WEST VIRGINIA CODE CHAPTER 16 ARTICLE 13E

WV Legislature

§16-13E-1. Short title.

This article shall be known and may be cited as the "West Virginia Community Enhancement Act".

WV Legislature

§16-13E-2. Definitions.

For purposes of this article:

(a) "Assessment bonds" means special obligation bonds or notes issued by a community enhancement district which are payable from the proceeds of assessments.

(b) "Assessment" means the fee, including interest, paid by the owner of real property located within a community enhancement district to pay for the cost of a project or projects constructed upon or benefitting or protecting such property and administrative expenses related thereto, which fee is in addition to all taxes and other fees levied on the property.

(c) "Board" means a Community Enhancement Board created pursuant to this article.

(d) "Community enhancement district" or "district" means a community enhancement district created pursuant to this article.

(e) "Cost" means the cost of:

(1) Construction, reconstruction, renovation and acquisition of all lands, structures, real or personal property, rights, rights-of-way, franchises, easements and interests acquired or to be acquired by the district;

(2) All machinery and equipment, including machinery and equipment needed to expand or enhance county or city services to the district;

(3) Financing charges and interest prior to and during construction and, if deemed advisable by the district or governing body, for a limited period after completion of the construction;

(4) Interest and reserves for principal and interest, including costs of municipal bond insurance and any other type of financial guaranty;

(5) Costs of issuance in connection with the issuance of assessment bonds;

(6) The design of extensions, enlargements, additions and improvements to the facilities of any district;

(7) Architectural, engineering, financial and legal services;

(8) Plans, specifications, studies, surveys and estimates of costs and revenues;

(9) Administrative expenses necessary or incident to determining to proceed with any project; and

(10) Other expenses as may be necessary or incident to the construction, acquisition and financing of a project.

WV Legislature

(f) "Development concept" means the following items, to the extent set forth or specified in the subject subdivision or land development plan and plat:

(1) The maximum aggregate number of lots or parcels into which the subject land is to be subdivided.

(2) The size and boundaries of the individual lots or parcels into which the subject land is to be subdivided.

(3) The density of the land development.

(4) Designation of use of the individual lots or parcels.

(5) The location of roads, streets, parking lots, sidewalks and other paved areas.

(6) The location of ingress and egress for the land development.

(7) Setback lines and distances and buildable areas.

(8) The finished layout and grade of the land.

(g) "Development concept vesting period" means the period commencing upon approval of the subject land development plan and plat by the planning commission and terminating on the maturity date of the subject assessment bonds or tax increment financing obligation. The development concept vesting period pertains only to the vested property right in a development concept that is established upon approval by the planning commission of a land development plan and plat in which a development concept is set forth or specified.

(h) "Five-year vesting period" means the five-year vesting period for an approved land development plan and plat provided under subsection (c), section twelve, article five, chapter eight-a of this code.

(i) "Governing body" means, in the case of a county, the county commission and in the case of a municipality, the mayor and council together, the council or the board of directors as charged with the responsibility of enacting ordinances and determining the public policy of such municipality.

(j) "Governmental agency" means the state government or any agency, department, division or unit thereof; counties; municipalities; any watershed enhancement districts, soil conservation districts, sanitary districts, public service districts, drainage districts, school districts, urban renewal authorities or regional governmental authorities established pursuant to this code.

(k) "Person" means an individual, firm, partnership, corporation, voluntary association or any other type of entity.

