DEVELOPMENT OFFICE

SERIES 16
TOURISM DEVELOPMENT DISTRICTS

§145-16-1. General.

1.1. Scope. -- This legislative rule governs the establishment of Tourism Development Districts and establishes the procedures, standards, legal documents, fees and notice applicable to an applicant for the establishment of a Tourism Development District.

1.2. Authority. – W. Va. Code §5B-1-9.

1.3. Filing Date. – _____.

1.4. Effective Date. -- _____.

1.5. Sunset Provision. This rule shall terminate and have no further force or effect upon the expiration of five (5) years from its effective date.

§145-16-2. Purpose.

2.1. Tourism Development Districts shall be authorized and administered by the Department of Commerce. The purpose of a Tourism Development District is to induce and assist tourism development located entirely or partially in municipalities with two thousand (2,000) residents or less in West Virginia and to promote uniform and consistent application of the Act.

§145-16-3. Definitions.

For purposes of this rule:

3.1. “Act” means the West Virginia Tourism Development District Act set forth in W. Va. Code §5B-1-9.

3.2. “Applicant” means an Approved Company that is applying or has applied to the Development Office for establishment of a Tourism Development District and which has entered into a TDA Agreement with the Development Office pursuant to W. Va. Code §5B-2E-6 to design, acquire, construct, and equip a Tourism Development Project or a Tourism Development Expansion Project.

3.3. “Application” means an application for establishment of a Tourism Development District that is filed with the Director of the Development Office pursuant to W. Va. Code §5B-1-9 and this rule, which provides all the information and documentation required by this rule.

3.4. “Application Fee” or “Fees” means the fee provided for in section five of this rule.

3.5. “Approved Company” means any eligible company approved by the Development Office pursuant to W. Va. §5B-2E-3 seeking to design, acquire, construct, and equip a Tourism Development Project or a Tourism Development Expansion Project.

3.6. “Approved Costs” or “Project Costs” means:

3.6.1. 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;

3.6.2. The costs of acquiring real property or interests in real property and any costs incidental thereto for a Project;

3.6.3. The costs 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;

3.6.4. 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;

3.6.5. All costs required to be paid under the terms of any contract for the acquisition, construction, equipping, or installation or installation of a Project;

3.6.6. All costs required for the acquisition, construction, equipping, or installation of Infrastructure on the real property on which the Project is located, or necessary to provide such services to the Project; and

3.6.7. All other costs comparable with those described in this subdivision.

3.7. “Control” means with respect to a corporation, ownership, directly or indirectly, of stock possessing fifty percent (50%) or more of the total combined voting power of all classes of the stock of the corporation entitled to vote. “Control” means with respect to a trust, ownership, directly or indirectly, of fifty percent (50%) or more of the beneficial interest in the principal or income of the trust. The ownership of stock in a corporation or of a capital or profits interest in a partnership or association or of a beneficial interest in a trust is determined in accordance with the rules for constructive ownership of stock provided in section 267(c) of the United States Internal Revenue Code of 1986, as amended, other than paragraph (3) of that section.

3.8. “Department of Commerce” means the Department of Commerce created in the executive branch of state government in W. Va. Code §5F-1-2(a).

3.9. “Department of Transportation” means the Department of Transportation created in the executive branch of state government in W. Va. Code §5F-1-2(a).

3.10. “Designee” means any officer or employee of the Director of the Development Office or the Secretary of Commerce, duly authorized, directly, or indirectly by one or more redelegations of authority, to perform the functions mentioned or described in this rule.

3.11. “Development Office” means the West Virginia Development Office created in W. Va. Code §5B-2-1 *et seq.*, which is an agency that is incorporated in and administered as part of the Department of Commerce, as provided in W. Va. Code §5B-1-2.

3.12. “Direct Jobs” means jobs located in the Tourism Development District during the construction phase and employment in the district after the project plan is completed.

