WEST VIRGINIA CODE CHAPTER 7 ARTICLE 11B

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§7-11B-1. Short title.

This article may be known and cited as "The West Virginia Tax Increment Financing Act".

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§7-11B-2. Findings and legislative purpose.

(a) It is found and declared to be the policy of this state to promote and facilitate the orderly development and economic stability of its communities. County commissions need the ability to raise revenue to finance capital improvements and facilities that are designed to encourage economic growth and development in geographic areas characterized by high levels of unemployment, stagnant employment, slow income growth, contaminated property or inadequate infrastructure. The construction of necessary capital improvements in accordance with local economic development plans will encourage investing in job-producing private development and expand the public tax base.

(b) It is also found and declared that capital improvements or facilities in any area that result in the increase in the value of property located in the area or encourage increased employment within the area will serve a public purpose for each taxing unit possessing the authority to impose ad valorem taxes in the area.

(c) It is the purpose of this article:

(1) To encourage local levying bodies to cooperate in the allocation of future tax revenues that are used to finance capital improvements and facilities designed to encourage private development in selected areas; and

(2) To assist local governments that have a competitive disadvantage in their ability to attract business, private investment or commercial development due to their location; to encourage remediation of contaminated property; to prevent or arrest the decay of selected areas due to the inability of existing financing methods to provide capital improvements and facilities; and to encourage private investment designed to promote and facilitate the orderly development or redevelopment of selected areas.

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§7-11B-3. Definitions.

(a) General. — When used in this article, words and phrases defined in this section have the meanings ascribed to them in this section unless a different meaning is clearly required either by the context in which the word or phrase is used or by specific definition in this article.

(b) Words and phrases defined. —

"Agency" includes a municipality, a county or municipal development agency established pursuant to authority granted in §7-12-1 of this code, a port authority, an airport authority or any other entity created by this state or an agency or instrumentality of this state that engages in economic development activity or the Division of Highways.

"Base assessed value" means the taxable assessed value of all real and tangible personal property, excluding personal motor vehicles, having a tax situs within a development or redevelopment district as shown upon the landbooks and personal property books of the assessor on July 1 of the calendar year preceding the effective date of the order or ordinance creating and establishing the development or redevelopment district: *Provided*, That for any development or redevelopment district approved after the effective date of the amendments to this section enacted during the regular session of the Legislature in 2014, personal trailers, personal boats, personal campers, personal motor homes, personal ATVs and personal motorcycles having a tax situs within a development or redevelopment district are excluded from the base assessed value.

"Blighted area" means an area within the boundaries of a development or redevelopment district located within the territorial limits of a municipality or county in which the structures, buildings or improvements, by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for access, ventilation, light, air, sanitation, open spaces, high density of population and overcrowding or the existence of conditions which endanger life or property, are detrimental to the public health, safety, morals or welfare. "Blighted area" includes any area which, by reason of the presence of a substantial number of substandard, slum, deteriorated or deteriorating structures, predominance of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility or usefulness, unsanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, defective or unusual conditions of title or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, substantially impairs or arrests the sound growth of a municipality, retards the provision of housing accommodations or constitutes an economic or social liability and is a menace to the public health, safety, morals or welfare in its present condition and use, or any area which is predominantly open and which because of lack of accessibility, obsolete platting, diversity of ownership, deterioration of structures or of site improvements, or otherwise, substantially impairs or arrests the sound growth of the community.

"Commissioner of Highways" means the Commissioner of the Division of Highways.

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"Conservation area" means any improved area within the boundaries of a development or redevelopment district located within the territorial limits of a municipality or county in which fifty percent or more of the structures in the area have an age of thirty-five years or more. A conservation area is not yet a blighted area but is detrimental to the public health, safety, morals or welfare and may become a blighted area because of any one or more of the following factors: Dilapidation; obsolescence; deterioration; illegal use of individual structures; presence of structures below minimum code standards; abandonment; excessive vacancies; overcrowding of structures and community facilities; lack of ventilation, light or sanitary facilities; inadequate utilities; excessive land coverage; deleterious land use or layout; depreciation of physical maintenance; and lack of community planning. A conservation area shall meet at least three of the factors provided in this subdivision.

"County commission" means the governing body of a county of this state and, for purposes of this article only, includes the governing body of a Class I, Class II or Class III municipality in this state.

"Current assessed value" means the annual taxable assessed value of all real and tangible personal property, excluding personal motor vehicles, having a tax situs within a development or redevelopment district as shown upon the landbook and personal property records of the assessor: *Provided*, That for any development or redevelopment district approved after the effective date of the amendments to this section enacted during the regular session of the Legislature in 2014, personal trailers, personal boats, personal campers, personal motor homes, personal ATVs and personal motorcycles having a tax situs within a development or redevelopment district are excluded from the current assessed value.

"Development office" means the West Virginia Department of Economic Development created in §5B-2-1 of this code.

"Development project" or "redevelopment project" means a project undertaken in a development or redevelopment district for eliminating or preventing the development or spread of slums or deteriorated, deteriorating or blighted areas, for discouraging the loss of commerce, industry or employment, for increasing employment or for any combination thereof in accordance with a tax increment financing plan. A development or redevelopment project may include one or more of the following:

(A) The acquisition of land and improvements, if any, within the development or redevelopment district and clearance of the land so acquired; or

(B) The development, redevelopment, revitalization or conservation of the project area whenever necessary to provide land for needed public facilities, public housing or industrial or commercial development or revitalization, to eliminate unhealthful, unsanitary or unsafe conditions, to lessen density, mitigate or eliminate traffic congestion, reduce traffic hazards, eliminate obsolete or other uses detrimental to public welfare or otherwise remove or prevent the spread of blight or deterioration;

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(C) The financial or other assistance in the relocation of persons and organizations displaced as a result of carrying out the development or redevelopment project and other improvements necessary for carrying out the project plan, together with those site improvements that are necessary for the preparation of any sites and making any land or improvements acquired in the project area available, by sale or lease, for public housing or for development, redevelopment or rehabilitation by private enterprise for commercial or industrial uses in accordance with the plan;

(D) The construction of capital improvements within a development or redevelopment district designed to increase or enhance the development of commerce, industry or housing within the development project area; or

(E) Any other projects the county commission or the agency deems appropriate to carry out the purposes of this article.

"Development or redevelopment district" means an area proposed by one or more agencies as a development or redevelopment district which may include one or more counties, one or more municipalities or any combination thereof, that has been approved by the county commission of each county in which the project area is located if the project is located outside the corporate limits of a municipality, or by the governing body of a municipality if the project area is located within a municipality, or by both the county commission and the governing body of the municipality when the development or redevelopment district is located both within and without a municipality.

"Division of Highways" means the state Department of Transportation, Division of Highways.

"Economic development area" means any area or portion of an area within the boundaries of a development or redevelopment district located within the territorial limits of a municipality or county that is neither a blighted area nor a conservation area and for which the county commission finds that development or redevelopment will not be solely used for development of commercial businesses that will unfairly compete in the local economy and that development or redevelopment is in the public interest because it will:

(A) Discourage commerce, industry or manufacturing from moving their operations to another state;

(B) Result in increased employment in the municipality or county, whichever is applicable; or

(C) Result in preservation or enhancement of the tax base of the county or municipality.

"Governing body of a municipality" means the city council of a Class I, Class II or Class III municipality in this state.

"Incremental value", for any development or redevelopment district, means the difference between the base assessed value and the current assessed value. The incremental value will be positive if the current value exceeds the base value and the incremental value will be

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negative if the current value is less than the base assessed value.

"Includes" and "including", when used in a definition contained in this article, shall not exclude other things otherwise within the meaning of the term being defined.