WV Legislature

(l) "Project" means the design, construction, reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement, equipping, maintenance, repair (including replacements) and start-up operation of water source of supply, treatment, transmission and distribution facilities, sewage treatment, collection and transmission facilities, stormwater systems, police stations, fire stations, libraries, museums, schools, other public buildings, hospitals, piers, docks, terminals, drainage systems, culverts, streets, roads, bridges (including approaches, causeways, viaducts, underpasses and connecting roadways), motor vehicle parking facilities (including parking lots, buildings, ramps, curb-line parking, meters and other facilities deemed necessary, appropriate, useful, convenient or incidental to the regulation, control and parking of motor vehicles), public transportation, public recreation centers, public recreation parks, swimming pools, tennis courts, golf courses, equine facilities, motor vehicle competition and recreational facilities, flood protection or relief projects, or the grading, regrading, paving, repaving, surfacing, resurfacing, curbing, recurbing, widening, lighting or otherwise improving any street, avenue, road, highway, alley or way, or the building or renewing of sidewalks and flood protection; and the terms shall mean and include any project as a whole, and all integral parts thereof, including all necessary, appropriate, useful, convenient or incidental appurtenances and equipment in connection with any one or more of the above.

WV Legislature

§16-13E-3. Power and authority of counties and municipalities to create and establish community enhancement districts.

(a) Every county and municipality is hereby empowered and authorized, in addition to any other rights, powers and authority conferred upon it elsewhere in this code, to create, modify and expand community enhancement districts in the manner hereinafter set forth in such county or municipality and to assist in the development, construction, acquisition, extension or improvement of a project or projects located in such county or municipality.

(b) Unless agreed to by a municipality, the power and authority hereby conferred on a county shall not extend into territory within the boundaries of any municipality: Provided, That notwithstanding any provision in this code to the contrary, the power and authority hereby conferred on counties may extend within the territory of a public service district created under section two, article thirteen-a of this chapter.

WV Legislature

§16-13E-4. Petition for creation or expansion of community enhancement district; petition requirements.

(a) The owners of at least sixty-one percent of the real property, determined by acreage, located within the boundaries of the area described in the petition, by metes and bounds or otherwise in a manner sufficient to describe the area, may petition a governing body to create or expand a community enhancement district.

(b) The petition for the creation or expansion of a community enhancement district shall include, where applicable, the following:

(1) The proposed name and proposed boundaries of such district and a list of the names and addresses of all owners of real property within the proposed district;

(2) A detailed project description;

(3) A map showing the proposed project, including all proposed improvements;

(4) A list of estimated project costs and the preliminary plans and specifications for such improvements, if available;

(5) A list of nonproject costs and how they will be financed;

(6) A consultant study outlining the projected assessments, setting forth the methodology for determining the assessments and the methodology for allocating portions of an initial assessment against a parcel expected to be subdivided in the future to the various lots into which the parcel will be subdivided and demonstrating that such assessments will adequately cover any debt service on bonds issued to finance the project and ongoing administrative costs;

(7) A development schedule;

(8) A list of recommended members for the board;

(9) If the project includes water, wastewater or sewer improvements, written evidence from the utility or utilities that will provide service to the district, if any, that said utility or utilities:

(A) Currently has adequate capacity to provide service without significant upgrades or modifications to its treatment, storage or source of supply facilities, except facilities which the community enhancement district will provide as described in the petition;

(B) Will review and approve all plans and specifications for the improvements to determine that the improvements conform to the utility's reasonable requirements and, if the improvement consists of water transmission or distribution facilities, that the improvements provide for adequate fire protection for the district; and

WV Legislature

(C) If built in conformance with said plans and specifications, will accept the improvements following their completion, unless such projects are to be owned by the district;

(10) If the project includes improvements other than as set forth in subdivision (9) of this subsection that will be transferred to another governmental agency, written evidence that such agency will accept such transfer, unless such projects are to be owned by the district;

(11) The benefits that can be expected from the creation of the district and the project; and

(12) A certification from each owner of real property within the proposed district who joins in the petition that he or she is granting an assessment against his or her property in such an amount as to pay for the costs of the project and granting a lien for said amount upon said property enforceable in accordance with this article.

(c) After reviewing the petition presented pursuant to this section, the governing body may by order or ordinance determine the necessity and economic feasibility of creating a community enhancement district and developing, constructing, acquiring, improving or extending a project therein. If the governing body determines that the creation of a community enhancement district and construction of the project is necessary and economically feasible, it shall set a date for the public meeting required under section five of this article and shall cause the petition to be filed with the clerk of the county commission or the clerk or recorder of the municipality, as the case may be, and be made available for inspection by interested persons before the meeting.