3.13. “Director” means the Executive Director of the West Virginia Development Office.

3.14. “Economic Development Project and/or Plan” means written and graphic material for provision of a Tourism Development Project or Tourism Development Expansion Project that at a minimum includes the following information:

3.14.1. Name, address and phone number of property owner(s).

3.14.2. Name, address and phone number of property developer (if not the owner).

3.14.3. Name of the development project, date, direction, and scale.

3.14.4. Date Economic Development Plan was prepared.

3.14.5. Name, address and phone numbers of project architect(s), engineer(s) and landscape architect(s).

3.14.6. Intended land-use or nature of development.

3.14.7. Vicinity map showing general location, surrounding property and major physical features.

3.14.8. General layout of property showing shape, approximate dimensions, and total acreage.

3.14.9. A conceptual site development plan showing alignment of building(s), what developer anticipates will be the use of the building(s) and any phases of the project, if the project will be done in phases.

3.14.10. A description of the infrastructure that will be provided by the developer.

3.15. “Full-time employee” means a permanent hourly or salary employee who is headquartered at a business location in the Tourism Development District and who works more than eighteen hundred (1,800) hours during the entire twelve-month period ending on the last day of the calendar year, whether these hours are hours worked in the district, or include hours of employer paid vacation leave or other employer paid leave. Full-time employee does not include an employee who is a part-time, seasonal or temporary employee.

3.16. “Full-time employment” means employment for at least one hundred forty (140) hours per month at a wage not less than the prevailing state or federal minimum wage, depending on which minimum wage provision is applicable to the business.

3.17. “Indirect Jobs” means jobs created in the county in which the Tourism Development District is located that did not exist in the county before completion of the project plan for the district and which are not located or based in the district.

3.18. “Infrastructure” includes, but is not limited to, broadband Internet, electric lines, natural gas or propane lines, water lines, water storage and treatment facilities, fiber optic communication lines, sewer

lines, sewer treatment facilities, storm water management and control facilities, electrical power facilities, solar power generation facilities, roads, streets, turn lanes, traffic signals, bridges, sidewalks, pedestrian trails, bike paths, parking lots, parking structures, curbs, gutters, street lighting, street signage, and street scaping located within the Tourism Development District, or located outside the Tourism Development District but necessary to serve the Project. "Infrastructure" does not include customer charges for connection to a utility or charges for the utility service used to consumed by the utility customer.

3.19. "New employee" means a person hired by the developer or other employer located in the Tourism Development District to fill a position or a job in the district which previously did not exist in the developer's or other district employer's business enterprise in this State prior to the date on which the Economic Development Project is placed in service or use in this State. A person is considered a "new employee" only if the person's duties in connection with the operation of the business in a Tourism Development District are on:

3.19.1. A regular, full-time and permanent basis, or

3.19.2. A regular, part-time and permanent basis provided the person is customarily performing the duties at least twenty (20) hours per week for at least six (6) months during the calendar year.

3.20. "New job" means a job which did not exist in the Tourism Development District in the business of the developer or other employer located in the district prior to the Economic Development Project being placed in service.

3.21. "Own or control the property in the Tourism Development District" means that the Applicant or a related person as defined in this rule shall own, control, or have the right of use to all real property located within the proposed Tourism Development District.

3.22. "Part-time employee" means an employee who works less than twenty (20) hours per week.

3.23. "Permanent employee" means any employee who is not a temporary or seasonal employee and who customarily performs his or her duties at least twenty (20) hours per week for at least six (6) months during the calendar year.

3.24. "Person" includes any natural person, corporation, partnership, or entity treated as a partnership for federal and state income tax purposes.

3.25. "Project" means a Tourism Development Project and/or a Tourism Development Expansion Project for which a Tourism Development District is proposed or for which the Director of the West Virginia Development Office has approved the creation of a Tourism Development District.

