WEST VIRGINIA CODE CHAPTER 7 ARTICLE 22

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§7-22-1. Short title.

This article is known and may be cited as the "County Economic Opportunity Development District Act".

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§7-22-2. Legislative findings and declaration of purpose.

The Legislature finds that many significant business opportunities initiated within the counties of this state face financial and other economic obstacles. This adversely affects the economic and general well-being of the citizens of those counties.

The Legislature further finds that there are undeveloped, underdeveloped or seriously deteriorated development areas within certain counties of this state which are uniquely situated relative to large populations in other states or to other specific economic recreational or cultural activities or facilities which will attract large populations from this state and other states who would be likely to make substantial retail purchases of tangible personal property and services offered in modern and modernized structures and facilities constructed, supplemented, reconstructed or repaired in such undeveloped, underdeveloped or seriously deteriorated areas within certain counties of this state. The Legislature further finds that economic inducements provided by the state are necessary and appropriate to enable the construction, supplementation, reconstruction and repair of such modern and modernized structures and facilities in such undeveloped, underdeveloped or seriously deteriorated areas within certain counties of this state. Establishment of economic opportunity development districts within counties of the state, in accordance with the purpose and powers set forth in this article, will serve a public purpose and promote the health, safety, prosperity, security and general welfare of all citizens in the state. It will also promote the establishment and vitality of significant business opportunities within counties while serving as an effective means for developing or restoring and promoting retail and other business activity within the economic opportunity development districts created herein. This will be of special benefit to the tax base of the counties within which any economic development district is created pursuant to this article and will specifically generate substantial incremental increases in excise taxes on sales within such economic opportunity development districts of tangible personal property and services and thereby and otherwise will stimulate economic growth and job creation.

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§7-22-3. Definitions.

For purposes of this article, the term:

(1) "County commission" means the governing body of a county of this state;

(2) "Development expenditures" means payments for governmental functions, programs, activities, facility construction, improvements and other goods and services which a district board is authorized to perform or provide under section five of this article;

(3) "District" means an economic opportunity development district created pursuant to this article;

(4) "District board" means a district board created pursuant to section ten of this article; and

(5) "Eligible property" means any taxable or exempt real property located in a district established pursuant to this article.

(6) "Remediation" means measures undertaken to bring about the reconditioning or restoration of property located within the boundaries of an economic opportunity development district that has been affected by exploration, mining, industrial operations or solid waste disposal and which measures, when undertaken, will eliminate or ameliorate the existing state of the property and enable the property to be commercially developed.

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§7-22-4. Authorization to create economic opportunity development districts.

A county commission may, in accordance with the procedures and subject to the limitations set forth in this article:

(1) Create one or more economic opportunity development districts within its county;

(2) Provide for the administration and financing of development expenditures within the districts; and(3) Provide for the administration and financing of a continuing program of development expenditures within the districts.

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§7-22-5. Development expenditures.

Any county commission that has established an economic opportunity development district under this article may make, or authorize to be made by a district board and other public or private parties, development expenditures as will promote the economic vitality of the district and the general welfare of the county, including, but not limited to, expenditures for the following purposes:

(1) Beautification of the district by means including landscaping and construction and erection of fountains, shelters, benches, sculptures, signs, lighting, decorations and similar amenities;

(2) Provision of special or additional public services such as sanitation, security for persons and property and the construction and maintenance of public facilities, including, but not limited to, sidewalks, parking lots, parking garages and other public areas;

(3) Making payments for principal, interest, issuance costs, any of the costs described in section twenty of this article and appropriate reserves for bonds and other instruments and arrangements issued or entered into by the county commission for financing the expenditures of the district described in this section and to otherwise implement the purposes of this article;

(4) Providing financial support for public transportation and vehicle parking facilities open to the general public, whether physically situate within the district's boundaries or on adjacent land;

(5) Acquiring, building, demolishing, razing, constructing, repairing, reconstructing, refurbishing, renovating, rehabilitating, expanding, altering, otherwise developing, operating and maintaining real property generally, parking facilities, commercial structures and other capital improvements to real property, fixtures and tangible personal property, whether or not physically situate within the district's boundaries, including, but not limited to, state road improvements pursuant to an intergovernmental agreement with the Commissioner of Highways: Provided, That the expenditure directly benefits the district;

(6) Developing plans for the architectural design of the district and portions thereof and developing plans and programs for the future development of the district;

(7) Developing, promoting and supporting community events and activities open to the general public that benefit the district;

(8) Providing the administrative costs for a district management program;

(9) Providing for the usual and customary maintenance and upkeep of all improvements and amenities in the district as are commercially reasonable and necessary to sustain its economic viability on a permanent basis;

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(10) Providing any other services that the county commission or district board is authorized to perform and which the county commission does not also perform to the same extent on a countywide basis;

(11) Making grants to the owners or tenants of economic opportunity development district for the purposes described in this section;

(12) Making grants to the Division of Highways for road projects benefitting an economic opportunity development district;

(13) Acquiring an interest in any entity or entities that own any portion of the real property situate in the district and contributing capital to any entity or entities;

(14) Remediation of publicly or privately owned landfills, former coal or other mining sites, solid waste facilities or hazardous waste sites to facilitate commercial development which would not otherwise be economically feasible; and

(15) To do any and all things necessary, desirable or appropriate to carry out and accomplish the purposes of this article notwithstanding any provision of this code to the contrary.

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§7-22-6. Notice; hearing.

(a) General. -- A county commission desiring to create an economic opportunity development district shall conduct a public hearing.

(b) Notice of hearing. -- Notice of the public hearing shall be published as a Class I-0 legal advertisement in compliance with article three, chapter fifty-nine of this code at least twenty days prior to the scheduled hearing. In addition to the time and place of the hearing, the notice must also state:

(1) The purpose of the hearing;

(2) The name of the proposed district;

(3) The general purpose of the proposed district;

(4) The geographic boundaries of the property proposed to be included in the district; and

(5) The proposed method of financing any costs involved, including the base and rate of special district excise tax that may be imposed upon sales of tangible personal property and taxable services from business locations situated within the proposed district.

(c) Opportunity to be heard. -- At the time and place set forth in the notice, the county commission shall afford the opportunity to be heard to any owner of real property situated in the proposed district and any residents of the county.

(d) Application to West Virginia Development Office. -- If the county commission, following the public hearing, determines it advisable and in the public interest to establish an economic opportunity development district, it shall apply to the West Virginia Development Office for approval of the economic opportunity development district project pursuant to the procedures provided in section seven of this article.

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§7-22-7. Application to Development Office for approval of an economic opportunity development district project.

(a) General. -- The Development Office shall receive and act on applications filed with it by county commissions pursuant to section six of this article. Each application must include:

(1) A true copy of the notice described in section six of this article;

(2) The total cost of the project;

(3) A reasonable estimate of the number of months needed to complete the project;

(4) A general description of the capital improvements, additional or extended services and other proposed development expenditures to be made in the district as part of the project;

(5) A description of the proposed method of financing the development expenditures, together with a description of the reserves to be established for financing ongoing development expenditures necessary to permanently maintain the optimum economic viability of the district following its inception: Provided, That the amounts of the reserves may not exceed the amounts that would be required by prevailing commercial capital market considerations;

(6) A description of the sources and anticipated amounts of all financing, including, but not limited to, proceeds from the issuance of any bonds or other instruments, revenues from the special district excise tax and enhanced revenues from property taxes and fees;

(7) A description of the financial contribution of the county commission to the funding of development expenditures;

(8) Identification of any businesses that the county commission expects to relocate their business locations from the district to another place in the state in connection with the establishment of the district or from another place in this state to the district: Provided, That for purposes of this article, any entities shall be designated "relocated entities";

(9) Identification of any businesses currently conducting business in the proposed economic opportunity development district that the county commission expects to continue doing business there after the district is created;

(10) A good faith estimate of the aggregate amount of consumers sales and service tax that was actually remitted to the Tax Commissioner by all business locations identified as provided in subdivisions (8) and (9) of this subsection with respect to their sales made and services rendered from their then current business locations that will be relocated from, or to, or remain in the district, for the twelve full calendar months next preceding the date of the application: Provided, That for purposes of this article, the aggregate amount is designated as "the base tax revenue amount";

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(11) A good faith estimate of the gross annual district tax revenue amount;

(12) The proposed application of any surplus from all funding sources to further the objectives of this article; and

(13) Any additional information the Development Office may require.