(d) Notwithstanding any other contrary provision of this article, nothing in this article shall modify:

(1) The jurisdiction of the Public Service Commission to determine the convenience and necessity of the construction of utility facilities, to resolve disputes between utilities relating to which utility should provide service to a district or otherwise to regulate the orderly development of utility infrastructure in the state; or

(2) The authority of the Infrastructure and Jobs Development Council as to the funding of utility facilities to the extent that loans, loan guarantees, grants or other funding assistance from a state infrastructure agency are involved.

WV Legislature

§16-13E-5. Notice to property owners before creation or expansion of community enhancement district and construction or acquisition of project; form of notice; affidavit of publication.

(a) Before the adoption or enactment of an order or ordinance creating a community enhancement district, the governing body shall cause notice to be given to the owners of real property located within the proposed community enhancement district that such ordinance or order will be considered for adoption or enactment, as the case may be, at a public meeting of the governing body at a date, time and place named in the notice and that all persons at that meeting, or any adjournment thereof, shall be given an opportunity to protest or be heard concerning the adoption, enactment or rejection of the order or ordinance. At or after the meeting the governing body may amend, revise or otherwise modify the information in the petition for the community enhancement district or project as it may deem appropriate after taking into account any comments received at such meeting.

(b) The notice required in this section shall be published at least thirty days prior to the date of the meeting as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code and the publication area for such publication shall be the county or municipality in which the proposed community enhancement district is located. The notice shall be in the form of, or substantially in the form of, the following notice:

"NOTICE TO ALL PERSONS OWNING PROPERTY LOCATED WITHIN ..... (here describe the boundaries of the proposed community enhancement district) IN THE ..... (county or municipality) OF ..... (name of county or municipality):

A petition has been presented to the ..... (county commission, city council or other governing body) of the ..... (county or municipality) of ..... (name of county or municipality) requesting establishment of a community enhancement district under chapter sixteen, article thirteen-b of the Code of West Virginia to ..... (here describe the project both within and outside of the proposed community enhancement district to be financed, developed, constructed, acquired, extended or improved, or the lots or parcels of land which may be protected, in the case of a flood relief project) in ..... (name of county or municipality) by ..... (here provide general description of the project) as the ..... (county commission, city council or other governing body) may deem proper and to assess the total cost (or, if the assessments are only necessary to pay for part of the total cost, the approximate percentage of the total cost) of such improvement on the property. A copy of the petition is available in the office of the ..... (name of clerk or recorder) for review by the public during regular office hours.

The petition to create a community enhancement district and to make such improvements, and estimates therefor, will be considered by the ..... (county commission, city council or other governing body) at a public meeting to be held on the ..... day of ....., ..., at .....m. at ..... Any owner of property whose property may be affected by the creation of the above-described community enhancement

WV Legislature

district, and any person whose property is not located within said community enhancement district but wishes his or her property to be included, will be given an opportunity, under oath, to protest or be heard at said meeting or any adjournment thereof:

..... (name of clerk or recorder)

..... (official position)."

(c) An affidavit of publication of the notice made by the newspaper publisher, or a person authorized to do so on behalf of such publisher, and a copy of the notice shall be made part of the minutes of the governing body and spread on its records of the meeting described in the notice. The service of said notice upon all persons owning any interest in any property located within the proposed community enhancement district shall conclusively be deemed to have been given upon the completion of such newspaper publication.

(d) The petitioners shall bear the expense of publication of the notice and the meeting, as requested by subsection (e) of this section.

(e) After the public meeting and before the governing body may adopt or enact an order or ordinance creating a community enhancement district, the governing body shall mail a true copy of the proposed order or ordinance creating the community enhancement district to the owners of real property in said district. Unless waived in writing, any petitioning owner of real property shall have thirty days from mailing of the proposed ordinance or order in which to withdraw his or her signature from the petition in writing prior to the vote of the governing body on such ordinance or order. If any signatures on the petition are so withdrawn, the governing body may pass the proposed ordinance or order only upon certification by the petitioners that the petition otherwise continues to meet the requirements of this article. If all petitioning owners of real property waive the right to withdraw their signatures from the petition, then the governing body may immediately adopt or enact the ordinance or order.