3.26. "Related person" means:

3.26.1. A corporation, partnership, or entity treated as a partnership for federal and state income tax purposes, or an association or trust controlled by the Applicant;

3.26.2. An individual, corporation, partnership, or entity treated as a partnership for federal and state income tax purposes, or an association or trust that is in control of the Applicant;

3.26.3. A corporation, partnership, or entity treated as a partnership for federal and state income tax purposes, or an association or trust controlled by an individual, corporation, partnership, or

entity treated as a partnership for federal and state income tax purposes, or by an association or trust that is in control of the Applicant; or

3.26.4. A member of the same controlled group as the Applicant.

3.27. "Secretary of Commerce" means the chief executive officer of the Department of Commerce, or his or her designee.

3.28. "Significant economic development activity" means:

3.28.1. Total private real and personal property investment in a project that is in excess of twenty-five million dollars (\$25,000,000), through acquisition of real property, infrastructure, new construction, reconstruction, installation of fixtures, and equipping of the Project; and

3.28.2. Creation of additional annual payroll within the Tourism Development District in excess of one million dollars (\$1,000,000).

3.29. "Site" means the real property owned or controlled by the Approved Company, or real property for which the Approved Company has the right of use, in the proposed Tourism Development District which is subject to a TDA Agreement; provided, however that the Site may include public rights of way and easements, specifically including, but not limited to roads, sidewalks, and bridges.

3.30. "TDA Act" means the West Virginia Tourism Development Act set forth in W. Va. Code §5B-2E-1, et seq.

3.31. "TDA Agreement" means a Tourism Development Agreement entered into, pursuant to W. Va. Code §5B-2E-6, between the Development Office and an Approved Company with respect to a Tourism Development Project or Tourism Development Expansion Project.

3.32. "Tourism Development District" means an area designated by the Director of the Development Office, pursuant to W. Va. Code §5B-1-9 and in accordance with this rule, where a Tourism Development Project or Tourism Development Expansion Project is to be acquired, constructed, equipped, developed, expanded, and operated, and which satisfies the following criteria:

3.32.1. The Tourism Development District shall be entirely or partially within the corporate limits of a municipality which has a population of two thousand (2,000) or less as of the most recent census, as specified in W. Va. Code §8-1-4;

3.32.2. The Applicant shall designate the boundaries of the proposed Tourism Development District;

3.32.3. The Approved Costs of the Project shall equal or exceed twenty-five million dollars (\$25,000,000); and

3.32.4. The Applicant shall have a TDA Agreement with the Development Office for the Project.

3.33. "Tourism Development District Agreement" means an agreement entered into between the Development Office and Approved Company, pursuant to the Act, which agreement sets forth the agreement of the parties thereto for the design, acquisition, construction and equipping, and all permits and regulations related to the subsequent operation, of the Project.

3.34. "Tourism Development Expansion Project" shall have the meaning defined in W. Va. Code §5B-2E-3.

3.35. "Tourism Development Project" shall have the meaning defined in W. Va. Code §5B-2E-3.

3.36. "West Virginia Code" or "W. Va. Code" means the Code of West Virginia, one thousand nine hundred thirty-one (1931), as amended.

§145-16-4. Content of Application.

An application for establishment of a Tourism Development District shall include the following:

4.1. The Applicant's name.

4.2. The Applicant's current address.

4.3. The Applicant's contact person, including, telephone number, facsimile number, and e-mail address.

4.4. A copy of the TDA Agreement with the Development Office entered into pursuant to W. Va. Code §5B-2E-6.

4.5. The name of the proposed Tourism Development District.

4.6. A general description of the Site proposed to be designated a Tourism Development District, which shall include, at a minimum, the following:

4.6.1. A written description of the Site that includes any city, county, and street addresses, but does not require a metes and bounds legal description;

4.6.2. The deed book and page number for each parcel of real property that is part of the Site; and

4.6.3. The tax map and parcel number for each parcel of real property that is part of the Site.

4.7. A map showing the boundaries of the Tourism Development District.

4.8. Documentation establishing that as of the date of the Application the Applicant owns or controls, or has right of use of, all of the real property to be included in the proposed Tourism Development District, provided, however that public property, public rights of way and easements, specifically including, but not limited to, roads, sidewalks, and bridges may be included within the boundaries of the Tourism Development District.