(b) Review of applications. -- The Development Office shall review all project proposals for conformance to statutory and regulatory requirements, the reasonableness of the project's budget and timetable for completion and the following criteria:

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

(2) The merits of the project determined by a cost-benefit analysis that incorporates all costs and benefits, both public and private;

(3) Whether the project is supported by significant private sector investment and substantial credible evidence that, but for the existence of sales tax increment financing, the project would not be feasible;

(4) Whether the economic opportunity district excise tax dollars will leverage or be the catalyst for the effective use of private, other local government, state or federal funding that is available;

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

(6) Whether the project will, directly or indirectly, improve the opportunities in the area where the project will be located for the successful establishment or expansion of other industrial or commercial businesses;

(7) Whether the project will, directly or indirectly, assist in the creation of additional long-term employment opportunities in the area and the quality of jobs created in all phases of the project, to include, but not be limited to, wages and benefits;

(8) Whether the project will fulfill a pressing need for the area, or part of the area, in which the economic opportunity district is located;

(9) Whether the county commission has a strategy for economic development in the county and whether the project is consistent with that strategy;

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

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

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

(13) (A) The ability of the county commission and the project developer or project team to carry out the project: Provided, That no project may be approved by the Development Office unless the amount of all development expenditures proposed to be made in the first twenty-four months following the creation of the district results in capital investment of more than $75 million in the district and the county submits clear and convincing information, to the satisfaction of the Development Office, that the investment will be made if the Development Office approves the project and the Legislature authorizes the county commission to levy an excise tax on sales of goods and services made within the economic opportunity district as provided in this article: Provided, however, That such minimum capital investment does not apply to projects proposed by the Commissioner of Highways in accordance with section twenty-three, article twenty-two, chapter seven of this code.

(B) Notwithstanding any provision of paragraph (A) of this subdivision to the contrary, no project involving remediation may be approved by the Development Office unless the amount of all development expenditures proposed to be made in the first forty-eight months following the creation of the district results in capital investment of more than $75 million in the district. In addition to the remaining provisions of paragraph (A) of this subdivision the Development Office may not approve a project involving remediation authorized under section five of this article unless the county commission submits clear and convincing information, to the satisfaction of the Development Office, that the proposed remediation expenditures to be financed by the issuance of bonds or notes pursuant to section sixteen of this article do not constitute more than twenty-five percent of the total development expenditures associated with the project.

(c) Additional criteria. -- The Development Office may establish other criteria for consideration when approving the applications.

(d) Action on the application. -- Upon receipt of an application, the Development Office shall promptly request a certification from the Tax Commissioner of the base tax revenue amount and the Tax Commissioner shall provide the certification to the Development Office within thirty days. The Executive Director of the Development Office shall act to approve or not approve any application within thirty days following the receipt of the application and the certification from the Tax Commissioner required by this subsection or the receipt of any additional information requested by the Development Office, whichever is the later.

(e) Certification of project. -- If the Executive Director of the Development Office approves a county's economic opportunity district project application, he or she shall issue to the county commission a written certificate evidencing the approval.

The certificate shall expressly state a base tax revenue amount, the gross annual district tax revenue amount and the estimated net annual district tax revenue amount which, for purposes of this article, is the difference between the gross annual district tax revenue

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amount and the base tax revenue amount, all of which the Development Office has determined with respect to the district's application based on any investigation it considers reasonable and necessary, including, but not limited to, any relevant information the Development Office requests from the Tax Commissioner and the Tax Commissioner provides to the Development Office: Provided, That in determining the net annual district tax revenue amount, the Development Office may not use a base tax revenue amount less than that amount certified by the Tax Commissioner but, in lieu of confirmation from the Tax Commissioner of the gross annual district tax revenue amount, the Development Office may use the estimate of the gross annual district tax revenue amount provided by the county commission pursuant to subsection (a) of this section.

(f) Certification of enlargement or reduction of geographic boundaries of previously certified district. -- If the Executive Director of the Development Office approves a county's economic opportunity district project application to expand or reduce the geographic boundaries of a previously certified district, he or she shall issue to the county commission a written certificate evidencing the approval.

The certificate shall expressly state a base tax revenue amount, the gross annual district tax revenue amount and the estimated net annual district tax revenue amount which, for purposes of this article, is the difference between the gross annual district tax revenue amount and the base tax revenue amount, all of which the Development Office has determined with respect to the district's application based on any investigation it considers reasonable and necessary, including, but not limited to, any relevant information the Development Office requests from the Tax Commissioner and the Tax Commissioner provides to the Development Office: Provided, That in determining the net annual district tax revenue amount, the Development Office may not use a base tax revenue amount less than that amount certified by the Tax Commissioner but, in lieu of confirmation from the Tax Commissioner of the gross annual district tax revenue amount, the Development Office may use the estimate of the gross annual district tax revenue amount provided by the county commission pursuant to subsection (a) of this section.

(g) Promulgation of rules. -- The Executive Director of the Development Office may promulgate rules to implement the economic opportunity development district project application approval process and to describe the criteria and procedures it has established in connection therewith. These rules are not subject to the provisions of chapter twenty-nine-a of this code but shall be filed with the Secretary of State.

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§7-22-7a. Base tax revenue amount.

(a) Recalculation of base tax revenue amount. --

(1) If the base tax revenue amount determined under section seven of this article is greater than $1 million for a given district, then, upon written request of the county commission that has established the economic opportunity development district pursuant to this article, filed with the Executive Director of the Development Office not later than April 30, 2015, the base tax revenue amount for that district shall be recalculated by the Tax Commissioner as the aggregate annual amount of special district excise tax due and owing and remitted to the Tax Commissioner by all business locations located in the district with respect to sales made and services rendered from business locations in the district, for the twelve full calendar months next succeeding the date the special district excise tax was first collected in the district.

(2) Limitation -- If the base tax revenue amount determined under section seven of this article exceeds the amount determined under subdivision (1) of this subsection by more than $1 million, then the recalculated base tax revenue amount for purposes of this article is the base tax revenue amount previously determined under section seven of this article minus $1 million.

(3) Effective date. –

(A) The recalculated base tax revenue amount determined under this section shall be the amount used to determine the net annual district tax revenue amount for the district beginning on July 1, 2015. For purposes of this article, "net annual district tax revenue amount" means the gross annual district tax revenue amount minus the base tax revenue amount. For purposes of this article, "gross annual district tax revenue amount" means the amount of special district excise tax, net of refunds and adjustments, collected from the district before subtraction of the base tax revenue amount.

(B) The recalculated base tax revenue amount shall only be applicable to determine the net annual district tax revenue amount for periods beginning on and after July 1, 2015. The recalculated base tax revenue amount determined pursuant to this section is prospective in operation, and no adjustment, refund, payment or repayment of special district excise tax, or consumers sales and service tax and use tax, or net annual district tax revenue amount, or accrual thereof, attributable to periods prior to July 1, 2015, shall affect recalculation of the base tax revenue amount.