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§16-13E-6. Creation of community enhancement district; community enhancement district to be a public corporation and political subdivision; powers thereof; community enhancement boards.

(a) Each community enhancement district shall be created by adoption or enactment of an order or ordinance.

(b) From and after the date of the adoption or enactment of the order or ordinance creating a community enhancement district, it shall thereafter be a public corporation and political subdivision of this state, but without any power to levy or collect ad valorem taxes. Each community enhancement district is hereby empowered and authorized, in addition to any other rights, powers and authorities conferred upon it in this article or elsewhere in this code, to:

(1) Acquire, own and hold, in its corporate name, by purchase, lease, right of eminent domain, gift or otherwise, such property, both real and personal and other interests in real estate, or any other property, whether tangible or intangible, as may be necessary or incident to the planning, financing, development, construction, acquisition, extension, improvement and completion of a project;

(2) Design, plan, finance, develop, construct, acquire, extend, improve and complete one or more projects and assess the cost of all or any portion of a project on real property located within the community enhancement district;

(3) Sue or be sued;

(4) Establish a bank account or accounts in its name;

(5) Enter into agreements or other transactions with any person or governmental agency necessary or incident to the development, planning, construction, acquisition or improvement of a project or for the operation, maintenance or disposition of a project or for any other services required by a project;

(6) Annually, on or before June 7, certify to the sheriff of the county in which the property is located the assessments granted against all property in the district for inclusion in the tax ticket;

(7) Expend funds to acquire, or construct part of a project on property located outside of a community enhancement district, and for any work undertaken thereon, as may be necessary or incident to the completion of a project;

(8) Enter into agreements with one or more counties, municipalities, public service districts or community enhancement districts to plan, develop, construct, acquire or improve a project jointly;

(9) Accept appropriations, gifts, grants, bequests and devises and use or dispose of the same

WV Legislature

to carry out its corporate purpose;

(10) Make and execute contracts, releases, assignments, compromises and other instruments necessary or convenient for the exercise of its powers, or to carry out its corporate purpose;

(11) Have a seal and alter the same;

(12) Raise funds by the issuance and sale of assessment bonds;

(13) Obtain options to acquire real property, or any interest therein, by purchase, lease or otherwise, which is found by the board to be suitable as a site, or part of a site, for the construction of a project;

(14) Pledge funds generated by assessments in a district or proceeds from the sale of assessment bonds to payment of debt service on tax increment financing obligations issued under article eleven-b, chapter seven of this code for the period of time determined by the community enhancement board; and

(15) Take any and all other actions consistent with the purpose of this article and not in violation of the Constitution of this state as may be necessary or incident to the construction and completion of a project.

(c) The powers of each community enhancement district shall be vested in and exercised by a community enhancement board which shall be composed of five members, four of whom shall be appointed by the governing body of the county or municipality in which the community enhancement district is located and one of whom shall be the sheriff or his or her designee of the county or the treasurer or his or her designee of the municipality (or such other person serving in an equivalent capacity if there is no treasurer), as the case may be, in which the community enhancement district is located. At least three members of the board shall be residents of the assessment district: Provided, That should less than three persons reside within the boundaries of the community enhancement district, then at least three members of the board shall be residents of the county or municipality, as the case may be: Provided, however, That if no persons reside within the boundaries of the community enhancement district then at least three members must be approved by the owner or owners of the land. No more than three initial members of the board may be from the same political party.