4.9. Documentation of financial ability of the Applicant to undertake and complete the design, acquisition, construction, installation, and equipping of the proposed Project and, subsequently, to operate the proposed Project.

4.10. A traffic study performed by a recognized traffic consultant if (a) the Economic Development Project will directly and indirectly employ more than two hundred (200) employees who will work in the

district once the Economic Development Project is finished, or (b) if more than two hundred (200) individuals will reside in the district once the Economic Development Project is completed, or (c) if any combination of residents and employees exceeds two hundred (200) persons in the aggregate.

4.11. A true copy of the Economic Development Plan including an estimated breakdown of Project costs.

4.12. If the Project infrastructure will tie in to a public or private utility, a letter from the utility or utilities serving the area in which the Economic Development Project is located certifying the following:

4.12.1. They have reviewed and approved all plans and specifications for the Project's infrastructure applicable to the utility to determine that the infrastructure conforms to the utility's reasonable requirements and, when the infrastructure consists of water transmission or distribution facilities, that the infrastructure will provide for adequate fire protection for the district; and

4.12.2. If the infrastructure is built in conformance with said plans and specifications, the utility will accept the improvements following their completion.

4.13. Facts and documents demonstrating that designation of a site as a Tourism Development District will create significant economic development activity, including, but not limited to:

4.13.1. Estimated total number of jobs to be created in the Tourism Development District.

4.13.1.a. Estimated number of construction jobs over the life of the Project;

4.13.1.b. Estimated number of permanent jobs and estimated annual payroll once the Project is completed and all buildings are occupied;

4.13.1.c. Estimated number of temporary and seasonal jobs once the Project is completed and all buildings to be occupied are occupied; and

4.13.1.d. Estimated number of part-time jobs once the Project is completed and all buildings are occupied.

4.13.2. Estimated annual state and local taxes the Project will generate, during construction, design and equipping, and subsequent operation, thereof, including:

4.13.2.a. Estimated business and occupation tax to be paid to the municipality in which the Project is wholly or partially located;

4.13.2.b. Estimated personal income taxes that will be paid by employees working in the Tourism Development District once the Project is completed, based on the payroll of the District;

4.13.2.c. Estimated *ad valorem* real and personal property taxes paid in the District; and

4.13.2.d. Estimated hotel occupancy taxes to be paid in the District.

4.14. The rules, regulations, standards, processes, or procedures which the Applicant proposes to be agreed to by and between the Applicant and the Development Office for design, acquisition,

construction, installation and equipping, and subsequent operation, of the Project with respect to the following:

4.14.1. Building codes (shall not be less restrictive than the building codes of the State of West Virginia);

4.14.2. Land use and permitting;

4.14.3. Historic preservation and viewshed (shall not be less restrictive than the requirements of the West Virginia State Office of Historic Preservation);

4.14.4. Demolition permitting (may be equivalent to the standards of the county in which the Project is located);

4.14.5. Noise ordinance;

4.14.6. Lighting and/or “dark skies” ordinance;

4.14.7. Regulation of alcoholic liquor, nonintoxicating beer or wine for consumption in the Tourism Development District (shall not be less restrictive than the laws and regulations of the State and the West Virginia Alcohol Beverage Control Administration); and

4.14.8. Inspection during acquisition, construction, installation and equipping of the Project.

4.15. The form of public notice regarding the application to be provided by the Development Office pursuant to this Rule.

4.15.1. A proposed form of Tourism Development District Agreement.

4.16. Documentation that the Applicant is in compliance with the TDA Agreement between the Development Office and the Approved Company and the requirements of W. Va. Code §5B-2E-1, et seq.