(b) Base tax revenue amount carry forward, recovery, recovery limitation.

(1) Notwithstanding any provision of section twelve of this article to the contrary, and notwithstanding the provisions of section eleven-a, article ten, chapter eleven of this code, if the amount of special district excise tax due and owing and collected in a calendar month is less than one-twelfth of the base tax revenue amount, the State Treasurer shall deposit the

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full amount of special district excise tax collections for that month into the General Revenue Fund of this state. In order to account for deficient special district excise tax collections in prior months for an economic opportunity development district, the State Treasurer shall deposit the full amount of special district excise tax collections into the General Revenue Fund in subsequent months during the fiscal year in which the deficiencies occurred, in amounts that may exceed one-twelfth of the base tax revenue amount, until past monthly deficiencies for that fiscal year are satisfied in full. Upon payment in full of past monthly deficiencies for such fiscal year, only one-twelfth of the base tax revenue amount shall be transferred to the General Revenue Fund for each month. Any monthly deficiencies shall be carried forward and accounted for in subsequent months only during the fiscal year in which such deficiencies occurred. On the first day of each fiscal year, any monthly deficiencies for an economic opportunity development district remaining from the prior fiscal year shall be discharged and shall not be taken into consideration by the State Treasurer when the monthly deposits are made to the General Revenue Fund pursuant to this section. For purposes of this section, fiscal year refers to the July 1 to June 30 fiscal year for the State of West Virginia.

(2) Notwithstanding the provisions of subdivisions (2) and (3), subsection (d) section eleven-a, article ten, chapter eleven of this code, the provisions of this subsection apply to, and are limited to, the circumstance where the amount of special district excise tax due and owing and collected in a calendar month is less than one-twelfth of the base tax revenue amount. All other corrections of, or relating to, any erroneous distribution, transfer, allocation, overpayment or underpayment of moneys or any adjustments otherwise necessary with relation to erroneous distributions, transfers, allocations, overpayments or underpayments of moneys, deposits, collections, or payments of special district excise tax shall be made in accordance with the provisions of section twenty-six, article ten, chapter eleven of this code.

(c) Limitation on changes to base tax revenue amount.

Except pursuant to a lawful recalculation of the base tax revenue amount under this section, or a lawful modification of geographical area included in a district under this article, the base tax revenue amount may not be modified, increased or decreased by reason of any change in law or fact relating to the consumers sales and service tax and use tax or to the base tax revenue amount determined under this article. No current, retrospective or prospective tax reporting anomaly, permutation of tax filing configuration, failure of tax payment, failure of tax filing, tax adjustment, claim for a tax refund, issuance of a tax refund, entitlement to a tax refund, claim for a tax credit, issuance of a tax credit, or entitlement to a tax credit, relating to, or affecting, consumers sales and service tax or use tax paid or payable in the district or special district excise tax paid or payable in the district, either prior to the date upon which the base tax revenue amount was determined under this article or subsequent to the date upon which the base tax revenue amount was determined under this article, changes in any way the base tax revenue amount.

(d) Sharing of District Information.

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(1) Notwithstanding the provisions of section five-d, article ten, chapter eleven of this code:

(A) So long as bonds are outstanding pursuant to this article, the Tax Commissioner shall provide on a monthly basis to the trustee for bonds issued pursuant to this article information on or derived from special district excise tax returns submitted pursuant to this article; and

(B) The trustee may share the information so obtained with the county commission that established the economic opportunity development district that issued the bonds pursuant to this article, with financial advisors registered or licensed with the appropriate oversight agency to act in such capacity and with underwriters and placement agents registered or licensed with the appropriate oversight agency to act in such capacity, that have been engaged by the county commission, and with the bondholders and with bond counsel for bonds issued pursuant to this article. The Tax Commissioner and the trustee may enter into a written agreement in order to accomplish exchange of the information.

(C) If bonds are not outstanding pursuant to this article, the Tax Commissioner shall provide on a monthly basis to the county commission that has established the economic opportunity development district pursuant to this article, information on or derived from special district excise tax returns submitted pursuant to this article; and

(D) The county commission may share the information so obtained with legal counsel for the county commission and with financial advisors registered or licensed with the appropriate oversight agency to act in such capacity and with underwriters and placement agents registered or licensed with the appropriate oversight agency to act in such capacity, that have been engaged by the county commission. The Tax Commissioner and the county commission may enter into a written agreement in order to accomplish exchange of the information.

(2) Any confidential information provided pursuant to this subsection shall be used solely for the protection and enforcement of the rights and remedies of the bondholders of bonds issued pursuant to this article, or, if there be none such, then, the district board of the district, or, if there be none such, then, the county commission that established the economic opportunity development district pursuant to this article. Any person or entity that is in possession of information disclosed by the Tax Commissioner, including but not limited to, the trustee and the county commission, and any person or entity that is in possession of information disclosed by or shared by the trustee pursuant to this subdivision, or disclosed by or shared by the county commission pursuant to this subdivision, is subject to the provisions of section five-d, article ten, chapter eleven of this code with relation to further disclosure of such information, as if the person or entity that is in possession of the tax information is an officer, employee, agent or representative of this state or of a local or municipal governmental entity or other governmental subdivision. This section does not prohibit the publication or release of statistics so classified as to prevent the identification of particular returns and the items thereof and the identity of specific taxpayers. For purposes of this article the term "confidential information" means information subject to the

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confidentiality restrictions of section five-d, article ten, chapter eleven of this code.

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§7-22-8. Establishment of the economic opportunity development district fund.

(a) General. -- There is hereby created a special revenue account in the State Treasury designated the "Economic Opportunity Development District Fund" which is an interest-bearing account and shall be invested in the manner described in section nine-c, article six, chapter twelve of this code with the interest income a proper credit to the Fund.

(b) District subaccount. -- A separate and segregated subaccount within the account shall be established for each economic opportunity development district and each joint economic opportunity development district that is approved by the Executive Director of the Development Office. In addition to the economic opportunity district excise tax levied and collected as provided in this article, funds paid into the account for the credit of any subaccount may also be derived from the following sources:

(1) All interest or return on the investment accruing to the subaccount;

(2) Any gifts, grants, bequests, transfers, appropriations or donations which are received from any governmental entity or unit or any person, firm, foundation or corporation; and

(3) Any appropriations by the Legislature which are made for this purpose.

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§7-22-9. Authorization to levy special district excise tax.

(a) General. — County commissions have no inherent authority to levy taxes and have only that authority expressly granted to them by the Legislature. The Legislature is specifically extended, and intends by this article, to exercise certain relevant powers expressed in section six-a, article X of the Constitution of this state as follows: (1) The Legislature may appropriate state funds for use in matching or maximizing grants-in-aid for public purposes from the United States or any department, bureau, commission, or agency thereof, or any other source, to any county, municipality, or other political subdivision of the state, under such circumstances and subject to such terms, conditions, and restrictions as the Legislature may prescribe by law; and (2) the Legislature may impose a state tax or taxes, or dedicate a state tax or taxes, or any portion thereof for the benefit of, and use by, counties, municipalities, or other political subdivisions of the state for public purposes, the proceeds of any such imposed or dedicated tax or taxes or portion thereof to be distributed to such counties, municipalities, or other political subdivisions of the state under such circumstances and subject to such terms, conditions and restrictions as the Legislature may prescribe.