(d) The four members appointed by the governing body shall be appointed for overlapping terms of four years each and thereafter until their respective successors have been appointed and have qualified. For the purpose of initial appointments, one member shall be appointed for a term of four years; one member shall be appointed for a term of three years; one member shall be appointed for a term of two years; and one member shall be appointed for a term of one year. Members may be reappointed for any number of terms. Before entering upon the performance of his or her duties, each member shall take and subscribe to the oath required by section five, article IV of the Constitution of this state. Vacancies shall

WV Legislature

be filled by appointment by the governing body of the county or municipality creating the assessment district for the unexpired term of the member whose office shall be vacant and such appointment shall be made within thirty days of the occurrence of such vacancy. Any such member may be removed by the governing body which appointed such member in case of incompetency, neglect of duty, gross immorality or malfeasance in office. Members shall be entitled to no more than $50 per meeting and reasonable expenses associated with their services.

(e) The board shall organize within thirty days following the first appointments and annually thereafter at its first meeting after January 1, of each year by selecting one of its members to serve as chairman, one to serve as treasurer and one to serve as secretary. The secretary, or his or her designee, shall keep a record of all proceedings of the board which shall be available for inspection as other public records and the treasurer, or his or her designee, shall maintain records of all financial matters relating to the community enhancement district, which shall also be available for inspection as other public records. Duplicate records shall be filed with the clerk or recorder, as the case may be, of the county or municipality which created the community enhancement district and shall include the minutes of all board meetings. The secretary and treasurer shall perform such other duties pertaining to the affairs of the community enhancement district as shall be prescribed by the board.

(f) The members of the board, and the chairman, secretary and treasurer thereof, shall make available to the governing body responsible for appointing the board, at all times, all of its books and records pertaining to the community enhancement district's operation, finances and affairs for inspection and audit. The board shall meet at least semiannually.

(g) A majority of the members of the board constitutes a quorum and meetings shall be held at the call of the chairman.

(h) Staff, office facilities and costs of operation of the board may be provided by the county or municipality which created the community enhancement district or by contract and said costs of operations shall be funded from assessments collected within the district.

(i) The chairman shall preside at all meetings of the board and shall vote as any other members of the board, but if he or she should be absent from any meeting the remaining members may select a temporary chairman, and if the member selected as chairman resigns as such or ceases for any reason to be a member of the board, the board shall select one of its members as chairman to serve until the next annual organizational meeting.

(j) The board shall, by resolution, determine its own rules of procedure, fix the time and place of its meetings and the manner in which special meetings may be called. The members of the board shall not be personally liable or responsible for any obligations of the assessment district or the board but are answerable only for willful misconduct in the performance of their duties.

WV Legislature

(k) The official name of a community enhancement district created under the provisions of this article may contain the name of the county or municipality, as the case may be, in which it is located.

(l) Notwithstanding any provision in this code to the contrary, the power and authority hereby conferred on community enhancement districts may extend within the territory of a public service district created under section two, article thirteen-a of this chapter.

WV Legislature

§16-13E-7. Provisions for construction of a project.

(a) After the creation of a community enhancement district and the appointment of the board thereof, the board shall provide by resolution for the construction of the project and shall also provide in the same or subsequent resolutions for the supervision of such work by a professional engineer, governmental agency or any other person designated by the board. The board may provide for the construction of the project by one of the two following methods or any combination thereof:

(1) If there exists a governmental agency with the experience, knowledge and authority to construct the project, the board may elect to enter into a contract with such agency for the construction of all or part of the project or for any other service necessary or incident to the construction of the project, in which case such governmental agency shall be responsible for entering into contracts, subject to the board's approval, with such other persons as may be necessary or incident to the construction of the project; or

(2) The board may elect to enter into one or more contracts with such contractors and other persons as may be necessary or incident to the construction of the project, in which case it shall solicit competitive bids. All contracts for work on any project, the expense of which will exceed $50,000, shall be awarded to the lowest qualified responsible bidder who shall furnish a sufficient performance and payment bond. The board may reject any and all bids and if it rejects all bids, notices shall be published as originally required before any other bids may be received. The board may let portions of the work necessary to complete a project under different contracts.

(b) The resolution described in subsection (a) of this section shall also provide for payment of the cost of the project.