"Intergovernmental agreement" means any written agreement that may be entered into by and between two or more county commissions, or between two or more municipalities, or between a county commission and a municipality, in the singular and the plural, or between two or more government entities and the Commissioner of Highways: *Provided*, That any intergovernmental agreement shall not be subject to provisions governing intergovernmental agreements set forth in other provisions of this code, including, but not limited to, §8-23-1 *et seq*. of this code, but shall be subject to the provisions of this article.

"Local levying body" means the county board of education and the county commission and includes the governing body of a municipality when the development or redevelopment district is located, in whole or in part, within the boundaries of the municipality.

"Obligations" or "tax increment financing obligations" means bonds, loans, debentures, notes, special certificates or other evidences of indebtedness issued by a county commission or municipality pursuant to this article to carry out a development or redevelopment project or to refund outstanding obligations under this article.

"Order" means an order of the county commission adopted in conformity with the provisions of this article and as provided in this chapter.

"Ordinance" means a law adopted by the governing body of a municipality in conformity with the provisions of this article and as provided in §8-1-1 *et seq*. of this code.

"Payment in lieu of taxes" means a payment with respect to real and personal property located in a development or redevelopment district and owned in title by this state, a political subdivision of this state or an agency or instrumentality thereof, that is made by the lessee of such property pursuant to a written payment in lieu of taxes agreement, whether in effect as of, or subsequent to, the date of creation of the development or redevelopment district.

"Person" means any natural person, and any corporation, association, partnership, limited partnership, limited liability company or other entity, regardless of its form, structure or nature, other than a government agency or instrumentality.

"Private project" means any project that is subject to ad valorem property taxation in this state or to a payment in lieu of tax agreement that is undertaken by a project developer in accordance with a tax increment financing plan in a development or redevelopment district.

"Project" means any capital improvement, facility or both, as specifically set forth and defined in the project plan, requiring an investment of capital including, but not limited to, extensions, additions or improvements to existing facilities, including water or wastewater

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facilities, and the remediation of contaminated property as provided for in §22-22-1 *et seq*. of this code, but does not include performance of any governmental service by a county or municipal government.

"Project area" means an area within the boundaries of a development or redevelopment district in which a development or redevelopment project is undertaken as specifically set forth and defined in the project plan.

"Project costs" means expenditures made in preparation of the development or redevelopment project plan and made, or estimated to be made, or monetary obligations incurred, or estimated to be incurred, by the county commission which are listed in the project plan as capital improvements within a development or redevelopment district, plus any costs incidental thereto. "Project costs" include, but are not limited to:

(A) Capital costs, including, but not limited to, the actual costs of the construction of public works or improvements, capital improvements and facilities, new buildings, structures and fixtures, the demolition, alteration, remodeling, repair or reconstruction of existing buildings, structures and fixtures, environmental remediation, parking and landscaping, the acquisition of equipment and site clearing, grading and preparation;

(B) Financing costs, including, but not limited to, an interest paid to holders of evidences of indebtedness issued to pay for project costs, all costs of issuance and any redemption premiums, credit enhancement or other related costs;

(C) Real property assembly costs, meaning any deficit incurred resulting from the sale or lease as lessor by the county commission of real or personal property having a tax situs within a development or redevelopment district for consideration that is less than its cost to the county commission;

(D) Professional service costs including, but not limited to, those costs incurred for architectural planning, engineering and legal advice and services;

(E) Imputed administrative costs including, but not limited to, reasonable charges for time spent by county employees or municipal employees in connection with the implementation of a project plan;

(F) Relocation costs including, but not limited to, those relocation payments made following condemnation and job training and retraining;

(G) Organizational costs including, but not limited to, the costs of conducting environmental impact and other studies and the costs of informing the public with respect to the creation of a development or redevelopment district and the implementation of project plans;

(H) Payments made, in the discretion of the county commission or the governing body of a municipality, which are found to be necessary or convenient to creation of development or redevelopment districts or the implementation of project plans; and

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(I) That portion of costs related to the construction of environmental protection devices, storm or sanitary sewer lines, water lines, amenities or streets or the rebuilding or expansion of streets, or the construction, alteration, rebuilding or expansion of which is necessitated by the project plan for a development or redevelopment district, whether or not the construction, alteration, rebuilding or expansion is within the area or on land contiguous thereto.

"Project developer" means any person who engages in the development of projects in the state.

"Project plan" means the plan for a development or redevelopment project that is adopted by a county commission or governing body of a municipality in conformity with the requirements of this article and this chapter or §8-1-1 *et seq*. of this code.

"Real property" means all lands, including improvements and fixtures on them and property of any nature appurtenant to them or used in connection with them and every estate, interest and right, legal or equitable, in them, including terms of years and liens by way of judgment, mortgage or otherwise, and indebtedness secured by the liens.

"Redevelopment area" means an area designated by a county commission or the governing body of a municipality in respect to which the commission or governing body has made a finding that there exist conditions which cause the area to be classified as a blighted area, a conservation area, an economic development area or a combination thereof, which area includes only those parcels of real property directly and substantially benefitted by the proposed redevelopment project located within the development or redevelopment district or land contiguous thereto.

"Redevelopment plan" means the comprehensive program under this article of a county or municipality for redevelopment intended by the payment of redevelopment costs to reduce or eliminate those conditions, the existence of which qualified the redevelopment area as a blighted area, conservation area, economic development area or combination thereof, and to thereby enhance the tax bases of the levying bodies which extend into the redevelopment area. Each redevelopment plan shall conform to the requirements of this article.

"Tax increment" means the amount of regular levy property taxes attributable to the amount by which the current assessed value of real and tangible personal property having a tax situs in a development or redevelopment district exceeds the base assessed value of the property.

"Tax increment financing fund" means a separate fund for a development or redevelopment district established by the county commission or governing body of the municipality into which all tax increment revenues and other pledged revenues are deposited and from which projected project costs, debt service and other expenditures authorized by this article are paid.

"This code" means the Code of West Virginia, 1931, as amended by the Legislature.

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"Total ad valorem property tax regular levy rate" means the aggregate levy rate of all levying bodies on all taxable property having a tax situs within a development or redevelopment district in a tax year but does not include excess levies, levies for general obligation bonded indebtedness or any other levies that are not regular levies.

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§7-11B-4. Powers generally.

In addition to any other powers conferred by law, a county commission or governing body of a Class I, Class II or Class III municipality may exercise any powers necessary and convenient to carry out the purpose of this article, including the power to:

(1) Create development and redevelopment areas or districts and to define the boundaries of those areas or districts;

(2) Cause project plans to be prepared, to approve the project plans, and to implement the provisions and effectuate the purposes of the project plans;

(3) Establish tax increment financing funds for each development or redevelopment district;

(4) Issue tax increment financing obligations and pledge tax increments and other revenues for repayment of the obligations;

(5) Deposit moneys into the tax increment financing fund for any development or redevelopment district;

(6) Enter into any contracts or agreements, including, but not limited to, agreements with project developers, consultants, professionals, financing institutions, trustees and bondholders determined by the county commission to be necessary or convenient to implement the provisions and effectuate the purposes of project plans;

(7) Receive from the federal government or the state loans and grants for, or in aid of, a development or redevelopment project and to receive contributions from any other source to defray project costs;

(8) Exercise the right of eminent domain to condemn property for the purposes of implementing the project plan. The rules and procedures set forth in §54-1-1 et seq. of this code shall govern all condemnation proceedings authorized in this article;

(9) Make relocation payments to those persons, businesses, or organizations that are displaced as a result of carrying out the development or redevelopment project;