Because a special district excise tax would have the effect of diverting, for a specified period of years, tax dollars which to the extent, if any, are not essentially incremental to tax dollars currently paid into the General Revenue Fund of the state, the Legislature finds that in order to substantially ensure that such special district excise taxes will not adversely impact the current level of the General Revenue Fund of the state, it is necessary for the Legislature to separately consider and act upon each and every economic development district which is proposed, including the unique characteristics of location, current condition and activity of and within the area included in such proposed economic opportunity development district and that for such reasons a statute more general in ultimate application is not feasible for accomplishment of the intention and purpose of the Legislature in enacting this article. Therefore, no economic opportunity development district excise tax may be levied by a county commission until after the Legislature expressly authorizes the county commission to levy a special district excise tax on sales of tangible personal property and services made within district boundaries approved by the Legislature.

(b) Authorizations. — The Legislature authorizes the following county commissions to levy special district excise taxes on sales of tangible personal property and services made from business locations in the following economic opportunity development districts:

(1) The Ohio County Commission may levy a special district excise tax for the benefit of the Fort Henry Economic Opportunity Development District which comprises 500 contiguous acres of land. Notwithstanding the time limitations provisions of subdivision (2), subsection (a), section fifteen of this article, the Fort Henry Economic Opportunity Development District shall not be abolished under §7-22-15(a)(2) of this code until the year 2054, unless sooner abolished and terminated in accordance with the §7-22-15(a)(1) of this code or any other provision of this code, or sooner abolished for any other reason: *Provided*, That on December 31, 2054, the provisions of §7-22-15(a)(2) of this code shall apply to abolish the Fort Henry Economic Opportunity Development District, if the district has not been abolished prior to

that date.

(2) The Harrison County Commission may levy a special district excise tax for the benefit of the Charles Pointe Economic Opportunity Development District which comprises 437 acres of land.

(3) The Monongalia County Commission may levy a special district excise tax for the benefit of the University Town Centre Economic Opportunity Development District which comprises approximately 1,450 contiguous acres of land. Notwithstanding the time limitations provisions of §7-22-15(a)(2) of this code, the University Town Centre Economic Opportunity Development District shall not be abolished pursuant to §7-22-15(a)(2) of this code until the year 2053, unless sooner abolished and terminated in accordance with the provisions of subdivision §7-22-15(a)(1) of this code or any other provision of this code, or sooner abolished for any other reason: *Provided*, That on December 31, 2053, the provisions of §7-22-15(a)(2) of this code shall apply to abolish the University Town Centre Economic Opportunity Development District, if the district has not been abolished prior to that date.

(4) The Jefferson County Commission may levy a special district excise tax for the benefit of the Hill Top House Hotel Economic Opportunity District which comprises approximately 11 contiguous acres of land: *Provided*, That notwithstanding any other provision of this article to the contrary:

(A) The Jefferson County Commission may create the district and levy the special district excise tax by order entered of record as provided in §7-22-10 of this code without the approval of the executive director of the development office; and

(B) The Jefferson County Commission may determine the base district tax, the base tax revenue amount, the gross annual district tax revenue amount, and the estimated net annual district tax revenue amount in lieu of that determination by the development office as provided in §7-22-7 of this code. For purposes of determining the base tax revenue amount, the Jefferson County Commission shall promptly request a certification from the Tax Commissioner of the base tax revenue amount and the Tax Commissioner shall provide the certification to the Jefferson County Commission within 30 days.

(5) The Mercer County Commission may levy a special district excise tax for the benefit of The Ridges Economic Opportunity Development District which comprises approximately 420 contiguous acres of land, subject to holding a public hearing as provided in §7-22-14(c) of this code, submitting the application required by §7-22-14(d) of this code, and obtaining the approval of the West Virginia Development Office as provided in §7-22-14(e) of this code.

(6) The Raleigh County Commission may levy a special district excise tax for the benefit of the Raleigh County Economic Opportunity Development District which comprises approximately 1,600 contiguous acres of land, subject to holding a public hearing as provided in §7-22-6 of this code, submitting the application required by §7-22-6 and §7-22-7 of this code, and obtaining the approval of the West Virginia Development Office as provided

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in §7-22-7 of this code.

(7) The Mason County Commission may levy a special district excise tax for the benefit of the Town of Henderson Economic Opportunity District which comprises approximately 150 contiguous acres of land, subject to holding a public hearing as provided in §7-22-6 of this code, submitting the application required by §7-22-6 and §7-22-7 of this code, and obtaining the approval of the West Virginia Development Office as provided in §7-22-7 of this code.

(8) The Berkeley County Commission may levy a special district excise tax for the benefit of the Berkeley County Economic Opportunity Development District which comprises approximately 275 contiguous acres of land, subject to holding a public hearing as provided in §7-22-6 of this code, submitting the application required by §7-22-6 and §7-22-7 of this code, and obtaining the approval of the West Virginia Development Office as provided in §7-22-7 of this code.

(c) Annual reports. — Notwithstanding any other provision of this code to the contrary, any jurisdiction that imposes a special district excise tax shall compile and issue an annual report for each fiscal year of operation, such year beginning on July 1 and ending on June 30. The annual report shall be issued on or before the next succeeding December 31 after the close of each fiscal year.

(1) The annual report shall be filed with the Governor, the Secretary of Commerce, the Secretary of Revenue, and the Joint Committee on Government and Finance.

(2) The annual report shall set forth in detail the following information:

(A) The amount of special district excise tax collected during the fiscal year;

(B) The total assessed value of all property located in the district at the inception of the district;

(C) The total assessed value of all property for the most recent property tax year in the district;

(D) A list of all businesses operating in the special district during the report year;

(E) The amount of indebtedness attributed to the sales tax increment financing project;

(F) The date of maturity for debts and annual amortization payment schedules for debt financed with the sales tax increment financing project;

(G) The projected date for retirement of all debt financed with the sales tax increment financing project; and

(H) The projected date of dissolution of the special district.

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§7-22-10. Order to create district as approved by Development Office and authorized by the Legislature.

(a) General. -- If an economic opportunity development district project has been approved by the executive director of the development office and the levying of a special district excise tax for the district has been authorized by the Legislature, all in accordance with this article, the county commission may create the district by order entered of record as provided in article one of this chapter: Provided, That the county commission may not amend, alter or change in any manner the boundaries of the economic opportunity development district authorized by the Legislature. In addition to all other requirements, the order shall contain the following:

(1) The name of the district and a description of its boundaries;

(2) A summary of any proposed services to be provided and capital improvements to be made within the district and a reasonable estimate of any attendant costs;

(3) The base and rate of any special district excise tax that may be imposed upon sales by businesses for the privilege of operating within the district, which tax shall be passed on to and paid by the consumer, and the manner in which the taxes will be imposed, administered and collected, all of which shall be in conformity with the requirements of this article; and

(4) The district board members' terms, their method of appointment and a general description of the district board's powers and duties, which powers may include the authority:

(A) To make and adopt all necessary bylaws and rules for its organization and operations not inconsistent with any applicable laws;

(B) To elect its own officers, to appoint committees and to employ and fix compensation for personnel necessary for its operations;

(C) To enter into contracts with any person, agency, government entity, agency or instrumentality, firm, partnership, limited partnership, limited liability company or corporation, including both public and private corporations, and for-profit and not-for-profit organizations and generally to do any and all things necessary or convenient for the purpose of promoting, developing and advancing the purposes described in section two of this article;

(D) To amend or supplement any contracts or leases or to enter into new, additional or further contracts or leases upon the terms and conditions for consideration and for any term of duration, with or without option of renewal, as agreed upon by the district board and any person, agency, government entity, agency or instrumentality, firm, partnership, limited partnership, limited liability company or corporation;