(c) Prior to the construction of the project, the board shall obtain such permits and licenses required by law for the construction and operation of the project.

(d) Prior to bidding a water, wastewater or storm water component of a project, the board shall submit the final plans and specifications to the utility or utilities who will provide the water, wastewater or storm water service for review and written approval.

WV Legislature

§16-13E-8. Notice to property owners of assessments; correcting and laying assessments; report on project completion; credits.

(a) Prior to the issuance of assessment bonds or pledging any amounts to payment of tax increment financing obligation debt service, the board shall cause a report to be prepared describing each lot or parcel of land located within the community enhancement district and setting forth the total cost of the project based on the contract with the governmental agency, the accepted bid or bids, or a cost estimate certified by a professional engineer, and all other costs incurred prior to the commencement of construction and the future administrative costs, and the respective amounts chargeable upon each lot or parcel of land and the proper amount to be assessed against the respective lots or parcels of land with a description of the lots and parcels of land as to ownership and location. If two or more different kinds of projects are involved, the report shall set forth the portion of the assessment attributable to each respective project. The board shall thereupon give notice to the owners of real property to be assessed that on or after a date specified in the notice an assessment will be deemed granted against the property. The notice shall state that the owner of assessed property, or other interested party, may on said date appear before the board to move the revision or correction of the proposed assessment and shall show the total cost of the project, whether the assessments will pay for all or part of the total cost of the project and the lots or parcels of property to be assessed and the respective amounts to be assessed against such lots or parcels, with a description of the respective lots and parcels of land as to ownership and location. The notice shall also be published as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of the code, and the publication area for such publication is the assessment district. On or after the date so advertised, the board may revise, amend, correct and verify the report and proceed by resolution to establish the assessments as corrected and verified and shall certify the same to the governing body which created the district.

(b) During the pendency of the project, the board may decrease the amount of the assessments certified to the county sheriff for collection following the June 7 certification of those assessments by the community enhancement district to the sheriff as provided by subdivision (6), subsection (b), section six of this article, upon a finding or determination by the community enhancement board that the decrease is necessary or appropriate as the total cost of the project is less than projected or that the need for the assessment amount has decreased under the circumstances, and so certify to the sheriff of the county where the property is located. The modified assessment shall be granted against all property in the district for inclusion in the tax ticket or the preparation of modified tax tickets by that sheriff for the affected parcels.

(c) Upon completion of a project, the board shall prepare a final report certifying the completion of the project and showing the total cost of the project and whether the cost is greater or less than the cost originally estimated. If the total cost of the project is less or greater than the cost shown in the report prepared prior to construction, the board may revise the assessment charged on each lot or parcel of land pursuant to subsection (a) of this

WV Legislature

section to reflect the total cost of the project as completed, and in so doing shall, in the case of an assessment increase only, follow the same procedure with regard to notice and providing each owner of assessed property the right to appear before the board to move for the revision or correction of such proposed reassessment as required for the original assessment. If an assessment is decreased, the board shall, by resolution and written notice to the sheriff of the county in which the community enhancement district is located, cause the next installment or installments of assessments then due and payable by each affected property owner to be reduced pro rata, and shall provide written notice to such property owners of the amount of such decrease by the deposit of such notice in the United States mail, postage prepaid.

(d) The value of the projects financed with the assessments shall be treated as a credit toward any impact fees related to the service or services provided levied under article twenty, chapter seven of this code.

WV Legislature

§16-13E-9. Exemption of public property from assessments.

No lots or parcels of land owned or controlled by the United States, this state, any municipality, county, Board of Education or other public body shall be subject to any assessments.

WV Legislature

§16-13E-10. Assessment bonds; sinking fund for assessment bonds; tax exemption.