(10) Clear and improve property acquired by the county commission pursuant to the project plan and construct public facilities on it or contract for the construction, development, redevelopment, rehabilitation, remodeling, alteration or repair of the property;

(11) Cause parks, playgrounds or water, sewer or drainage facilities or any other public improvements, including, but not limited to, fire stations, community centers and other public buildings, which the county commission is otherwise authorized to undertake to be laid out, constructed or furnished in connection with the development or redevelopment project. When the public improvement of the county commission is to be located, in whole or

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in part, within the corporate limits of a municipality, the county commission shall consult with the mayor and the governing body of the municipality regarding the public improvement and shall pay for the cost of the public improvement from the tax increment financing fund;

(12) Lay out and construct, alter, relocate, change the grade of, make specific repairs upon or discontinue public ways and construct sidewalks in, or adjacent to, the project area: Provided, That when the public way or sidewalk is located within a municipality, the governing body of the municipality shall consent to the same and if the public way is a state road, the consent of the commissioner of highways shall be necessary;

(13) Cause private ways, sidewalks, ways for vehicular travel, playgrounds or water, sewer or drainage facilities and similar improvements to be constructed within the project area for the particular use of the development or redevelopment district or those dwelling or working in it;

(14) Construct, or cause to be constructed, any capital improvements of a public nature;

(15) Construct capital improvements to be leased or sold to private entities in connection with the goals of the development or redevelopment project;

(16) Cause capital improvements owned by one or more private entities to be constructed within the development or redevelopment district;

(17) Designate one or more official or employee of the county commission to make decisions and handle the affairs of development and redevelopment project areas or districts created by the county commission pursuant to this article;

(18) Adopt orders, ordinances or bylaws or repeal or modify such ordinances or bylaws or establish exceptions to existing ordinances and bylaws regulating the design, construction and use of buildings within the development or redevelopment district created by a county commission or governing body of a municipality under this article;

(19) Enter orders, adopt bylaws or repeal or modify such orders or bylaws or establish exceptions to existing orders and bylaws regulating the design, construction and use of buildings within the development or redevelopment district created by a county commission or governing body of a municipality under this article;

(20) Sell, mortgage, lease, transfer or dispose of any property or interest therein, by contract or auction, acquired by it pursuant to the project plan for development, redevelopment or rehabilitation in accordance with the project plan;

(21) Expend project revenues as provided in this article;

(22) Enter into one or more intergovernmental agreements or memorandums of understanding with the Commissioner of Highways or with other county commissions or

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municipalities regarding development or redevelopment districts;

(23) Designate one or more officials or employees of the county commission or municipality that created the development or redevelopment district to sign documents, to make decisions and handle the affairs of the development or redevelopment district. When two or more county commissions, or municipalities, or any combination thereof, established the development or redevelopment district, the government entities shall enter into one or more intergovernmental agreements regarding administration of the development or redevelopment district and the handling of its affairs; and

(24) Do all things necessary or convenient to carry out the powers granted in this article.

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§7-11B-5. Powers supplemental.

The powers conferred by this article are in addition and supplemental to the powers conferred upon county commissions and municipalities by the Legislature relating to the issuance of industrial and commercial development bonds and refunding bonds.

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§7-11B-6. Application for development or redevelopment plan.

(a) An agency or a project developer may apply to a county commission or the governing body of a municipality for adoption of a development or redevelopment project plan. The application shall state the project's economic impact, viability, estimated revenues and potential for job creation and such other information as the county commission or the governing body of the municipality may require.

(b) Copies of the application shall be made available to the public in the county clerk's office or the municipal recorder's office when the application is filed with the governing body of a municipality.

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§7-11B-7. Creation of a development or redevelopment area or district.

(a) County commissions and the governing bodies of Class I, Class II or Class III municipalities, upon their own initiative or upon application of an agency or a developer, may propose creation of a development or redevelopment district and designate the boundaries of the district: *Provided*, That a district may not include noncontiguous land.

(b) The county commission or municipality proposing creation of a development or redevelopment district shall then hold a public hearing at which interested parties are afforded a reasonable opportunity to express their views on the proposed creation of a development or redevelopment district and its proposed boundaries.

(1) Notice of the hearing shall be published as a Class II legal advertisement in accordance with §59-3-2 of this code.

(2) The notice shall include the time, place and purpose of the public hearing, describe in sufficient detail the tax increment financing plan, the proposed boundaries of the development or redevelopment district and, when a development or redevelopment project plan is being proposed, the proposed tax increment financing obligations to be issued to finance the development or redevelopment project costs.

(3) Prior to the first day of publication, a copy of the notice shall be sent by first-class mail to the director of the Development Office and to the chief executive officer of all other local levying bodies having the power to levy taxes on real and tangible personal property located within the proposed development or redevelopment district.

(4) All parties who appear at the hearing shall be afforded an opportunity to express their views on the proposal to create the development or redevelopment district and, if applicable, the development or redevelopment project plan and proposed tax increment financing obligations.

(c) After the public hearing, the county commission, or the governing body of the municipality, shall finalize the boundaries of the development or redevelopment district, the development or redevelopment project plan, or both, and submit the same to the director of the Development Office for his or her review and approval. The director, within sixty days after receipt of the application, shall approve the application as submitted, reject the application or return the application to the county commission or governing body of the municipality for further development or review in accordance with instructions of the director of the Development Office. A development or redevelopment district or development or redevelopment project plan may not be adopted by the county commission or the governing body of a municipality until after it has been approved by the executive director of the Development Office.

(d) Upon approval of the application by the Development Office, the county commission may enter an order and the governing body of the municipality proposing the district or

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development or redevelopment project plan may adopt an ordinance, that:

(1) Describes the boundaries of a development or redevelopment district sufficiently to identify with ordinary and reasonable certainty the territory included in the district, which boundaries shall create a contiguous district;

(2) Creates the development or redevelopment district as of a date provided in the order or ordinance;

(3) Assigns a name to the development or redevelopment district for identification purposes.

(A) The name may include a geographic or other designation, shall identify the county or municipality authorizing the district and shall be assigned a number, beginning with the number one.

(B) Each subsequently created district in the county or municipality shall be assigned the next consecutive number;

(4) Contains findings that the real property within the development or redevelopment district will be benefitted by eliminating or preventing the development or spread of slums or blighted, deteriorated or deteriorating areas, discouraging the loss of commerce, industry or employment, increasing employment or any combination thereof;

(5) Approves the development or redevelopment project plan, if applicable;

(6) Establishes a tax increment financing fund as a separate fund into which all tax increment revenues and other revenues designated by the county commission, or governing body of the municipality, for the benefit of the development or redevelopment district shall be deposited, and from which all project costs shall be paid, which may be assigned to and held by a trustee for the benefit of bondholders if tax increment financing obligations are issued by the county commission or the governing body of the municipality; and

(7) Provides that ad valorem property taxes on real and tangible personal property having a tax situs in the development or redevelopment district shall be assessed, collected and allocated in the following manner, commencing upon the date of adoption of such order or ordinance and continuing for so long as any tax increment financing obligations are payable from the tax increment financing fund, hereinafter authorized, are outstanding and unpaid:

(A) For each tax year, the county assessor shall record in the land and personal property books both the base assessed value and the current assessed value of the real and tangible personal property having a tax situs in the development or redevelopment district;

(B) Ad valorem taxes collected from regular levies upon real and tangible personal property having a tax situs in the district that are attributable to the lower of the base assessed value or the current assessed value of real and tangible personal property located in the development project area shall be allocated to the levying bodies in the same manner as

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applicable to the tax year in which the development or redevelopment project plan is adopted by order of the county commission or by ordinance adopted by the governing body of the municipality;

(C) The tax increment with respect to real and tangible personal property in the development or redevelopment district shall be allocated and paid into the tax increment financing fund and shall be used to pay the principal of and interest on tax increment financing obligations issued to finance the costs of the development or redevelopment projects in the development or redevelopment district. Any levying body having a development or redevelopment district within its taxing jurisdiction shall not receive any portion of the annual tax increment except as otherwise provided in this article; and

(D) In no event shall the tax increment include any taxes collected from excess levies, levies for general obligation bonded indebtedness or any levies other than the regular levies provided for in §11-8-1 *et seq*. of this code.

