WEST VIRGINIA CODE: §8-38-7

§8-38-7. 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 municipalities 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 municipality to the funding of development expenditures;

(8) Identification of any businesses that the municipality 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 municipality 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

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the application: Provided, That for purposes of this article, the aggregate amount is designated as “the base tax revenue amount”;

(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 development 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 municipality has a strategy for economic development in the municipality and whether the project is consistent with that strategy;

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

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

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

(13)(A) The ability of the municipality 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 municipality 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 municipality to levy an excise tax on sales of goods and services made within the economic opportunity development 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 municipality 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. -- 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 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 municipality’s economic opportunity district project application, he or she shall issue to the municipality 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

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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 municipality 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 municipality'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 municipality 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 municipality 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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