WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1995

ENROLLED

SENATE BILL NO. 550

(By Senator Craig)

PASSED March 9, 1995
In Effect 90 days from Passage
AN ACT to amend chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article eleven-b; and to amend and reenact section eleven, article nine-a, chapter eighteen of said code, all relating to the tax increment project financing act; legislative findings and purpose; definitions; tax increment financing procedures; copies of tax increment project financing order provided to assessor, sheriff and director of finance; issuance of obligations for development project costs; terminating tax increment financing; severability; and clarifying the term "assessed value".

Be it enacted by the Legislature of West Virginia:

That chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article eleven-b; and that section eleven, article nine-a, chapter eighteen of said code be amended and reenacted, all to read as follows:
CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.
ARTICLE 11B. WEST VIRGINIA TAX INCREMENT FINANCING ACT.

§7-11B-1. Short title.

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

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

It is hereby found and declared that capital improvements or facilities in any area which result in the increase in the value of property located in the area or encourage increased employment within the area will serve a public purpose for each taxing unit possessing the authority to impose ad valorem taxes in the area and that each development project developed pursuant to this article, and any leasehold interest therein, are declared to be public property, and shall be exempt from taxation by the state or any county, municipality or to other levying body as long as such development project is owned by the county commission.

§7-11B-3. Definitions.

As used in this article, the term or phrase:

(a) "Agency" means a county or municipal development agency established by section one, article twelve, chapter seven of this code.

(b) "Base assessed value" means the taxable assessed value of real and tangible personal property of a project developer within a development project area as shown upon the land book and personal property records of the assessor on the first day of July of the year preceding the effective date of the order authorizing the tax increment financing plan.

(c) "Current assessed value" means the annual taxable assessed value of real and tangible personal property of a project developer within a development project area as shown upon the land book and personal property records.
of the assessor.

(d) "Development project" means a project undertaken by a county commission in a development project area in accordance with a tax increment financing plan.

(e) "Development project area" means an area to be designated by one or more agencies as a development project area, which may include one or more counties, municipalities or combination thereof.

(f) "Private project" means any project which is subject to ad valorem property taxes in the state undertaken by a project developer in accordance with a tax increment financing plan in a development project area.

(g) "Project" means any facility requiring an investment of capital, including extensions, additions or improvements to existing facilities and including water or waste water facilities, but does not include performance of any governmental service by a county or municipal government or any housing facility to be rented or used as a permanent residence.

(h) "Project developer" means any person or corporation which engages in the development of projects in the state.

(i) "Tax increment" means the amount of tax attributable to the amount by which the current assessed value of a private project in a development project area exceeds the base assessed value, if any, of such private project, less the portion of tax allocated to the state.

(j) "Tax increment obligation" means any bond or note issued by a county commission in accordance with section six of this article.

(k) "Tax increment financing plan" means a plan proposed by either an agency or a project developer requesting that a specific development project be developed in conjunction with a private project of such project developer, which plan is approved by the county
commission for the county in which the development project area is located in accordance with the procedures set forth in section four of this article.

§7-11B-4. Tax increment financing procedures.

(a) An agency or a project developer may request that a county commission adopt a tax increment financing plan with respect to a development project to be developed in conjunction with a private project of a project developer. Upon receipt of an agency's or project developer's proposed tax increment financing plan, the county commission of any county may adopt a tax increment financing plan by entering an order designating a development project area, approving a tax increment financing plan and providing that ad valorem property taxes on real property owned by the project developer in the development project area shall be assessed, collected and allocated by the taxing units in such area in the following manner for so long as any tax increment financing obligations payable from the tax increment financing fund, hereinafter authorized, are outstanding and unpaid:

(1) The assessor shall record in the land and personal property books both the base assessed value and the current assessed value of the real and tangible personal property of the project developer in the development project area.

(2) Ad valorem taxes upon real and tangible personal property of the project developer which are attributable to the lower of the base assessed value or current assessed value of real and tangible personal property located in the development project area shall be allocated to the taxing units in the same manner as applicable in the year preceding adoption of the tax increment financing order.
(3) The tax increment with respect to the private project of the project developer in the development project area shall be allocated and paid into a separate special fund created for each development project entitled the "Tax Increment Financing Fund" and used to pay the principal of and interest on tax increment financing obligations issued to finance the costs of such development project. Any taxing unit having a private project or any portion thereof within its borders shall allocate its tax increment to such fund, provided, however, that the portion of property taxes allocable to the state shall be paid over to the state in accordance with law.

(4) In no event shall tax increment financing apply to any levies other than the levies provided for in article eight, chapter eleven of this code.

(b) Before entering an order approving a tax increment financing plan, the county commission in every county in which the development project area is located shall hold a public hearing on the need for tax increment financing in the county. Notice of the public hearing shall be published once each week for three successive weeks immediately preceding the public hearing as a Class III legal advertisement in accordance with section two, article three, chapter fifty-nine of this code. The notice shall include the time, place and purpose of the public hearing, describe in sufficient detail the tax increment financing plan, indicate the proposed boundaries of the development project area and the proposed tax increment financing obligations to be issued to finance the development project costs. All parties who appear at the hearing shall be afforded an opportunity to express their views on the proposal to undertake and finance the project.