(e) Proceeds from tax increment financing obligations issued under this article may only be used to pay for costs of development and redevelopment projects to foster economic development in the development or redevelopment district or land contiguous thereto.

(f) Notwithstanding subsection (d) of this section, a county commission may not enter an order approving a development or redevelopment project plan unless the county commission expressly finds and states in the order that the development or redevelopment project is not reasonably expected to occur without the use of tax increment financing.

(g) Notwithstanding subsection (d) of this section, the governing body of a municipality may not adopt an ordinance approving a development or redevelopment project plan unless the governing body expressly finds and states in the ordinance that the development or redevelopment project is not reasonably expected to occur without the use of tax increment financing.

(h) No county commission shall establish a development or redevelopment district any portion of which is within the boundaries of a Class I, II, III or IV municipality without the formal consent of the governing body of such municipality.

(i) A tax increment financing plan that has been approved by a county commission or the governing body of a municipality may be amended by following the procedures set forth in this article for adoption of a new development or redevelopment project plan.

(j) The county commission may modify the boundaries of the development or redevelopment district, from time to time, or the governing body of a county may extend the length of existence of the development or redevelopment district as set forth in §7-11B-10 of this code, subject to the limitations and requirements of this section, by entry of an order modifying the order creating the development or redevelopment district.

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(k) The governing body of a municipality may modify the boundaries of the development or redevelopment district, from time to time, or extend the length of existence of the development or redevelopment district as set forth in §7-11B-10 of this code, by amending the ordinance creating the development or redevelopment district.

(l) Before a county commission or the governing body of a municipality may amend such an order or ordinance, the county commission or municipality shall give the public notice as provided in subdivisions (1) and (2), subsection (b) of this section, hold a public hearing, as provided in subdivision (4), subsection (b) of this section, and obtain the approval of the director of the Development Office. No consent or approval from the local levying bodies having the power to levy taxes on property within the development or redevelopment district shall be required in order to amend such order or ordinance for the purposes herein described, aside from the county commission or the governing body of the municipality which is amending such order or ordinance. In the event any tax increment financing obligations are outstanding with respect to the development or redevelopment district, any change in the boundaries shall not reduce the amount of tax increment available to secure the outstanding tax increment financing obligations.

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§7-11B-8. Project plan — approval.

(a) The county commission or municipality creating the district shall cause the preparation of a project plan for each development or redevelopment district and the project plan shall be adopted by order of the county commission, or ordinance adopted by the governing body of the municipality, after it is approved by the executive director of the Development Office. This process shall conform to the procedures set forth in this section.

(b) Each project plan shall include:

(1) A statement listing the kind, number and location of all proposed public works or other improvements within the district and on land outside but contiguous to the district;

(2) A cost-benefit analysis showing the economic impact of the plan on each levying body that is at least partially within the boundaries of the development or redevelopment district. This analysis shall show the impact on the economy if the project is not built and is built pursuant to the development or redevelopment plan under consideration. The cost-benefit analysis shall include a fiscal impact study on every affected levying body and sufficient information from the developer for the agency, if any proposing the plan, the county commission being asked to approve the project and the Development Office to evaluate whether the project as proposed is financially feasible;

(3) An economic feasibility study;

(4) A detailed list of estimated project costs;

(5) A description of the methods of financing all estimated project costs, including the issuance of tax increment obligations and the time when the costs or monetary obligations related thereto are to be incurred;

(6) A certification by the county assessor of the base assessed value of real and tangible personal property having a tax situs in a development or redevelopment district: *Provided*, That if such certification is made during the months of January or February of each year, the county assessor may certify an estimated base assessed value of real and tangible personal property having a tax situs in a development or redevelopment district: *Provided, however*, That prior to issuance of tax increment obligations, the county assessor shall certify a final base assessed value for the estimated base assessed value permitted by this section;

(7) The type and amount of any other revenues that are expected to be deposited to the tax increment financing fund of the development or redevelopment district;

(8) A map showing existing uses and conditions of real property in the development or redevelopment district;

(9) A map of proposed improvements and uses in the district;

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(10) Proposed changes of zoning ordinances, if any;

(11) Appropriate cross-references to any master plan, map, building codes and municipal ordinances or county commission orders affected by the project plan;

(12) A list of estimated nonproject costs;

(13) A statement of the proposed method for the relocation of any persons, businesses or organizations to be displaced;

(14) A certificate from the executive director of the workers' compensation commission, the commissioner of the Bureau of Employment Programs and the State Tax Commissioner that the project developer is in good standing with the workers' compensation commission, the Bureau of Employment Programs and the state Tax Division; and

(15) A certificate from the sheriff of the county or counties in which the development or redevelopment district is located that the project developer is not delinquent on payment of any real and personal property taxes in such county.

(c) If the project plan is to include tax increment financing, the tax increment financing portion of the plan shall set forth:

(1) The amount of indebtedness to be incurred pursuant to this article;

(2) An estimate of the tax increment to be generated as a result of the project;

(3) The method for calculating the tax increment, which shall be in conformance with the provisions of this article, together with any provision for adjustment of the method of calculation;

(4) Any other revenues, such as payment in lieu of tax revenues, to be used to secure the tax increment financing; and

(5) Any other provisions as may be deemed necessary in order to carry out any tax increment financing to be used for the development or redevelopment project.

(d) If less than all of the tax increment is to be used to fund a development or redevelopment project or to pay project costs or retire tax increment financing, the project plan shall set forth the portion of the tax increment to be deposited in the tax increment financing fund of the development or redevelopment district and provide for the distribution of the remaining portion of the tax increment to the levying bodies in whose jurisdiction the district lies.

(e) The county commission or governing body of the municipality that established the tax increment financing fund shall hold a public hearing at which interested parties shall be afforded a reasonable opportunity to express their views on the proposed project plan being considered by the county commission or the governing body of the municipality.

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(1) Notice of the hearing shall be published as a Class II legal advertisement in accordance with §59-3-2 of this code.

(2) At least 30 days prior to the public hearing, a copy of the notice shall be sent by first-class mail to the chief executive officer of all other levying bodies having the power to levy taxes on property located within the proposed development or redevelopment district.

(f) Approval by the county commission or the governing body of a municipality of an initial development or redevelopment project plan must be within one year after the date of the county assessor's certification required by subdivision (6), subsection (b) of this section: *Provided*, That additional development or redevelopment project plans may be approved by the county commission or the governing body of a municipality in subsequent years, so long as the development or redevelopment district continues to exist. The approval shall be by order of the county commission or ordinance of the municipality, which shall contain a finding that the plan is economically feasible.

WV Legislature

§7-11B-9. Project plan – amendment.

(a) The county commission may by order, or the governing body of a municipality by ordinance, adopt an amendment to a project plan.

(b) Adoption of an amendment to a project plan shall be preceded by a public hearing held by the county commission, or governing body of the municipality, at which interested parties shall be afforded a reasonable opportunity to express their views on the amendment.

(1) Notice of the hearing shall be published as a Class II legal advertisement in accordance with §59-3-2 of this code.