4.17. Applicant shall demonstrate that the Applicant has attempted to work in good faith with local officials in regard to land-use issues by submission of the following:

4.17.1. A copy of the original land use plan submitted to the local land use officials;

4.17.2. A copy of any and all amended or revised land development plan and plat submitted to the local land use officials, with a cover document highlighting the major difference(s) between each version of the land use plan;

4.17.3. One or more documents showing that the land use plan was rejected by the land use officials. Examples of these documents include, but are not limited to, a transcript of the public meeting at which the land use plan was rejected, a letter or order signed by the chairman of the land use officials providing reasons why the land use plan was rejected, the affidavit of the applicant or the affiant’s attorney stating the affiant’s understanding of why the land use plan was rejected; and

4.17.4. A nonbinding review of the existing planning and zoning ordinances of any municipality located in the proposed Tourism Development District.

4.18. The Applicant may refer to and/or rely upon the application it submitted to the Development Office prior to being designated as an Approved Company pursuant to W. Va. Code §5B-2E-1, *et seq.* to satisfy some or all of the requirements set forth in this section.

4.19. Applicant agrees to an ongoing obligation to supplement any information required in this rule and shall promptly correct any errors or update information contained in its Application.

§145-16-5. Application fee.

5.1. All costs for the application process shall be borne by the Applicant and such cost shall be negotiated between the Development Office and the Applicant but shall be not less than ten thousand dollars (\$10,000) or more than one hundred thousand dollars (\$100,000). The amount of such fee shall include costs of any outside vendor which the Development Office shall determine necessary to assist the Development Office in the review of the Application and the implementation of the rules, regulations, standards, processes, or procedures which the Development Office approves pursuant to this rule for design, acquisition, construction, installation and equipping, and subsequent operation, of the Project.

5.2. If the application is withdrawn by the Applicant before the Development Office begins its review of the application, the application fee shall be refunded to the Applicant. If the application is withdrawn after the Development Office has begun review of the application, no portion of the application fee shall be refunded to the Applicant.

§145-16-6. Timeline for processing application.

6.1. The Development Office shall mark on the application the date it is received by the Development Office.

6.2. The Development Office shall have ninety (90) days after it physically receives a complete application to establish a Tourism Development District in which to grant the application, deny the application, or request additional information from the Applicant. A complete application is one which provides all of the information required by section four of this rule.

6.3. If the application is granted or denied, the Director of the Development Office shall promptly notify the Applicant in writing of the decision, which shall be served on the Applicant by certified mail, or by facsimile transmission and first-class regular mail.

6.4. If the Director requests additional information from the Applicant, the request shall be made in writing and served on the Applicant by certified mail, electronic-mail, or by facsimile transmission and first-class regular mail.

6.5. The Applicant shall have thirty (30) days from date of receipt of the request for additional information in which to provide the additional information.

6.6. When the additional information is provided within the applicable thirty-day period, the Director shall have thirty (30) days after physical receipt of the additional information to act on the application or the balance of the original ninety-day period to act on the application, whichever is longer.

§145-16-7. Timely filing and paying; performance when last day to act is Saturday, Sunday or holiday in this State.

7.1. Delivery in person. If any document required by this rule to be filed with the Director of the Development Office, or any payment required to be made, within a prescribed period or on or before a prescribed date, is delivered in person on or before such date to the Development Office, it shall be timely filed.

7.2. Timely mailing. If any document required by this rule to be filed with the Director of the Development Office, or any payment required to be made within a prescribed period or on or before a prescribed date under authority of this rule, is, after such period or such date, delivered by United States mail to the Director of the Development Office, the date of the United States Postal Service postmark stamped on the cover in which such document or payment is mailed is the date of delivery or the date of payment as the case may be, provided the following mailing requirements are met:

7.2.1. The postmark date falls within the prescribed period or on or before the prescribed date for filing of the document or for making payment, and

7.2.2. The document or payment was, within the time prescribed in subdivision 7.2.1, deposited in the mail in the United States in an envelope or other appropriate wrapper, postage prepaid, properly addressed to the Development Office.