(E) To, unless otherwise provided in, and subject to the provisions of any contracts or leases to operate, repair, manage and maintain buildings and structures and provide adequate

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insurance of all types and in connection with the primary use thereof and incidental thereto to provide services, such as retail stores and restaurants, and to effectuate incidental purposes, grant leases, permits, concessions or other authorizations to any person or persons upon the terms and conditions for consideration and for the term of duration as agreed upon by the district board and any person, agency, governmental department, firm or corporation;

(F) To delegate any authority given to it by law to any of its officers, committees, agents or employees;

(G) To apply for, receive and use grants-in-aid, donations and contributions from any source or sources and to accept and use bequests, devises, gifts and donations from any person, firm or corporation;

(H) To acquire real property by gift, purchase or construction or in any other lawful manner and hold title thereto in its own name and to sell, lease or otherwise dispose of all or part of any real property which it may own, either by contract or at public auction, upon the approval by the district board;

(I) To purchase or otherwise acquire, own, hold, sell, lease and dispose of all or part of any personal property which it may own, either by contract or at public auction;

(J) Pursuant to a determination by the district board that there exists a continuing need for development expenditures and that moneys or funds of the district are necessary therefor, to borrow money and execute and deliver the district's negotiable notes and other evidences of indebtedness therefor, on the terms as the district shall determine, and give security therefor as is requisite, including, without limitation, a pledge of the district's rights in its subaccount of the economic opportunity development district fund;

(K) To acquire (either directly or on behalf of the county an interest in any entity or entities that own any real property situate in the district, to contribute capital to any entity or entities and to exercise the rights of an owner with respect thereto; and

(L) To expend its funds in the execution of the powers and authority given in this section, which expenditures, by the means authorized in this section, are hereby determined and declared as a matter of legislative finding to be for a public purpose and use, in the public interest and for the general welfare of the people of West Virginia, to alleviate and prevent economic deterioration and to relieve the existing critical condition of unemployment existing within the state.

(b) Additional contents of order. -- The county commission's order shall also state the general intention of the county commission to develop and increase services and to make capital improvements within the district.

(c) Mailing of certified copies of order. -- Upon entry of an order establishing an economic

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opportunity development district excise tax, a certified copy of the order shall be mailed to the State Auditor, as ex officio the chief inspector and supervisor of public offices, the State Treasurer and the Tax Commissioner.

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§7-22-11. District board; duties.

(a) General. -- The county commission of a county that has been authorized by the Legislature to establish an economic opportunity development district, in accordance with this article, shall provide, by order entered of record, for the appointment of a district board to oversee the operations of the district: Provided, That the county commission may, by order, in lieu of appointing a separate district board, designate itself to act as the district board.

(b) Composition of board. -- If a separate district board is to be appointed, it shall be made up of at least seven members, two of which shall be owners, or representatives of owners, of real property situated in the economic opportunity development district and the other five shall be residents of the county within which the district is located.

(c) Annual report. -- The district board, in addition to the duties prescribed by the order creating the district, shall submit an annual report to the county commission and the Development Office containing:

(1) An itemized statement of its receipts and disbursements for the preceding fiscal year;

(2) A description of its activities for the preceding fiscal year;

(3) A recommended program of services to be performed and capital improvements to be made within the district for the coming fiscal year; and

(4) A proposed budget to accomplish its objectives.

(d) Conflict of interest exception. -- Nothing in this article prohibits any member of the district board from also serving on the board of directors of a nonprofit corporation with which the county commission may contract to provide specified services within the district.

(e) Compensation of board members. -- Each member of the district board may receive reasonable compensation for services on the board in the amount determined by the county commission: Provided, That when a district board is not created for the district but the work of the board is done by the county commission, the county commissioners shall receive no additional compensation.

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§7-22-12. Special district excise tax authorized.

(a) General. -- The county commission of a county, authorized by the Legislature to levy a special district excise tax for the benefit of an economic opportunity development district, may, by order entered of record, impose that tax on the privilege of selling tangible personal property and rendering select services in the district in accordance with this section.

(b) Tax base. -- The base of a special district excise tax imposed pursuant to this section shall be identical to the base of the consumers sales and service tax imposed pursuant to article fifteen, chapter eleven of this code on sales made and services rendered within the boundaries of the district. Sales of gasoline and special fuel are not subject to special district excise tax but remain subject to the tax levied by article fifteen, chapter eleven of this code. Except for the exemption provided in section nine-f of that article, all exemptions and exceptions from the consumers sales and service tax also apply to the special district excise tax.

(c) Tax rate. -- The rate or rates of a special district excise tax levied pursuant to this section shall be identical to the rate or rates of the consumer sales and service tax imposed pursuant to article fifteen, chapter eleven of this code on sales made and services rendered within the boundaries of the district authorized by this section.

(d) Collection by Tax Commissioner. -- The order of the county commission imposing a special district excise tax shall provide for the tax to be collected by the Tax Commissioner in the same manner as the tax levied by section three, article fifteen, chapter eleven of this code is administered, assessed, collected and enforced.

(1) The Tax Commissioner may require the electronic filing of returns related to the special district excise tax imposed pursuant to this section, and also may require the electronic payment of the special district excise tax imposed pursuant to this section. The Tax Commissioner may prescribe by rules adopted or proposed pursuant to article three, chapter twenty-nine-a of this code, administrative notices, and forms and instructions, the procedures and criteria to be followed to electronically file those returns and to electronically pay the special district excise tax imposed pursuant to this section.

(2) Any rules filed by the State Tax Commissioner relating to the special district excise tax imposed pursuant to this section shall set forth the following:

(A) Acceptable indicia of timely payment;

(B) Which type of electronic filing method or methods a particular type of taxpayer may or may not use;

(C) What type of electronic payment method or methods a particular type of taxpayer may or may not use;

(D) What, if any, exceptions are allowable, and alternative methods of payment that may be

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used for any exceptions;

(E) Procedures for making voluntary or mandatory electronic payments or both;

(F) Procedures for ensuring that taxpayers new to an economic opportunity development district are included within the Tax Commissioner's database;

(G) Procedures for ensuring that taxpayers with multiple locations properly allocate their special district excise taxes to the appropriate economic opportunity development district and reflect the allocation of their returns; and

(H) Any other provisions necessary to ensure the timely electronic filing of returns related to the special district excise tax and the making of payments electronically of the special district excise tax imposed pursuant to this section.

(3)(A) Notwithstanding the provisions of section five-d, article ten, chapter eleven of this code: (i) So long as bonds are outstanding pursuant to this article, the Tax Commissioner shall provide on a monthly basis to the trustee for bonds issued pursuant to this article information on returns submitted pursuant to this article; and (ii) the trustee may share the information so obtained with the county commission that established the economic opportunity development district that issued the bonds pursuant to this article and with the bondholders and with bond counsel for bonds issued pursuant to this article. The Tax Commissioner and the trustee may enter into a written agreement in order to accomplish exchange of the information.

(B) Any confidential information provided pursuant to this subdivision shall be used solely for the protection and enforcement of the rights and remedies of the bondholders of bonds issued pursuant to this article. Any person or entity that is in possession of information disclosed by the Tax Commissioner or shared by the trustee pursuant to subdivision (a) of this subsection is subject to the provisions of section five-d, article ten, chapter eleven of this code as if the person or entity that is in possession of the tax information is an officer, employee, agent or representative of this state or of a local or municipal governmental entity or other governmental subdivision.