(2) At least 30 days prior to the public hearing, a copy of the notice shall be sent by first-class mail to the chief executive officer of all other local levying bodies having the power to levy taxes on property within the development or redevelopment district.

(3) Copies of the proposed plan amendments shall be made available to the public at the county clerk's office or municipal clerk's office at least fifteen days prior to the hearing.

(c) One or more existing development or redevelopment districts may be combined pursuant to lawfully adopted amendments to the original plans for each district: Provided, That the county commission, or governing body of the municipality, finds that the combination of the districts will not impair the security for any tax increment financing obligations previously issued pursuant to this article.

(1) The base assessed value of the real and tangible personal property located in the combined development or redevelopment district following such combination shall be the same base assessed value as existed for such real and tangible personal property in each of the separate development or redevelopment districts prior to such combination.

(2) The termination date for the combined development or redevelopment district which results from the combination of two or more previously created districts shall be the termination date as provided pursuant to §7-11B-10 of this code of the development or redevelopment district which had the latest termination date prior to the combination of such districts.

WV Legislature

§7-11B-10. Termination of development or redevelopment district.

(a) No development or redevelopment district may be in existence for a period longer than 30 years (unless two or more districts are combined as described in §7-11B-9(c) of this code) and no tax increment financing obligations may have a final maturity date later than the termination date of the area or district: Provided, That, for any existing development or redevelopment district for which tax increment financing obligations have been issued by a county commission, or the governing body of a municipality, prior to December 31, 2020, the termination date for that existing development or redevelopment district may be extended not more than 15 years.

(b) The county commission or governing body of the municipality creating the development or redevelopment district may set a shorter period for the existence of the district. In this event, no tax increment financing obligations may have a final maturity date later than the termination date of the district. The county commission or the governing body of the municipality which created the development or redevelopment district may not take action to terminate a district prior to the time otherwise provided in its official action creating, combining, or extending the district if the county commission or the governing body of the municipality then has tax increment revenue obligations which remain outstanding and unpaid.

(c) Upon termination of the district, no further ad valorem tax revenues shall be distributed to the tax increment financing fund of the district.

(d) The county commission shall adopt, upon the expiration of the time periods set forth in this section, an order terminating the development or redevelopment district created by the county commission: *Provided*, That no district shall be terminated so long as bonds with respect to the district remain outstanding.

(e) The governing body of the municipality shall repeal, upon the expiration of the time periods set forth in this section, the ordinance establishing the development or redevelopment district: *Provided*, That no district shall be terminated so long as bonds with respect to the district remain outstanding.

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§7-11B-11. Costs of formation of development or redevelopment district.

(a) The county commission, or the governing body of a municipality, may pay, but shall have no obligation to pay, the costs of preparing the project plan or forming the development or redevelopment district created by them.

(b) If the county commission, or the governing body of the municipality, elects not to incur those costs, they shall be made project costs of the district and reimbursed from bond proceeds or other financing or may be paid by developers, property owners or other persons interested in the success of the development or redevelopment project.

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§7-11B-12. Overlapping districts prohibited,

The boundaries of any development and redevelopment districts shall not overlap with any other development or redevelopment district.

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§7-11B-13. Conflicts of interest; required disclosures and abstention.

(a) If any member of the governing body of an agency applying for a development or redevelopment district or a development or redevelopment project plan, a member of the county commission considering the application or a member of the governing body of a municipality considering the application owns or controls an interest, direct or indirect, in any property included in the development or redevelopment district, or proposed development or redevelopment district, he or she shall refrain from any further official involvement in regard to such application shall abstain from voting on any matter pertaining to such application, and shall abstain from communicating with other members concerning any matter pertaining to such application.

(b) With respect to development or redevelopment projects, the provisions of subsection (a), section fifteen, article ten, chapter sixty-one of this code do not apply to any person who, or person whose spouse, is a salaried employee of a project developer under a contract subject to the provisions of said subsection if the employee, his or her spouse or child:

(1) Is not a party to the contract;

(2) Is not an owner, a shareholder, a director or an officer of a private entity under the contract;

(3) Receives no commission, bonus or other direct remuneration or thing of value by virtue of the contract;

(4) Does not participate in the deliberations or awarding of the contract; and

(5) Does not approve, vote for or otherwise authorize the payment of public funds, including, but not limited to, tax increment revenues, pursuant to or as a result of the contract.

(c) Additionally, no member of the county commission or governing body of a municipality considering a development or redevelopment district or project plan, no member of the governing body of an agency proposing a development or redevelopment district or project plan, or any employee of the county, municipality or agency shall acquire any interest, direct or indirect, in any property in a development or redevelopment district or project area, or a proposed development or redevelopment district or project area, during the period of time between when the individual first obtains personal knowledge of the development or redevelopment district or project plan and the completion of the public hearing regarding the development or redevelopment district or project plan or on a date which the county commission or governing body of a municipality publicly announces that the development or redevelopment district or project plan is no longer under consideration.

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§7-11B-14. Projects financed by tax increment financing considered to be public improvements subject to prevailing wage, local labor preference and competitive bid requirements.

(a) Any project acquired, constructed, or financed, in whole or in part, by a county commission or municipality under this article shall be considered to be a "public improvement" within the meaning of the provisions of articles one-c, chapter twenty-one of this code.

(b) The county commission or municipality shall, except as provided in subsection (c) of this section, solicit or require solicitation of competitive bids and require compliance with article one-c, chapter twenty-one of this code for every project or infrastructure project funded pursuant to this article exceeding $25,000 in total cost: Provided, That the provisions of article two-d, chapter seventeen of this code may apply where applicable to projects subject to an intergovernmental agreement with the Commissioner of Highways.

(c) Following the solicitation of the bids, the construction contract shall be awarded to the lowest qualified responsible bidder, who shall furnish a sufficient performance and payment bond: Provided, That the county commission, municipality or other person soliciting the bids may reject all bids and solicit new bids on the project.

(d) No officer or employee of this state or of any public agency, public authority, public corporation, or other public entity, and no person acting or purporting to act on behalf of such officer or employee or public entity shall require that any performance bond, payment bond, or bid bond required or permitted by this section be obtained from any particular surety company, agent, broker or producer.

(e) This section does not:

(1) Apply to work performed on construction projects not exceeding a total cost of $50,000 by regular full-time employees of the county commission or the municipality: Provided, That no more than $50,000 shall be expended on an individual project in a single location in a twelve-month period;

(2) Prevent students enrolled in vocational educational schools from being used in construction or repair projects when such use is a part of the students' training program;

(3) Apply to emergency repairs to building components and systems: Provided, That the term "emergency repairs" means repairs that, if not made immediately, will seriously impair the use of the building components and systems or cause danger to those persons using the building components and systems; or

(4) Apply to any situation where the county commission or municipality comes to an agreement with volunteers, or a volunteer group, by which the governmental body will provide construction or repair materials, architectural, engineering, technical or any other

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professional services and the volunteers will provide the necessary labor without charge to, or liability upon, the governmental body: Provided, That the total cost of the construction or repair projects does not exceed $50,000.

(f) The provisions of subsections (a) and (b) of this section apply to any specific project, whether privately or publicly owned or constructed on private or public lands, that are financed or to be financed, in whole or in part, with tax increment or proceeds of tax increment financing obligations: Provided, That, the provisions of subsections (a) and (b) of this section do not apply to any project or part of a project that is privately owned and financed without any tax increment or proceeds of tax increment financing obligations.

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§7-11B-15. Reports by county commissions and municipalities, contents, and publication; procedure to determine progress of project; reports by Development Office, content of reports; rule-making authority; Development Office to provide manual and assistance.