7.3. Registered and certified mailing. For purposes of this section, if any document or payment is sent by United States registered or certified mail, the date of registration or certification is the postmark date.

7.4. Time for performance. When the last day to act falls on a Saturday, Sunday, or legal holiday in this State, the act shall be timely if done on the next day that is not a Saturday, Sunday, or legal holiday in this State.

§145-16-8. Public notices.

8.1. Within fourteen (14) days after receipt of any application for establishment of a Tourism Development District, the Director of the Development Office shall solicit written comment from the public either in support of or opposition to the proposed Tourism Development District and shall file a notice in the State Register in substantially the same form as follows allowing the public fourteen (14) days from the date of publication of the notice to provide written comment:

TO WHOM IT MAY CONCERN

Notice is hereby given that [Name of Applicant] filed an application with the Director of the West Virginia Development Office on [Month] [Date], [Year] For establishment of the [Name of District] Tourism Development District. The proposed district consists of [Number] contiguous acres located at [Address] in [Municipality], West Virginia. Included in the application is a plan for development of the district, which is generally described as follows:

[Insert brief description of the project, including phases of the project, if any, and the Project's estimated cost.]

Interested persons may inspect the application during normal business hours of the West Virginia Development Office in Charleston, West Virginia, to the extent inspection is permitted under the State Freedom of Information Act, W. Va. Code §29B-1-1, et seq.

Comments shall be received until _____, _____, via United States mail at the following address:

West Virginia Development Office
ATTN: Executive Director
State Capitol Complex – Building 3
1900 Kanawha Boulevard E.
Charleston, West Virginia 25305

8.2. The Development Office shall mail a copy of the aforementioned notice to the chief elected official of any municipality located within, or partially within, the proposed Tourism Development District. Such municipality may file statements in support or opposition of the application within fourteen (14) days after the Director's filing the public notice described in section 8.1. of this rule. A municipality desiring to file such statements, shall submit the statement to the Director of the Development Office in person, by certified mail return receipt requested, by electronic-mail, or by facsimile transmission.

8.3. The Director shall file a copy of the Director's letter or order in the State Register within fourteen (14) days after the Director designates or rejects an application.

§145-16-9. Criteria for Considering Applications; Tourism Development District Agreement between Development Office and Applicant upon Approval.

9.1. The Director of the Development Office shall consider the following criteria when determining whether to grant or deny an application for establishment of a Tourism Development District:

9.1.1. The approved costs of the Tourism Development Project or Tourism Development Expansion Project must be in excess of twenty-five million dollars (\$25,000,000);

9.1.2. The estimated number and type of jobs to be created within the Tourism Development District, specifically including, but not limited to, construction jobs and permanent jobs;

9.1.3. The estimated average annual payroll of the permanent jobs to be created in the Tourism Development District; and

9.1.4. The economic impact on the state and the region in which the Tourism Development District is to be located, specifically including, but not limited to, the extent to which the district will stimulate and support the growth of new or existing businesses located in the county, compete with or compliment existing businesses, improve the opportunities for successful establishment or expansion of other commercial or industrial business, or create additional employment opportunities and diversify the local economy.