(C) Notwithstanding any provision of this code to the contrary, so long as bonds are outstanding pursuant to this article, the Tax Commissioner shall allow a designated representative of the county commission that established the economic opportunity development district for which the bonds were issued to audit the returns filed by the taxpayers in the economic opportunity development district no less often than once each quarter of the fiscal year. The Tax Commissioner may require the audit to be conducted at the Tax Commissioner's office, may prohibit copying of any returns, and may require the representatives to enter into a written confidentiality agreement. The Tax Commissioner shall promptly investigate any questions raised by an audit, shall promptly take all actions required to correct any errors, and shall report to the applicable county commission the results of its investigation and actions.

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(e) Deposit of net tax collected. --

(1) The order of the county commission imposing a special district excise tax shall provide that the Tax Commissioner deposit the net amount of tax collected in the Special Economic Opportunity Development District Fund to the credit of the county commission's subaccount therein for the economic opportunity development district and that the money in the subaccount may only be used to pay for development expenditures as provided in this article except as provided in subsection (f) of this section.

(2) The State Treasurer shall withhold from the county commission's subaccount in the Economic Opportunity Development District Fund and shall deposit in the General Revenue Fund of this state, on or before the twentieth day of each calendar month next following the effective date of a special district excise tax, a sum equal to one twelfth of the base tax revenue amount last certified by the Development Office pursuant to section seven of this article.

(f) Effective date of special district excise tax. -- Any taxes imposed pursuant to the authority of this section are effective on the first day of the calendar month that begins sixty days after the date of adoption of an order entered of record imposing the tax or the first day of any later calendar month expressly designated in the order.

(g) Copies of order. -- Upon entry of an order levying a special district excise tax, a certified copy of the order shall be mailed to the State Auditor, as ex officio the chief inspector and supervisor of public offices, the State Treasurer and the Tax Commissioner.

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§7-22-13. Requisition of district subaccount funds.

Sixty days after collection of a special district excise tax begins, the State Auditor shall, upon receipt of a monthly requisition from the district board, issue his or her warrant on the State Treasurer for the funds requested from the district's subaccount, which funds are applied for the purposes described in section five of this article and the State Treasurer shall pay the warrant out of funds in the subaccount.

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§7-22-14. Modification of Included area; notice; hearing.

(a) General. -- The order creating an economic opportunity development district may not be amended to include additional contiguous property until after the amendment is approved by the executive director of the Development Office in the same manner as an application to approve the establishment of the district is acted upon under section seven of this article and the amendment is authorized by the Legislature. The order creating an economic opportunity development district may not be amended to remove property until after the amendment is approved by the executive director of the Development Office in the same manner as an application to approve the establishment of the district is acted upon under section seven of this article: Provided, That any amendment for the purpose of removing property from an economic opportunity development district may not require authorization from the Legislature and shall ensure that any such district after such an amendment remains contiguous. The order which is entered for the purpose of removing parcels from an existing economic opportunity development district may not be effective any earlier than the first day of the calendar month which begins at least thirty days following the entry of the order or such later date as may be specified by the county commission in the order.

(b) Limitations. -- Additional property may not be included in the district unless it is situated within the boundaries of the county and is contiguous to the then current boundaries of the district.

(c) Public hearing required. --

(1) The county commission of any county desiring to amend its order shall designate a time and place for a public hearing upon the proposal to include additional property. The notice shall meet the requirements set forth in section six of this article.

(2) At the time and place set forth in the notice, the county commission shall afford the opportunity to be heard to any owners of real property either currently included in or proposed to be added to the existing district and to any other residents of the county.

(d) Application to West Virginia Development Office. -- Following the hearing, the county commission may, by resolution, approve the filing of an application with the Development Office for the inclusion of the additional property in the district or for the removal of the applicable parcels from the district.

(e) Consideration by the Executive Director of the Development Office. -- Before the executive director of the Development Office approves inclusion of the additional property in the district, the Development Office shall determine the amount of taxes levied by article fifteen, chapter eleven of this code that were collected by businesses located in the area the county commission proposes to add to the district in the same manner as the base amount of tax was determined when the district was first created. The State Treasurer shall also deposit one twelfth of this additional tax base amount into the General Revenue Fund each month, as provided in section twelve of this article.

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(f) Legislative action required to include additional property. -- After the Executive Director of the Development Office approves amending the boundaries of the district to include additional property, the Legislature must amend section nine of this article to allow levy of the special district excise tax on business located in geographic area to be included in the district. After the Legislature amends said section, the county commission may then amend its order: Provided, That the order may not be effective any earlier than the first day of the calendar month that begins sixty days after the effective date of the act of the Legislature authorizing the levy on the special district excise tax on businesses located in the geographic area to be added to the boundaries of the district for which the tax is levied or a later date as set forth in the order of the county commission.

(g) Collection of special district excise tax. -- All businesses included in a district because of the boundary amendment shall on the effective date of the order, determined as provided in subsection (f) of this section, collect the special district excise tax on all sales on tangible property or services made from locations in the district on or after the effective date of the county commission's order or a later date as set forth in the order.

(h) Minor Modifications. -- Notwithstanding any provision of this article to contrary, a county commission may amend the order creating an economic opportunity development district to make, and may make, modifications to the boundaries of the economic opportunity development district without holding a public hearing or receiving approval of the executive director of the West Virginia Development Office or authorization by the Legislature if the modifications do not increase the total acreage of the economic opportunity development district or result in a change to the base tax revenue amount. The county commission is authorized to levy special district excise taxes on sales of tangible personal property and services made from business locations within the modified boundaries of the economic opportunity development district.

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§7-22-15. Abolishment and dissolution of district; notice; hearing.

(a) General. -- (1) Except upon the express written consent of the Executive Director of the Development Office and of all the holders or obligees of any indebtedness or other instruments the proceeds of which were applied to any development expenditures or any indebtedness the payment of which is secured by revenues payable into the fund provided under section eight of this article or by any public property, a district may only be abolished by the county commission when there is no outstanding indebtedness, the proceeds of which were applied to any development expenditures or the payment of which is secured by revenues payable into the fund provided under section eight of this article, or by any public property, and following a public hearing upon the proposed abolishment.

(2) Thirty-year limitations. --

(A) Thirty-year limitation on new districts. -- Notwithstanding subdivision (1) of this subsection, and notwithstanding any other provision of this code to the contrary, any district for which the date of initial enactment was after December 31, 2013, shall cease to exist and shall be abolished by operation of law, at 11:59 P.M., United States eastern time zone, on December 31 of the thirtieth calendar year subsequent to the initial year of enactment. Special district excise tax may not be levied, imposed or collected in or from the district so abolished or from or on any business located therein or any transaction occurring therein after the cessation and abolishment of the district.

(B) Thirty-year limitation on preexisting districts receiving authorization for boundary changes or other changes after December 31, 2013. -- Notwithstanding subdivision (1) of this subsection, notwithstanding any other provision of this Code to the contrary and notwithstanding a date of initial enactment for a district that is prior to December 31, 2013, if legislative authorization is enacted after December 31, 2013, to expand or amend the previously authorized boundary, size or acreage of the district, or make any other amendment or change relating to the district, such district shall cease to exist and shall be abolished by operation of law, at 11:59 P.M., United States eastern time zone, on December 31 of the thirtieth calendar year subsequent to the initial year of enactment. Special district excise tax may not be levied, imposed or collected in or from the district so abolished or from or on any business located therein or any transaction occurring therein after the cessation and abolishment of the district.