(a) For constructing or acquiring any project authorized by this article, and also for reimbursing or paying the costs and expenses of creating the district, the board of any such district is hereby authorized to borrow money, from time to time, and in evidence thereof issue the bonds of such district, payable from the proceeds of the assessments granted under this article. Such bonds shall be issued in one or more series, may bear such date or dates, may mature at such time or times not exceeding thirty-five years from their respective dates, shall be fully registered as to principal and interest in the name of the bondholder with a certificate of authentication attached thereto, may bear interest at such rate or rates not exceeding eighteen percent per annum, may be payable at such times, may be executed in such manner, may be payable at such place or places, may be subject to such terms of redemption with or without premium, may be declared or become due before maturity date thereof, may be authenticated in any manner, and, upon compliance of such conditions, may contain such terms and covenants as provided by the resolution or resolutions of the board. All such bonds shall be, and shall be treated as, negotiable instruments for all purposes. Bonds bearing the signatures of officers and offices on the dates of the signing thereof shall be valid and binding for all purposes notwithstanding that before the delivery thereof any or all such persons whose signatures appear thereon shall have ceased to be such officers. Notwithstanding the requirements or provisions of any other law, any such bonds may be negotiated or sold in such manner at such time or times and at such prices or prices as is found by the board to be most advantageous. Any resolution or resolutions providing for the issuance of such bonds may contain covenants and restrictions upon the issuance of additional bonds thereafter as may be deemed necessary or advisable for the assurance of the payment of the bonds thereby authorized.

(b) At or before the time of issuance of any bonds under this article, the board shall by resolution provide for the creation of a sinking fund and for payments in succession fund from the assessments granted pursuant to this article in such amount as shall be sufficient to pay the accruing interest and retire the bonds at or before the time each will respectively become due and to establish or maintain reserves therefor. All sums which are or should be, in accordance with such provisions, paid into such sinking fund shall be used solely for payment of interest and for the retirement of such bonds at or prior to maturity as may be provided or required by such resolution.

(c) The property, including leased property, of the community enhancement district and bonds and any income or interest thereon issued by the community enhancement district are exempt from taxation by the State of West Virginia and other taxing bodies of the state.

WV Legislature

§16-13E-10a. Extension of vesting period for land development plans and plats; approval of phases.

(a) The five-year vesting period is extended to the development concept vesting period with respect to the development concept if: (i) The land development will be wholly contained within a community enhancement district; and (ii) either:

(A) Such community enhancement district has been created and is in existence, and such facts have been communicated to the planning commission, at the time the planning commission approves the subject land development plan and plat (whether such plan and plat is denominated final, preliminary, phased preliminary, concept or otherwise); or

(B) Such community enhancement district is created after the initial approval of the subject land development plan and plat and the planning commission subsequently ratifies the approval of such plan and plat with the knowledge of the existence of the community enhancement district; and (iii) assessment bonds or tax increment financing obligations payable from or secured by, in whole, or in part, assessments against real property located within the district are issued within the five-year vesting period.

(b) Nothing herein shall be deemed to extend or otherwise modify the five-year vesting period with respect to items other than those included in the development concept.

(c) When a land development will be wholly contained within a community enhancement district, a land development plan and plat that otherwise pertains to and seeks approval of only a portion or phase of the land development may also contain the development concept for a greater portion, multiple phases or the entirety of the land development if the plan and plat expressly so provides. Approval of a land development plan and plat by the planning commission constitutes approval of, and the establishment of a vested property right in, the entire development concept contained in the land development plan and plat.

(d) This section shall apply to all community enhancement districts, regardless of whether created prior or subsequent to enactment of this section.

WV Legislature

§16-13E-11. Indebtedness of assessment district.

No Constitutional or statutory limitation with respect to the nature or amount of or rate of interest on indebtedness which may be incurred by municipalities, counties or other public or governmental bodies shall apply to the indebtedness of a community enhancement district. No indebtedness of any nature of a community enhancement district shall constitute an indebtedness of any municipality or county creating and establishing such community enhancement district or a charge against any property of said municipalities or counties but shall be paid solely from the assessments which the community enhancement district is authorized to impose on the owners of the property within the district by this article. No indebtedness or obligation incurred by any community enhancement district shall give any right against any member of the governing body of any municipality or any member of the county commission of any county or any member of the community enhancement board of any community enhancement district.