9.2. The Development Office shall enter into a Tourism Development District Agreement with the Applicant for each approved Tourism Development District. The Tourism Development District Agreement shall include the following:

9.2.1. The rules, regulations, standards, processes, or procedures for design, acquisition, construction, installation and equipping, and subsequent operation, of the Project with respect to the following:

9.2.1.a. Building codes (shall not be less restrictive than the building codes of the State of West Virginia);

9.2.1.b. Land use and permitting;

9.2.1.c. Historic preservation and viewshed (shall not be less restrictive than the requirements of the West Virginia State Office of Historic Preservation);

9.2.1.d. Demolition permitting;

9.2.1.e. Noise ordinance;

9.2.1.f. Lighting and/or “dark skies” ordinance;

9.2.1.g. Regulation of alcoholic liquor, nonintoxicating beer or wine for consumption in the Tourism Development District (shall not be less restrictive than the laws and regulations of the State and the West Virginia Alcohol Beverage Control Administration); and

9.2.1.h. In determining the rules, regulations, standards, processes, or procedures for design, acquisition, construction, installation and equipping, and subsequent operation, of the Project to be required in the Tourism Development District Agreement, the Development Office shall conduct a nonbinding review of the existing planning and zoning ordinances of any municipality in which the Tourism Development District is wholly or partially located.

9.2.2. Procedures for review of design, plans and specification for the construction of, and for inspection during acquisition, construction, installation and equipping of, the Project to ensure compliance with the rules, regulations, procedures, standards, processes, and procedures agreed to in the Tourism Development District Agreement.

9.2.3. Provisions for monitoring on-going compliance during operation of the Tourism Development District with the rules, regulations, procedures, standards, processes, and procedures agreed to in the Tourism Development District Agreement.

9.2.4. Criterion for determining whether the Applicant has attempted to work in good faith with local officials in regard to land use include but are not limited to:

9.2.4.a. The land use plan submitted to local officials.

9.2.4.b. Any revised land use plan submitted to local officials.

9.2.4.c. That the land use plan(s) submitted by the Applicant was rejected or tabled by the local officials, or the local officials refused to consider the land use plan.

§145-16-10. Duties of Applicant after District is Established.

10.1. The owner, operator, or manager, as applicable, and all concessions and licensees thereof, of the Project shall, in the same manner as any other business or commercial venture located within the municipality:

10.1.1. Pay any applicable business and occupation tax;

10.1.2. Collect and remit any applicable municipal sales and use tax;

10.1.3. Pay any applicable *ad valorem* real and personal property tax consistent with the same mileage rates;

10.1.4. Collect and remit any applicable hotel occupancy tax;

10.1.5. Pay any applicable municipal service fees, including, but not limited to, fire, police, sanitation, or city service fees;

10.1.6. Pay any reasonable applicable municipal utility rates, fees, and charges for utilities used or consumed during construction and operation of premises within the Tourism Development District, including, but not limited to, water, sewer, stormwater, and garbage and recycling collection, provided, however, the provider may not charge rates to the premises within the Tourism Development District which are discriminatory;

10.1.6.a. Any 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 Approved Company. Any such 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.

10.1.6.b. The Applicant shall only be required to pay any reasonable 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 may not be discriminatory and shall be subject to review and approval by the Public Service Commission of West Virginia.

10.1.7. Comply with state laws, regulations, and licensure requirements concerning state control of alcoholic liquors pursuant to Chapter 60 of the Code and control of nonintoxicating beer pursuant to W. Va. Code §11-16-1, *et seq.*;

10.1.8. Be entitled to municipal police protection and municipal fire protection, if available;

10.1.9. Design, acquire, construct, and equip the Project pursuant to the State Building Code in accordance with W. Va. Code §8-12-13 and W. Va. C.S.R. §87-4-1, *et seq.*; and

10.1.10. Permit inspection of the design, acquisition, construction, and equipping of the Project pursuant to the standards approved by the Development Office.

10.2. The Applicant or any successor to the Applicant shall continue to comply, on an on-going basis, with the requirements of W.Va. Code §5B-2E-1, *et seq.* and the TDA Agreement and shall file a certification of such compliance with the Director of the Development Office by the last day of each calendar year, commencing the first full calendar year following the calendar in which the parties execute the Tourism Development District Agreement.

§145-16-11. Vested property right; termination.

