WEST VIRGINIA CODE CHAPTER 8 ARTICLE 38

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§8-38-1. Short title.

This article is known and may be cited as the “Municipal Economic Opportunity Development District Act”.

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§8-38-2. Legislative findings and declaration of purpose.

The Legislature finds that many significant business opportunities initiated within municipalities of this state face financial and other economic obstacles.

The Legislature further finds that there are undeveloped, underdeveloped or seriously deteriorated development areas within certain municipalities 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 municipalities 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 municipalities of this state. This adversely affects the economic and general well-being of the citizens of those municipalities. Establishment of economic opportunity development districts within municipalities 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 those municipalities 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 municipalities 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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§8-38-3. Definitions.

For purposes of this article, the term:

(1) "Affordable housing" means housing that could be purchased with a cash down payment of at least ten percent and the proceeds of a mortgage loan, the monthly principal and interest payments on which do not exceed thirty percent of the gross monthly income of a household earning one hundred percent of the current median family income, as computed by the United States Department of Housing and Urban Development, for the county in which the district is located. For the purposes of this definition, the monthly principal and interest payments referred to in the preceding sentence are computed using a standard amortization calculation incorporating the prevailing annual rate of interest on mortgage loans offered by financial institutions in the vicinity of the district, as determined by the Development Office at the time of its review of a municipality's application in accordance with section seven of this article, and a thirty year amortization period.

(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;

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

(6) "Municipality" is a word of art and means any Class I, Class II and Class III city or any Class IV town or village as classified in section three, article one of this chapter;

(7) "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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§8-38-4. Authorization to create economic opportunity development districts.

A municipality 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 limits;

(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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§8-38-5. Development expenditures.

Any municipality 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 municipality, 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 municipality 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;

(10) Providing any other services that the municipality or district board is authorized to

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perform and which the municipality 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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§8-38-6. Notice; hearing.

(a) General. -- A municipality 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 municipality shall afford the opportunity to be heard to any owner of real property situated in the proposed district and any residents of the municipality.

(d) Application to West Virginia Development Office. -- If the municipality, 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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§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 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 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;

(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 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 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

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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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§8-38-8. 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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§8-38-9. Authorization to levy special district excise tax.

(a) General. — Municipalities 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 municipality until after the Legislature expressly authorizes the municipality 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 municipalities 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 City of South Charleston may levy a special district excise tax for the benefit of the South Charleston Park Place Economic Opportunity Development District which comprises up to two thousand one hundred contiguous acres of land.

(2) The City of Huntington may levy a special district excise tax for the benefit of the City of Huntington Economic Opportunity Development District which comprises 146 acres of land, subject to holding public hearing as provided in §8-38-6 of this code, submitting the application required by §8-38-6 and §8-38-7 of this code, and obtaining the approval of the West Virginia Division of Economic Development as provided in §8-38-7 of this code.

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(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;

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

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§8-38-10. Ordinance 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 municipality may create the district by ordinance entered of record as provided in article one of this chapter: Provided, That the municipality 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 ordinance 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 insurance of all types and in connection with the primary use thereof and incidental thereto

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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 municipality) 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 ordinance. -- The municipality's ordinance shall also state the general intention of the municipality to develop and increase services and to make capital improvements within the district.

(c) Mailing of certified copies of ordinance. -- Upon enactment of an ordinance establishing an economic opportunity development district excise tax, a certified copy of the ordinance

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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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§8-38-11. District board; duties.

(a) General. -- The council of a municipality that has been authorized by the Development Office to establish an economic opportunity development district, in accordance with this article, shall provide, by ordinance, for the appointment of a district board to oversee the operations of the district: Provided, That the municipality may, in the ordinance, 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 municipality within which the district is located.

(c) Annual report. -- The district board, in addition to the duties prescribed by the ordinance creating the district, shall submit an annual report to the municipality 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 municipality 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 municipality: Provided, That when a district board is not created for the district but the work of the board is done by the municipality, the members shall receive no additional compensation.

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§8-38-12. Special district excise tax authorized.

(a) General. -- The council of a municipality, authorized by the Legislature to levy a special district excise tax for the benefit of an economic opportunity development district, may, by ordinance, 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 article fifteen, chapter eleven of this code, 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 stated in an ordinance enacted by the municipality and identical to the rate or rates of the consumers sales and service tax imposed pursuant to article fifteen, chapter eleven of this code on sales rendered within the boundaries of the district authorized by this section.

(d) Collection by Tax Commissioner. -- The ordinance of the municipality 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 State Tax Commissioner may require the electronic filing of returns related to the special district excise tax imposed pursuant to this section and may require the electronic payment of the special district excise tax imposed pursuant to this section. The State 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 municipality 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 municipality 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 municipality the results of its investigation and actions.

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(e) Deposit of net tax collected. --

(1) The ordinance of the municipality 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 municipality'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)(A) The State Treasurer shall withhold from the municipality'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.