(a) Each year, the county commission, or its designee, and the governing body of a municipality, or its designee, that has approved a development or redevelopment project plan shall prepare a report giving the status of each plan and each development and redevelopment project included in the plan and file it with the executive director of the Development Office by October 1, each year. The report shall include the following information:

(1) The aggregate amount and the amount by source of revenue in the tax increment financing fund;

(2) The amount and purpose of expenditures from the tax increment financing fund;

(3) The amount of any pledge of revenues, including principal and interest on any outstanding tax increment financing indebtedness;

(4) The base assessed value of the development or redevelopment project or the development or redevelopment district, as appropriate;

(5) The assessed value for the current tax year of the development or redevelopment project property or of the taxable property having a tax situs in the development or redevelopment district, as appropriate;

(6) The assessed value added to base assessed value of the development or redevelopment project or the taxable property having a tax situs in the development or redevelopment district, as the case may be;

(7) Payments made in lieu of taxes received and expended;

(8) Reports on contracts made incidental to the implementation and furtherance of a development or redevelopment plan or project;

(9) A copy of any development or redevelopment plan, which shall include the required findings and cost-benefit analysis;

(10) The cost of any property acquired, disposed of, rehabilitated, reconstructed, repaired or remodeled;

(11) The number of parcels of land acquired by or through initiation of eminent domain proceedings;

(12) The number and types of jobs projected by the project developer to be created, if any,

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and the estimated annualized wages and benefits paid or to be paid to persons filling those jobs;

(13) The number, type and duration of the jobs created, if any, and the annualized wages and benefits paid;

(14) The amount of disbursements from the tax increment financing fund during the most recently completed fiscal year, in the aggregate and in such detail as the executive director of the Development Office may require;

(15) An annual statement showing payments made in lieu of taxes received and expended during the fiscal year;

(16) The status of the development or redevelopment plan and projects therein;

(17) The amount of outstanding tax increment financing obligations; and

(18) Any additional information the county commission or the municipality preparing the report deems necessary or that the executive director of the Development Office may by procedural rule require.

(b) Data contained in the report required by subsection (a) of this section shall be deemed a public record as defined in article one, chapter twenty-nine-b of this code.

(1) The county commission's annual report shall be published on its web site, if it has a web site. If the county does not have a web site, the annual report shall be published on the web site of the Development Office.

(2) The municipality's annual report shall be published on its web site, if it has a web site. If the municipality does not have a web site, the annual report shall be published on the web site of the Development Office.

(c) After the close of the fiscal year, but on or before October 1, each year, the county commission and the governing body of a municipality that approved a development or redevelopment plan shall publish in a newspaper of general circulation in the county or municipality, as appropriate, an annual statement showing for each development or redevelopment project or plan for which tax increment financing obligations have been issued:

(1) A summary of receipts and disbursements, by major category, of moneys in the tax increment financing fund during that fiscal year;

(2) A summary of the status of the development or redevelopment plan and each project therein;

(3) The amount of tax increment financing principal outstanding as of the close of the fiscal

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year; and

(4) Any additional information the county commission or municipality deems necessary or appropriate to publish.

(d) Five years after the establishment of a development or redevelopment plan, and every five years thereafter, the county commission or municipality that approved the plan shall hold a public hearing regarding that development or redevelopment plan and the projects created or to be created in the development or redevelopment district pursuant to this article.

(1) The purpose of the public hearing is to determine if the development or redevelopment plan and the proposed project or projects are making satisfactory progress under the proposed time schedule contained within the approved plans for completion of the projects.

(2) Notice of this public hearing shall be given in a newspaper of general circulation in the county, or in the municipality for a municipal plan, once each week for four successive weeks immediately prior to the hearing.

(3) Public hearings on development and redevelopment plans and projects may be held as part of a regular or special meeting of the county commission, or governing body of the municipality, that adopted the plan.

(e) The executive director of the Development Office shall submit a report to the Governor, the Speaker of the House of Delegates and the President of the Senate no later than February first of each year. The report shall contain a summary of all information received by the executive director pursuant to this section.

(f) For the purpose of facilitating and coordinating the reports required by this section, the executive director of the Development Office may promulgate procedural rules in the manner provided in article three, chapter twenty-nine-a of this code to ensure compliance with this section.

(g) The executive director of the Development Office shall provide information and technical assistance, as requested by a county commission or the governing body of a municipality, on the requirements of this article. The information and technical assistance shall be provided in the form of a manual, written in an easy-to-follow manner, and through consultations with staff of the Development Office.

(h) By October 1, each year, each agency that proposed a development or redevelopment plan that was approved by a county commission, or the governing body of a municipality, and each county commission, or governing body of a municipality, that approved a development or redevelopment plan that was not proposed by an agency shall report to the executive director of the Development Office the name, address, phone number and primary line of business of any business that relocates to the development or redevelopment district

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during the immediately preceding fiscal year of the state. The executive director shall compile and report the same to the Governor, the Speaker of the House of Delegates and the President of the Senate by February 1 of the next calendar year.

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§7-11B-16. Valuation of real property.

(a) Upon and after the effective date of the creation of a development or redevelopment district, the county assessor of the county in which the district is located shall transmit to the county clerk a certified statement of the base assessed value, total ad valorem regular levy rate, total general obligation bond debt service ad valorem rate and total excess levy rate applicable for the development or redevelopment district.

(1) The assessor shall undertake, upon request of the county commission, or the governing body of the municipality, creating the development or redevelopment district, an investigation, examination and inspection of the taxable real and tangible personal property having a tax situs in the district and shall reaffirm or revalue the base value for assessment of the property in accordance with the findings of the investigation, examination and inspection.

(2) The county assessor shall determine, according to his or her best judgment from all sources available to him or her, the full aggregate assessed value of the taxable property in the district, which aggregate assessed valuation, upon certification thereof by the assessor to the clerk, constitutes the base value of the development or redevelopment district.

(b) The county assessor shall give notice annually to the designated finance officer of each levying body having the power to levy taxes on property within each district of the current value and the incremental value of the property in the development or redevelopment district.

(c) The assessor shall also determine the tax increment by applying the applicable ad valorem regular levy rates to the incremental value.

(d) The notice shall also explain that the entire amount of the tax increment allocable to property within the development or redevelopment district will be paid to the tax increment financing fund of the development or redevelopment district until it is terminated.

(e) The assessor shall identify upon the landbooks those parcels of property that are within each existing development or redevelopment district, specifying on landbooks the name of each district.

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§7-11B-17. Division of ad valorem real property tax revenue.

(a) For so long as the development or redevelopment district exists, the county sheriff shall divide the ad valorem tax revenue collected, with respect to taxable property in the district, as follows:

(1) The assessor shall determine for each tax year:

(A) The amount of ad valorem property tax revenue that should be generated by multiplying the assessed value of the property for the then current tax year by the aggregate of applicable levy rates for the tax year;

(B) The amount of ad valorem tax revenue that should be generated by multiplying the base assessed value of the property by the applicable regular ad valorem levy rates for the tax year;

(C) The amount of ad valorem tax revenue that should be generated by multiplying the assessed value of the property for the current tax year by the applicable levy rates for general obligation bond debt service for the tax year;

(D) The amount of ad valorem property tax revenue that should be generated by multiplying the assessed value of the property for the current tax year by the applicable excess levy rates for the tax year; and

(E) The amount of ad valorem property tax revenue that should be generated by multiplying the incremental value by the applicable regular levy rates for the tax year.