WV Legislature

§16-13E-12. Payment of assessments to sheriff; report to community enhancement district; collection of delinquent assessments.

The assessments imposed pursuant to this article will not be considered to be ad valorem taxes or the equivalent of ad valorem taxes under any other provision of this code: Provided, That for the exclusive purposes of collection of the assessments imposed under section eight of this article and enforcement of the assessment liens created by section thirteen of this article, the provisions of chapter eleven-a of this code shall apply as if the assessments were taxes as that term is defined in section one, article one of that chapter. The sheriff shall promptly deposit all assessments upon receipt thereof in a segregated account established by the sheriff for such purpose and shall maintain a record of the assessments so received. Each month, the sheriff shall pay all moneys collected for the community enhancement district into the district treasury or if the sheriff consents to a trustee for the benefit of bondholders if assessment bonds are issued by the community enhancement district. Payments to the community enhancement district shall be made in the time set forth in section fifteen, article one, chapter eleven-a of this code and the sheriff shall be entitled to take a commission for collection of the assessments on behalf of the community enhancement district, as provided in section seventeen of said article. For each tax year, the sheriff will prepare and deliver to the board of each community enhancement district located in the county, a statement setting forth the aggregate amount of assessments received for such district and the name of any property owner who failed to pay the assessments due and payable for the period in question. This report shall be due on or before August 1, of the following year. The sheriff is authorized to collect delinquent assessments and enforce the liens created in section thirteen of this article as if those assessments were delinquent real property taxes and the liens are tax liens using the enforcement tools provided in articles two and three, chapter eleven-a of this code.

WV Legislature

§16-13E-13. Liens; recording notice of liens; priority; release of lien; notice to future property owners.

(a) With the exception of property exempt from assessment pursuant to section nine of this article, there shall be a lien on all real property located within the community enhancement district for the assessments imposed by section eight of this article, which lien shall attach on the date specified in the notice to property owners. A notice of the liens of said assessments referring to the assessing resolution and setting forth a list of the property assessed, described respectively as to amounts of assessment, ownership and location of the property, shall be certified, by the chairman and secretary of the board, to the clerk of the county commission of the county wherein the project is located. The county clerk shall record the notice of such lien in the appropriate trust deed book or other appropriate county lien book and index the same in the name of each owner of property assessed. From the date of an assessment, the trustee, for the benefit of bondholders if assessment bonds are issued by the community enhancement district, and/or the district shall have such lien and shall be entitled to enforce the same in its, his or their name to the extent of the amount, including principal and interest and any penalty due for any failure to pay an installment when due, of such assessments and against the property to which the assessment applies, as to any assessment not paid as and when due. The trustee or the district, as an alternative to the enforcement provision set forth in section twelve of this article, are granted all legal remedies as are necessary to collect the assessment. Such assessments shall be and constitute liens for the benefit of the community enhancement district or of the trustee, for the benefit of bondholders if assessment bonds are issued by the community enhancement district, upon the respective lots and parcels of land assessed and shall have priority over all other liens except those for land taxes due the state, county and municipality and except any liens for preexisting special assessments provided under this code. If any assessment is revised in accordance with this article, the lien created by this section shall extend to the assessment so revised and shall have the same priority as the priority of the lien created upon the laying of the original assessment. Such assessments and interest thereon shall be paid by the owners of the property assessed as and when the installments are due. Following the payment in full of any assessment bonds including any interest thereon, the chairman and secretary of the board shall execute a release of all liens and shall certify the same to county clerk for recordation.

(b) Following the grant of an assessment on property as provided in this article, the seller of such property shall provide reasonable disclosure to the buyer in the real estate contract that an assessment has been granted on the property, the amount of the assessment and the duration of the assessment.

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§16-13E-14. Liberal construction.

This article being necessary for the public health, safety and welfare and economic development, it shall be liberally construed to effectuate the purpose hereof.

WV Legislature