(C) Definitions. -- For purposes of this subdivision:

(i) The term "date of initial enactment" means the date of passage of legislation whereby legislative authorization was first enacted for the county commission to levy special district excise taxes for a district, and prior to enactment of any legislative authorization to expand or amend the authorized boundary, size or acreage of the district, or make any other amendment or change relating to the district as originally authorized.

(ii) The term "initial year of enactment" means the calendar year during which the date of

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initial enactment occurred.

(D) This section shall not be interpreted to abrogate or hinder the authority of the Tax Commissioner to collect, receive, process or administer any special district excise tax accrued, due or payable for any tax period prior to the cessation and abolishment of the district, or to audit and issue assessments of tax, interest, additions to tax and penalties for the collection, remittance and enforcement thereof.

(E) Upon cessation and abolishment of a district under this section or any provision of this code, or any cessation or abolishment of a district for any reason, the consumers sales and service tax and use tax and municipal consumers sales and service tax and use tax, if applicable, shall be imposed, collected, levied and remitted, as provided by law for sales and uses in the previously authorized district.

(b) Notice of public hearing. -- Notice of the public hearing required by subsection (a) of this section shall be provided by first-class mail to all owners of real property within the district and shall be published as a Class I-0 legal advertisement in compliance with article three, chapter fifty-nine of this code at least twenty days prior to the public hearing.

(c) Transfer of district assets and funds. -- Upon the abolishment of any economic opportunity development district, any funds or other assets, contractual rights or obligations, claims against holders of indebtedness or other financial benefits, liabilities or obligations existing after full payment has been made on all existing contracts, bonds, notes or other obligations of the district are transferred to and assumed by the county commission. Any funds or other assets transferred shall be used for the benefit of the area included in the district being abolished.

(d) Reinstatement of district. -- Following abolishment of a district pursuant to this section, its reinstatement requires compliance with all requirements and procedures set forth in this article for the initial development, approval, establishment and creation of an economic opportunity development district.

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§7-22-16. Bonds issued to finance economic opportunity development district projects.

(a) General. -- The county commission that established the economic opportunity development district may issue bonds or notes for the purpose of financing development expenditures, as described in section five of this article, with respect to one or more projects within the economic opportunity development district.

(b) Limited obligations. -- All bonds and notes issued by a county commission under the authority of this article are limited obligations of the county.

(c) Term of obligations. -- No county commission may issue notes, bonds or other instruments for funding district projects or improvements that exceed a repayment schedule of thirty years.

(d) Debt service. -- The principal and interest on the bonds shall be payable out of the funds on deposit in the subaccount established for the economic opportunity development district pursuant to section eight of this article, including, without limitation, any funds derived from the special district excise tax imposed by section twelve of this article or other revenues derived from the economic opportunity development district to the extent pledged for the purpose by the county commission in the resolution authorizing the bonds.

(e) Surplus funds. -- To the extent that the average daily amount on deposit in the subaccount established for a district pursuant to section eight of this article exceeds, for more than six consecutive calendar months, the sum of: (1) One hundred thousand dollars; plus (2) the amount required to be kept on deposit pursuant to the documents authorizing, securing or otherwise relating to the bonds or notes issued under this section, then the excess shall be used by the district either to redeem the bonds or notes previously issued or remitted to the General Fund of this state.

(f) Debt not general obligation of county. -- Neither the notes or bonds and any interest coupons issued under the authority of this article shall ever constitute an indebtedness of the county commission issuing the notes or bonds within the meaning of any Constitutional provision or statutory limitation and shall never constitute or give rise to a pecuniary liability of the county commission issuing the notes or bonds.

(g) Debt not a charge general credit or taxing powers of county. -- Neither the bonds or notes, nor interest thereon, is a charge against the general credit or taxing powers of the county commission and that fact shall be plainly stated on the face of each bond or note.

(h) Issuance of bonds or notes. --

(1) Bonds or notes allowed under this section may be executed, issued and delivered at any time and from time to time, may be in a form and denomination, may be of a tenor, must be negotiable but may be registered as to the principal thereof or as to the principal and

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interest thereof, may be payable in any amounts and at any time or times, may be payable at any place or places, may bear interest at any rate or rates payable at any place or places and evidenced in any manner and may contain any provisions therein not inconsistent herewith, all as provided in the order or orders of the county commission whereunder the bonds or notes are authorized to be issued.

(2) The bonds may be sold by the county commission at public or private sale at, above or below par as the county commission authorizes.

(3) Bonds and notes issued pursuant to this article shall be signed by the president of the county commission, or other chief officer thereof, and attested by the county clerk and be under the seal of the county.

(4) Any coupons attached to the bonds shall bear the facsimile signature of the president of the commission or other chief officer thereof. In case any of the officials whose signatures appear on the bonds, notes or coupons cease to be officers before the delivery of the bonds or notes, their signatures shall, nevertheless, be valid and sufficient for all purposes to the same extent as if they had remained in office until the delivery.

(i) Additional bonds or notes. -– If the proceeds of the bonds or notes, by error of calculation or otherwise, are less than the cost of the economic opportunity development district project, or if additional real or personal property is to be added to the district project or if it is determined that financing is needed for additional development or redevelopment expenditures, additional bonds or notes may, in like manner, be issued to provide the amount of the deficiency or to defray the cost of acquiring or financing any additional real or personal property or development or redevelopment expenditures and, unless otherwise provided for in the trust agreement, mortgage or deed of trust, are considered to be of the same issue and shall be entitled to payment from the same fund, without preference or priority, and shall be of equal priority as to any security.

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§7-22-17. Security for bonds.

(a) General. -- Unless the county commission otherwise determines in the order authorizing the issuance of the bonds or notes under the authority of this article, there is hereby created a statutory lien upon the subaccount created pursuant to section eight of this article and all special district excise tax revenues collected for the benefit of the district pursuant to section eleven-a, article ten, chapter eleven of this code for the purpose of securing the principal of the bonds or notes and the interest thereon.

(b) Security for debt service. -- The principal of and interest on any bonds or notes issued under the authority of this article shall be secured by a pledge of the special district excise tax revenues derived from the economic opportunity development district project by the county commission issuing the bonds or notes to the extent provided in the order adopted by the county commission authorizing the issuance of the bonds or notes.

(c) Trust indenture. --

(1) In the discretion and at the option of the county commission, the bonds and notes may also be secured by a trust indenture by and between the county commission and a corporate trustee, which may be a trust company or bank having trust powers, within or without the State of West Virginia.

(2) The resolution order authorizing the bonds or notes and fixing the details thereof may provide that the trust indenture may contain provisions for the protection and enforcing the rights and remedies of the bondholders as are reasonable and proper, not in violation of law, including covenants setting forth the duties of the county commission in relation to the construction, acquisition or financing of an economic opportunity development district project, or part thereof or an addition thereto, and the improvement, repair, maintenance and insurance thereof and for the custody, safeguarding and application of all moneys and may provide that the economic opportunity development district project shall be constructed and paid for under the supervision and approval of the consulting engineers or architects employed and designated by the county commission or, if directed by the county commission in the resolution order, by the district board, and satisfactory to the purchasers of the bonds or notes, their successors, assigns or nominees who may require the security given by any contractor or any depository of the proceeds of the bonds or notes or the revenues received from the district project be satisfactory to the purchasers, their successors, assigns or nominees.

(3) The indenture may set forth the rights and remedies of the bondholders, the county commission or trustee and the indenture may provide for accelerating the maturity of the revenue bonds, at the option of the bondholders or the county commission issuing the bonds, upon default in the payment of the amounts due under the bonds.