(2) The sheriff shall determine from the calculations set forth in subdivision (1) of this subsection the percentage share of total ad valorem revenue for each levying body according to paragraphs (B) through (D), inclusive, of said subdivision by dividing each of such amounts by the total ad valorem revenue figure determined by the calculation in paragraph (A) of said subdivision; and

(3) On each date on which ad valorem tax revenue is to be distributed to the levying bodies, such revenue shall be distributed by:

(A) Applying the percentage share determined according to paragraph (B), subdivision (1) of this subsection to the revenues received and distributing such share to the levying bodies entitled to such distribution pursuant to current law;

(B) Applying the percentage share determined according to paragraph (C), subdivision (1) of this subsection to the revenues received and distributing such share to the levying bodies entitled to such distribution by reason of having general obligation bonds outstanding;

(C) Applying the percentage share determined according to paragraph (D), subdivision (1) of this subsection to the revenues received and distributing such share to the levying bodies

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entitled to such distribution by reason of having excess levies in effect for the tax year; and

(D) Applying the percentage share determined according to paragraph (E), subdivision (1) of this subsection to the revenues received and distributing such share to the tax increment financing fund of the development or redevelopment district.

(b) In each year for which there is a positive tax increment, the county sheriff shall remit to the tax increment financing fund of the development or redevelopment district that portion of the ad valorem property taxes collected that consists of the tax increment.

(c) Any additional moneys appropriated to the development or redevelopment district pursuant to an appropriation by the county commission that created the district and any additional moneys dedicated to the fund from other sources shall be deposited to the tax increment financing fund for the development or redevelopment district by the sheriff.

(d) Any funds deposited into the tax increment financing fund of the development or redevelopment district may be used to pay project costs, principal and interest on bonds and the cost of any other improvements in the development or redevelopment district deemed proper by the county commission.

(e) Unless otherwise directed pursuant to any agreement with the holders of tax increment financing obligations, moneys in the tax increment financing fund may be temporarily invested in the same manner as other funds of the county commission, or the municipality, that established the fund.

(f) If less than all of the tax increment is to be used for project costs or pledged to secure tax increment financing as provided in the plan for the development or redevelopment district, the sheriff shall account for that fact in distributing the ad valorem property tax revenues.

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§7-11B-18. Payments in lieu of taxes and other revenues.

(a) The county commission or municipality that created the development or redevelopment district shall deposit in the tax increment financing fund of the development or redevelopment district all payments in lieu of taxes received pursuant to any agreement entered into on or subsequent to the date of creation of a development or redevelopment district on tax exempt property located within the development or redevelopment district, and prior to the amendments to this section enacted in the 2021 regular session of the Legislature.

(b) Any real or personal property located within the development or redevelopment district and owned by this state, a political subdivision of this state or an agency or instrumentality thereof may be made subject to a payment in lieu of taxes agreement. The real and personal property subject to a payment in lieu of taxes agreement is deemed public property and exempt from ad valorem property taxation by this state, a political subdivision of this state, an agency or instrumentality thereof or other levying body, so long as it is owned in title by this state, a political subdivision of this state or an agency or instrumentality thereof. The exemption from ad valorem property taxation is applicable to any leasehold or similar interest held by persons other than this state, a political subdivision of this state or an agency or instrumentality thereof, if acquired or constructed with the written agreement of the county school board, county commission and any municipal authority within whose jurisdiction the real and personal property is physically situated.

(c) Any payment in lieu of taxes agreement shall be made between the public entity that owns the property, the lessee of the property who would be making the payment in lieu of taxes and the county school board, county commission and any municipal authority within whose jurisdiction the real or personal property is situate. The payment in lieu of taxes agreement shall provide the amount that shall be paid by the lessee and the amount, if any, that shall be attributable to the base assessed value of the property and the incremental value.

(d) Following the amendments to this section enacted in the 2021 regular session of the Legislature, any portion of the payment in lieu of taxes attributable in the payment in lieu of tax agreement to the incremental value shall be deposited in the tax increment financing fund. Following the amendments to this section enacted in the 2021 regular session of the Legislature, the remaining portion of the in lieu payment shall be distributed among the levying bodies as follows:

(1) The portion of the in lieu tax payment attributable to the base value of the property shall be distributed to the levying bodies in the same manner as taxes attributable in the payment in lieu of tax agreement to the base value of other property in the district are distributed; and

(2) The portions of the in lieu tax payment attributable in the payment in lieu of tax agreement to levies for bonded indebtedness and excess levies shall be distributed in the

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same manner as those levies on other property in the district are distributed.

(e) Other revenues to be derived from the development or redevelopment district may also be deposited in the tax increment financing fund at the direction of the county commission.

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§7-11B-19. Tax increment obligations generally.

(a) Tax increment obligations may be issued by a county commission, or the governing body of the municipality, to pay project costs for projects included in the development or redevelopment plan approved by the Development Office and adopted by the county commission, or the governing body of the municipality, that are located in a development or redevelopment district or on land not in the district that is contiguous to the district and which contain infrastructure or other facilities which serve the district.

(1) Tax increment financing obligations may be issued for project costs, as defined in section three of this article, which may include interest prior to and during the acquisition, construction and equipping of a project and for a reasonable time thereafter, with such reserves as may be required by any agreement securing the obligations and all other expenses incidental to planning, carrying out and financing the project.

(2) The proceeds of tax increment financing obligations may also be used to reimburse the costs of any interim financing or cash expenditures entered on behalf of projects in the development or redevelopment district.

(b) Tax increment financing obligations issued under this article shall be payable solely from the tax increment or other revenues deposited to the credit of the tax increment financing fund of the development or redevelopment district.

(c) Under no event shall tax increment financing obligations be secured or be deemed to be secured by the full faith and credit of the county commission or the municipality issuing the tax increment financing obligations.

(d) Every tax increment financing bond, note or other obligation issued under this article shall recite on its face that it is a special obligation payable solely from the tax increment and other revenues pledged for its repayment.

WV Legislature

§7-11B-20. Tax increment financing obligations -- authority to issue.

For the purpose of paying project costs, or for the purpose of refunding notes issued under this article for the purpose of paying project costs, the county commission or municipality creating the development or redevelopment district may issue tax increment financing obligations payable out of tax increments and other revenues deposited to the tax increment financing fund of the development or redevelopment district.

WV Legislature

§7-11B-21. Tax increment financing obligations -- authorizing order or ordinance.

(a) Issuance of tax increment financing obligations shall be authorized by order of the county commission, or ordinance of the municipality, that created the development or redevelopment district.

(b) The order, or ordinance, shall state the name of the development or redevelopment district, the amount of tax increment financing obligations authorized, the type of obligation authorized and the interest rate or rates to be borne by the bonds, notes or other tax increment financing obligations.

(c) The order or ordinance may prescribe the terms, form and content of the tax increment financing obligations and other particulars or information the county commission, or governing body of the municipality, issuing the obligations deems useful or it may include by reference the terms and conditions set forth in a trust indenture or other document securing the development or redevelopment project tax increment financing obligations.

WV Legislature

§7-11B-22. Tax increment financing obligations — terms, conditions.

(a) Tax increment financing obligations may not be issued in an amount exceeding the estimated aggregate project costs, including all costs of issuance of the tax increment financing obligations.

(b) Tax increment financing obligations shall not be included in the computation of the Constitutional debt limitation of the county commission or municipality issuing the tax increment financing obligations.

(c) Tax increment financing obligations shall mature over a period not exceeding thirty years from their issue date, or a period terminating with the date of termination of the development or redevelopment district, whichever period terminates earlier.

(d) Tax increment financing obligations may contain a provision authorizing their redemption, in whole or in part, at stipulated prices, at the option of the county commission or municipality issuing the obligations, and, if so, the obligations shall provide the method of selecting the tax increment financing obligations to be redeemed.