11.1. When a Tourism Development District is established, the Applicant and any successor to the Applicant shall have a vested property right to undertake and complete the approved elements of the Project, subject to the provisions of the Act and this rule.

11.2. Failure to abide by the terms and conditions of this rule or material failure to complete the Project shall result in revocation of the Tourism Development District and in forfeiture of the right established in this section; provided, however, the Applicant or any successor thereto shall have sixty (60) days to begin to cure any such failure before any such revocation of the Tourism Development District may occur.

11.3. The vesting period within which the approved elements of the Project must be completed is five (5) years from the date the Tourism Development District is established. This five-year period can be extended once for a period of up to a maximum of thirty-six (36) months upon submission of the certification required by subsection 10.2 to the Director stating that the Applicant is seeking an extension. The vesting shall become permanent once eighty percent (80%) or more of the buildings in the Project, based on square footage of space, have been completed, unless the Tourism Development District is sooner terminated as provided in this rule.

11.4. Revocation of the Tourism Development District as provided in this rule or expiration of the five-year vesting period prior to completion of the Project shall not affect the portion of the Project completed before the district is revoked or the five-year vesting period expires. Neither of these events shall affect any construction work in progress, begun before the district is revoked or the five-year vesting period expires except that this grandfather rule shall not apply to any construction work in progress that is not consistent with the application or any change thereto that has been approved in writing by the Director of the Development Office. The revocation of the Tourism Development District shall not impact operation of the portion of the Project for which design, acquisition, construction, or equipping has been completed prior to the revocation of the Tourism Development District or any design, acquisition, construction or equipping which is grandfathered under this rule.

11.5. Each Tourism Development District Shall terminate by operation of law ninety-nine (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.

11.6. A Tourism Development District shall continue to exist beyond the termination or expiration of the Act.

§145-16-12. Tourism Development Act.

12.1. Failure of the Legislature to renew the Tourism Development Act (W. Va. Code §5B-2E-1, et seq.) may not modify or alter the designation and vested rights or 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 potential termination of the Tourism Development Act.

§145-16-13. Home Rule limited.

13.1. Upon the establishment of a Tourism Development District in accordance with this rule, and notwithstanding any provision of the Code to the contrary, or a municipality's home rule powers with respect to ordinances and ordinance procedures, including any authority pursuant to W. Va. Code §8-1-5a, any Project within a Tourism Development District, is not subject to any municipal:

13.1.1. Zoning, historic preservation, horticultural, noise, viewshed, lighting, development, or land use ordinances, restriction, limitations, or approvals;

13.1.2. Regulation of the sale of alcoholic liquor, nonintoxicating beer, or wine for consumption within the Tourism Development District;

13.1.3. Building permitting, inspection, or code enforcement;

13.1.4. License requirements;

13.1.5. Legal jurisdiction in which the Tourism Development District is entirely or partially located, except as provided in this rule;

13.1.6. Tax, fee, or charge, except as provided in this rule; or

13.1.7. Consent or approval or any state or county action pursuant to the Code, including, but not limited to, 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 districts, or the approval of tax increment financing development or redevelopment plans.

§145-16-14. Cooperation with Other State Agencies.

14.1. The Division of Highways, State 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 including, but not limited to, the development or improvement of such highways, road, thoroughfares, and sidewalks within the municipality where the Tourism Development District is partially or entirely located.

§145-16-15. Maximum number of Districts.

15.1. The Development Office may not approve more than five (5) Tourism Development Districts.

§145-16-16. Orders of the Director are final.

16.1. The decision of the Director of the Development Office regarding an application is final.

16.2. The Director may terminate a Tourism Development District if her or she determines that the Tourism Development Project or Tourism Development Expansion Project has been abandoned or ceased operations for five (5) consecutive years.

§145-16-17. Severability.

17.1. Pursuant to W. Va. Code §2-2-10, if any provision of this rule 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 rule, and to this end the provisions of this rule are declared to be severable.