(4) The county commission may also provide by resolution and in the trust indenture for the payment of the proceeds of the sale of the bonds or notes and the revenues from the

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economic opportunity development district project to any depository it determines, for the custody and investment thereof and for the method of distribution thereof, with safeguards and restrictions it determines to be necessary or advisable for the protection thereof and upon the filing of a certified copy of the resolution or of the indenture for record in the office of the clerk of the county commission of the county in which the economic opportunity development project is located, the resolution has the same effect, as to notice, as the recordation of a deed of trust or other recordable instrument.

(5) In the event that more than one certified resolution or indenture is recorded, the security interest granted by the first recorded resolution or indenture has priority in the same manner as an earlier filed deed of trust except to the extent the earlier recorded resolution or indenture provides otherwise.

(d) Mortgage or deed of trust. --

(1) In addition to or in lieu of the indenture provided in subsection (c) of this section, the principal of and interest on the bonds or notes may, but need not, be secured by a mortgage or deed of trust covering all or any part of the economic opportunity development district project from which the revenues pledged are derived and the same may be secured by an assignment or pledge of the income received from the economic opportunity development district project.

(2) The proceedings under which bonds or notes are authorized to be issued, when secured by a mortgage or deed of trust, may contain the same terms, conditions and provisions provided herein when an indenture is entered into between the county commission and a trustee and any mortgage or deed of trust may contain any agreements and provisions customarily contained in instruments securing bonds or notes, including, without limiting the generality of the foregoing, provisions respecting the fixing and collection of revenues from the economic opportunity development district project covered by the proceedings or mortgage, the terms to be incorporated in any lease, sale or financing agreement with respect to the economic opportunity development district project, the improvement, repair, maintenance and insurance of the economic opportunity district project, the creation and maintenance of special funds from the revenues received from the economic opportunity development district project and the rights and remedies available in event of default to the bondholders or note holders, the county commission, or to the trustee under an agreement, indenture, mortgage or deed of trust, all as the county commission body considers advisable and shall not be in conflict with the provisions of this article or any existing law: Provided, That in making any agreements or provisions, a county commission shall not have the power to incur original indebtedness by indenture, order, resolution, mortgage or deed of trust except with respect to the economic opportunity development district project and the application of the revenues therefrom and shall not have the power to incur a pecuniary liability or a charge upon its general credit or against its taxing powers unless approved by the voters in accordance with article one, chapter thirteen of this code or as otherwise permitted by the Constitution of this state.

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(e) Enforcement of obligations. --

(1) The proceedings authorizing any bonds and any indenture, mortgage or deed of trust securing the bonds may provide that, in the event of default in payment of the principal of or the interest on the bonds, or notes, or in the performance of any agreement contained in the proceedings, indenture, mortgage or deed of trust, payment and performance may be enforced by the appointment of a receiver in equity with power to charge and collect rents or other amounts and to apply the revenues from the economic opportunity development district project in accordance with the proceedings or the provisions of the agreement, indenture, mortgage or deed of trust.

(2) Any agreement, indenture, mortgage or deed of trust may provide also that, in the event of default in payment or the violation of any agreement contained in the mortgage or deed of trust, the agreement, indenture, mortgage or deed of trust may be foreclosed either by sale at public outcry or by proceedings in equity and may provide that the holder or holders of any of the bonds secured thereby may become the purchaser at any foreclosure sale, if the highest bidder therefor.

(f) No pecuniary liability. -- No breach of any agreement, indenture, mortgage or deed of trust may impose any pecuniary liability upon a county or any charge upon its general credit or against its taxing powers.

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§7-22-18. Redemption of bonds.

The revenue bonds issued pursuant to this article may contain a provision therein to the effect that they, or any of them, may be called for redemption at any time prior to maturity by the county commission and at the redemption prices or premiums, which terms shall be stated in the bond.

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§7-22-19. Refunding bonds.

(a) Any bonds issued under this article and at any time outstanding may at any time, and from time to time, be refunded by a county commission by the issuance of its refunding bonds in amount as the county commission considers necessary to refund the principal of the bonds to be refunded, together with any unpaid interest thereon; to make any improvements or alterations in the economic opportunity development district project; and any premiums and commissions necessary to be paid in connection therewith.

(b) Any refunding may be effected whether the bonds to be refunded shall have then matured or shall thereafter mature, either by sale of the refunding bonds and the application of the proceeds thereof for the redemption of the bonds to be refunded thereby, or by exchange of the refunding bonds for the bonds to be refunded thereby: Provided, That the holders of any bonds to be refunded shall not be compelled without their consent to surrender their bonds for payment or exchange prior to the date on which they are payable or, if they are called for redemption, prior to the date on which they are by their terms subject to redemption.

(c) Any refunding bonds issued under the authority of this article is subject to the provisions contained in section sixteen of this article and shall be secured in accordance with the provisions of section seventeen of this article.

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§7-22-20. Use of proceeds from sale of bonds.

(a) General. -- The proceeds from the sale of any bonds issued under authority of this article shall be applied only for the purpose for which the bonds were issued: Provided, That any accrued interest received in any sale shall be applied to the payment of the interest on the bonds sold: Provided, however, That if for any reason any portion of the proceeds may not be needed for the purpose for which the bonds were issued, then the unneeded portion of the proceeds may be applied to the purchase of bonds for cancellation or payment of the principal of or the interest on the bonds, or held in reserve for the payment thereof.

(b) Payment of costs. -- The costs that may be paid with the proceeds of the bonds include all development expenditures described in section five of this article and may also include, but not be limited to, the following:

(1) The cost of acquiring any real estate determined necessary;

(2) The actual cost of the construction of any part of an economic opportunity development district project which may be constructed, including architects', engineers', financial or other consultants' and legal fees;

(3) The purchase price or rental of any part of an economic opportunity development district project that may be acquired by purchase or lease;

(4) All expenses incurred in connection with the authorization, sale and issuance of the bonds to finance the acquisition and the interest on the bonds for a reasonable time prior to construction during construction and for not exceeding twelve months after completion of construction; and

(5) Any other costs and expenses reasonably necessary in the establishment and acquisition of an economic opportunity development district project and the financing thereof.

WV Legislature

§7-22-21. Bonds made legal investments.

Bonds issued under the provisions of this article are legal investments for banks, building and loan associations and insurance companies organized under the laws of this state and for a business development corporation organized pursuant to chapter thirty-one, article fourteen of this code.

WV Legislature

§7-22-22. Exemption from taxation.

The revenue bonds and notes issued pursuant to this article and the income therefrom are exempt from taxation except inheritance, estate and transfer taxes; and the real and personal property which a county commission or district board acquires pursuant to the provisions of this article are exempt from taxation by the state, or any county, municipality or other levying body, as public property so long as the property is owned by the county commission or district board.

WV Legislature

§7-22-23. Joint economic opportunity development districts.

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

(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 economic opportunity development district; (2) propose joint applications for the districts; (3) enter into one or more intergovernmental agreements between themselves and/or the Commissioner of Highways to share: (A) Project expenses; and (B) certain excise tax collections, on a pro rata or other basis, to facilitate construction of projects within the combined economic opportunity development district and to jointly take such other actions as are authorized in the County Economic Opportunity Development District Act.

(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 if bonds or notes, remain outstanding the proceeds of which were used to finance construction of the project for which the written intergovernmental agreement was executed.

(e) No withdrawing county commission or municipality is 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 an economic opportunity development district may enter into one or more intergovernmental agreements with one or more other counties or municipalities that also create an economic opportunity development 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 bonds or notes.

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

(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.

WV Legislature

(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.

WV Legislature

§7-22-24. Application by Division of Highways.

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

(b) Projects 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, shall be 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.

WV Legislature