(e) The principal and interest on tax increment financing obligations may be payable at any place set forth in the resolution, trust indenture or other document governing the obligations.

(f) Bonds or notes shall be issued in registered form.

(g) Bonds or notes may be issued in any denomination.

(h) Each tax increment financing obligation issued under this article is declared to be a negotiable instrument.

(i) The tax increment financing obligations may be sold at public or private sale.

(j) Insofar as they are consistent with subsections (a), (b) and (c) of this section, the procedures for issuance, form, contents, execution, negotiation and registration of county and municipal industrial or commercial revenue bonds set forth in §13-2C-1 *et seq*. of this code are incorporated by reference herein.

(k) The bonds may be refunded or refinanced and refunding bonds may be issued in any principal amount: *Provided*, That the last maturity of the refunding bonds shall not be later than the termination date of the district as set forth in §7-11B-10 of this code.

WV Legislature

§7-11B-23. Tax increment financing obligations -- security -- marketability.

To increase the security and marketability of tax increment financing obligations, the county commission or municipality issuing the obligations may:

(1) Create a lien for the benefit of the holders of the obligations upon any capital improvements, facilities or both financed by the obligations; or

(2) Make such covenants and do any and all such actions, not inconsistent with the Constitution of this state, which may be necessary, convenient or desirable in order to additionally secure the obligations or which tend to make the obligations more marketable according to the best judgment of the county commission or municipality issuing the tax increment financing obligations.

WV Legislature

§7-11B-24. Tax increment financing obligations -- special fund for repayment.

(a) Tax increment financing obligations issued by a county commission or municipality are payable out of the tax increment financing fund created for each development and redevelopment district created under this article.

(b) The county commission or municipality issuing the tax increment financing obligations shall irrevocably pledge all or part of the tax increment financing fund to the payment of the obligations. The tax increment financing fund, or the designated part thereof, may thereafter be used only for the payment of the obligations and their interest until they have been fully paid.

(c) A holder of the tax increment financing obligations shall have a lien against the tax increment financing fund for payment of the obligations and interest on them and may bring suit to enforce the lien.

(d) A county commission or municipality may issue and secure additional bonds payable out of the tax increment fund created for each development or redevelopment district created under this article, which bonds may rank on a parity with, or be subordinate or superior to, other bonds issued by the county commission or municipality from each such tax increment fund.

WV Legislature

§7-11B-25. Tax increment financing obligations – Tax exemption.

Tax increment financing obligations issued under this article, together with the interest and income therefrom, shall be exempt from all state income taxes, whether imposed on individuals, corporations or other persons, from state business franchise taxes and from ad valorem property taxes.

WV Legislature

§7-11B-26. Excess funds.

(a) Moneys received in the tax increment financing fund of the development or redevelopment district in excess of amounts needed to pay project costs and debt service may be used by the county commission or municipality that created the development or redevelopment district for other projects within the district or distributed to the levying bodies as provided in this article.

(b) Upon termination of the district, all amounts in the tax increment financing fund of the district shall be paid over to the levying bodies in the same proportion that ad valorem property taxes on the base value was paid over to those levying bodies for the tax year in which the district is terminated.

WV Legislature

§7-11B-27. Computation of local share for support of public schools when tax increment financing is used.

For purposes of any computation made in accordance with the provisions of section eleven, article nine-a, chapter eighteen of this code, for a county in which there is tax increment financing in effect pursuant to this article, the assessed value shall be the current assessed value minus the amount of assessed value used to determine the tax increment amount, minus any other adjustments allowed by section eleven of said article.

WV Legislature

§7-11B-28. Effective date.

Notwithstanding the effective date of this act of the Legislature, this article shall not become operational and shall have no force and effect until the day the people ratify an amendment to the Constitution of this state authorizing tax increment financing secured by ad valorem property taxes.

WV Legislature

§7-11B-29. Joint development or redevelopment districts.

(a) The Legislature hereby finds and declares that the citizens of the state would benefit from coordinated road construction efforts by county commissions, municipalities and the division of highways.

(b) Notwithstanding any other section of this code to the contrary, any two or more county commissions, any two or more municipalities, or any combination thereof, may: (1) Create a combined development or redevelopment district; (2) propose joint project plans; (3) propose joint amendments to an existing project plan for combined development or redevelopment district; and (4) enter into one or more intergovernmental agreements between themselves and/or the Commissioner of Highways to share: (A) Project expenses; and (B) certain property tax collections, on a pro rata or other basis, to facilitate construction of projects within the combined development or redevelopment district and to jointly take such other actions as are authorized in this article.

(c) When a project begins in one county and ends in another county of this state, the county commission of each county included in a multicounty project may, by resolution, adopt a written intergovernmental agreement with each county and/or the Commissioner of Highways regarding the proposed multicounty project. When the project begins or passes through the corporate limits of a municipality, the governing body of that municipality may by resolution adopt a written intergovernmental agreement with the county or counties in which the project is located.

(d) No county commission or municipality may withdraw from an intergovernmental agreement as long as tax increment financing obligations remain outstanding for which the proceeds were used by any party to the intergovernmental agreement to finance construction of the project for which the written intergovernmental agreement was executed.

(e) No withdrawing county commission or municipality shall be entitled to the return of any money or property advanced to the project.

(f) Notwithstanding any provision of this code to the contrary, any county commission or municipality that creates a development or redevelopment district may enter into one or more intergovernmental agreements with one or more other counties or municipalities that also create a development or redevelopment district to finance, in whole or in part, one or more projects, to pool tax increment and other revenues to finance, in whole or in part, contiguous projects on a cash basis or to pay debt service on tax increment financing obligations.

(g) The obligations of the parties under any intergovernmental agreement executed pursuant to this article are not debt within the meaning of sections six or eight, article X of the Constitution of West Virginia.

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(h) Any intergovernmental agreement must be approved by resolution adopted by a majority vote of the county commission of each county participating in the agreement, by a majority vote of the governing body of each municipality participating in the agreement and by the Commissioner of Highways.

(i) The Commissioner of Highways is authorized to enter into intergovernmental agreements with county commissions and municipalities of this state, or with the federal government or any agency thereof, respecting the financing, planning, and construction of state roads and bridges, including related infrastructure if any, constructed, in whole or in part, pursuant to this article.

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§7-11B-30. Application by Division of Highways.

(a) The Commissioner of Highways may propose creation by a county commission or municipality of development or redevelopment areas or districts and project plans, or propose amendments to an existing project plans. This plan may include related infrastructure that is necessary or convenient to economic development adjacent to the proposed project.

(b) Project plans proposed by the Commissioner of Highways are limited to those related to the construction, reconstruction, improvement or modernization of state roads, as defined in article four, chapter seventeen of this code, that are part of the state road system, as defined in that article or that will become part of the state road system upon completion of the construction. All construction, reconstruction, improvement or modernization and maintenance of state roads shall be done by or under the supervision of the Commissioner of Highways.

(c) All road projects that are accepted as part of the state road system, and all real property interests and appurtenances, is under the exclusive jurisdiction and control of the Commissioner of Highways, who may exercise the same rights and authority as he or she has over other transportation facilities in the state road system.

(d) Except as provided in an intergovernmental agreement executed by one or more county commissions, municipalities and/or the Commissioner of Highways and as provided in this article, a county commission or municipality may not be required to pay for the cost of constructing, reconstructing, improving, maintaining a road that is part of the state road system as defined in article four, chapter seventeen of this code or to pay any other expense fairly related to that road.

(e) The powers conferred by this article on the Commissioner of Highways or the Division of Highways are in addition and supplemental to the powers conferred upon the Commissioner of Highways, the Division of Highways, and the Department of Transportation by the Legislature elsewhere in this code.

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