(B) In addition to the amounts described in paragraph (A) of this subdivision, the Tax Commissioner shall deposit in the General Revenue Fund of this state on the dates specified in paragraph (A) not less than twenty percent nor more than fifty percent of the excess of the special district excise taxes collected during the preceding month above one twelfth of the base tax revenue, said percentage to be fixed by the Development Office in conjunction with its approval of an application in accordance with section seven of this article based on the amount of state funds, if any, to be expended in conjunction with the respective economic opportunity development district project for items including, but not limited to, the acquisition, construction, reconstruction, improvement, enlargement or extension of roadways, rights-of-way, sidewalks, traffic signals, water or sewer lines and other public infrastructure and such other expenditures of state funds identified by the Development Office: Provided, That the Development Office has the discretion to reduce the minimum percentage of the excess special district excise taxes deposited by the Tax Commissioner in the General Revenue Fund as outlined above from twenty percent to ten percent in conjunction with its approval of an application in accordance with section seven of this article based on its determination that:

(i) The economic development project provides for expenditures in excess of $100 million;

(ii) The economic opportunity development district project does not require the state to expend any additional state funds for items within the district including, but not limited to, the acquisition, construction, reconstruction, improvement, enlargement or extension of roadways, rights-of-way, sidewalks, traffic signals, water or sewer lines and other public infrastructure; and

(iii) The economic development project contains a provision for a mixed use development with a housing component with at least ten percent of housing units in the district allocated as affordable housing.

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(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 at least sixty days after the date of enactment of the ordinance imposing the tax or at any later date expressly designated in the ordinance that begins on the first day of a calendar month.

(g) Copies of ordinance. -- Upon enactment of an ordinance levying a special district excise tax, a certified copy of the ordinance 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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§8-38-13. 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.

WV Legislature

§8-38-14. Modification of included area; notice; hearing.

(a) General. -- The ordinance 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. 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 such amendment for the purpose of removing property from an economic opportunity development district shall 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 municipality and is contiguous to the then current boundaries of the district.

(c) Public hearing required. --

(1) The council of any municipality desiring to amend its ordinance 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 municipality 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 municipality.

(d) Application to West Virginia Development Office. -- Following the hearing, the municipality 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 municipality 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 municipality may then amend its ordinance: Provided, That the ordinance may not be effective any earlier than the first day of the calendar month that begins sixty days after the effective date of the amended ordinance imposing the levy of 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 the first day of a later calendar month as set forth in the ordinance of the municipality.

(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 ordinance, 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 municipality's ordinance or a later date as set forth in the ordinance.

(h) Minor modifications. -- Notwithstanding any provision of this article to contrary, a municipality may amend the ordinance 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 municipality 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.

WV Legislature

§8-38-15. Abolishment and dissolution of district; notice; hearing.

(a) General. -- 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 municipality 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.

(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 municipality. 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.

WV Legislature

§8-38-16. Bonds issued to finance economic opportunity development district projects.

(a) General. -- The municipality 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 municipality under the authority of this article are limited obligations of the municipality.

(c) Term of obligations. -- No municipality 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 is 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 municipality in the ordinance 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) $100,000; 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 municipality. -- Neither the notes or bonds and any interest coupons issued under the authority of this article shall ever constitute an indebtedness of the municipality issuing the notes or bonds within the meaning of any Constitutional provision or statutory limitation and do not constitute or give rise to a pecuniary liability of the municipality issuing the notes or bonds.

(g) Debt not a charge general credit or taxing powers of municipality. -- Neither the bonds or notes, nor interest thereon, is a charge against the general credit or taxing powers of the municipality 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 interest thereof, may be payable in any amounts and at any time or times, may be payable at

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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 ordinance of the municipality whereunder the bonds or notes are authorized to be issued.

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

(3) Bonds and notes issued pursuant to this article shall be signed by the authorized representative of the municipality and attested by the municipal clerk or recorder and be under the seal of the municipality.

(4) Any coupons attached to the bonds shall bear the facsimile signature of the authorized representative of the municipality. If 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 are 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 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 expenditures and, unless otherwise provided in the trust agreement, mortgage or deed of trust, are considered to be of the same issue and are entitled to payment from the same fund, without preference or priority, and are of equal priority as to any security.

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§8-38-17. Security for bonds.

(a) General. -– Unless the municipality otherwise determines in the ordinance 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 municipality issuing the bonds or notes to the extent provided in the ordinance adopted by the municipality authorizing the issuance of the bonds or notes.

(c) Trust indenture. --

(1) In the discretion and at the option of the municipality, the bonds and notes may also be secured by a trust indenture by and between the municipality 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 ordinance 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 municipality 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 municipality or, if directed by the municipality in the ordinance, 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 municipality or trustee and the indenture may provide for accelerating the maturity of the revenue bonds, at the option of the bondholders or the municipality issuing the bonds, upon default in the payment of the amounts due under the bonds.

(4) The municipality 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 economic opportunity development district project to any depository it determines, for the

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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 with the clerk or recorder of the municipality 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 municipality 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 development 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 municipality, or to the trustee under an agreement, indenture, mortgage or deed of trust, all as the municipality 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 municipality shall not have the power to incur original indebtedness by indenture, ordinance, 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.

(e) Enforcement of obligations. --

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(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 municipality or any charge upon its general credit or against its taxing powers.

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§8-38-18. 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 municipality and at the redemption prices or premiums, which terms shall be stated in the bond.

WV Legislature

§8-38-19. 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 municipality by the issuance of its refunding bonds in amount as the municipality 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 are 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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§8-38-20. 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

§8-38-21. 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

§8-38-22. 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 municipality 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 municipality or district board.

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§8-38-23. 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; and (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 as long as 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.

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(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

§8-38-24. 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.

(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.

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