(c) Proceeds from tax increment financing obligations issued under this article may be used only to pay for costs of development projects to foster economic
development, including infrastructure and other public
improvements prerequisite to private improvements,
when such development projects would not reasonably
be expected to occur without tax increment financing.
There shall be a finding by any county commission which
issues tax increment financing obligations that a
development project is not reasonably expected to occur
without the use of tax increment financing.
§7-11B-5. Copies of tax increment financing order to
assessor, sheriff and director of the division of
finance.
1 The county commission shall transmit to the assessor,
sheriff and the director of the division of finance,
department of administration, a copy of the tax
increment financing order; a description of all real and
tangible personal property of the project developer
located within the development project area; a map
indicating the boundaries of the development project
area; and a description of the manner of collecting and
allocating property taxes pursuant to this article.
§7-11B-6. Issuance of obligations for development project
costs.
1 (a) A county commission may issue bonds or notes for
the purpose of financing the cost of acquisition and
construction of one or more development projects in a
development project area within the county which will
be sold, leased with an option by the lessee to purchase,
leased or otherwise disposed of to a project developer.
Such bonds or notes shall be issued and the payment of
such bonds or notes secured in the manner provided by
the applicable provisions of sections seven, eight, nine,
ten, eleven, twelve, thirteen, except to the extent that the
provisions of said section thirteen are modified hereby
with respect to the tax increment financing fund,
fourteen, fifteen, seventeen, nineteen and twenty, article
two-c, chapter thirteen of this code: Provided, That the
principal and interest on such bonds or notes shall be
payable out of the tax increment financing fund attributable to the related private project: *Provided, however,* That in the event the moneys on deposit in such tax increment financing fund are not sufficient to fully pay the debt service on such bonds or notes, then such bonds or notes shall be payable out of the revenues derived from the lease, lease with an option by the lessee to purchase, sale or other disposition in connection with the development project for which the bonds or notes are issued, or any other revenue derived from such project.

(b) No bonds or notes shall be issued under this article until all questions connected with the same shall have been first submitted to a vote of the qualified voters of the county for which the bonds or notes are to be issued, and shall have received three fifths of all the votes cast for and against the same: *Provided,* That if a development project area includes more than one county, the qualified voters in both counties must adopt the measure prior to any notes or bonds being issued. The county commission referred to in this section may, by order entered of record, direct that an election be held for the purpose of submitting to the voters of the county all questions connected with the issuing of bonds or notes. Such order shall state:

1. The reasons for issuing the bonds or notes;
2. The purpose or purposes for which the proceeds of bonds or notes are to be expended;
3. The amount of the proposed bond or note issue;
4. The date of the election;
5. If a special election, the names of commissioners for holding same; and
6. That the tax increment attributable to the related private project shall be used to pay the principal and interest on such bonds or notes and will not be available for other purposes until such bonds or notes are paid in
Any other provision which does not violate any provision of law, or transgress any principle of public policy, may be incorporated in the order. The cost of such election, if any, shall be reimbursed by the project developer of the related private project: Provided, That no election is required in a municipality in which a project development area is located if the municipality is within a county holding an election. The order authorizing the issuance of tax increment obligations shall pledge all or such part of the funds deposited in the tax increment financing fund as are necessary for the payment of the debt service on such tax increment obligations.

(c) Any revenues in the tax increment financing fund which are not used for the payment of the principal of or interest on tax increment financing obligations issued shall be deemed “surplus funds” and at the end of each tax year shall be paid into the general funds of the taxing units in proportion to their respective contributions to the fund.

§7-11B-7. Terminating tax increment financing.

(a) Upon the retirement of all tax increment financing obligations payable from the tax increment financing fund, the county commission shall enter an order to dissolve the tax increment financing fund and to terminate the existence of a development project area. When the fund is dissolved, any and all revenue remaining in the fund after payment of all tax increment obligations payable therefrom shall be paid into the general fund of the taxing units in proportion to their respective contributions to the fund.

(b) Upon dissolving the tax increment financing fund, real and tangible personal property shall be assessed and taxes collected and allocated in the same manner as applicable in the year preceding the adoption of the tax
increment financing order.

§7-11B-8. Severability.

1 If any provision of this article or the application thereof to any person or circumstance is held unconstitutional or otherwise invalid, such unconstitutionality or invalidity shall not affect, impair or invalidate other provisions or applications of this article and, to this end, the provisions of this article are declared to be severable.

CHAPTER 18. EDUCATION.

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.


1 (a) For the fiscal year beginning on the first day of July, one thousand nine hundred ninety-three, and thereafter, on the basis of each county's certificates of valuation as to all classes of property as determined and published by the assessors pursuant to section six, article three, chapter eleven of this code for the next ensuing fiscal year in reliance upon the assessed values annually developed by each county assessor pursuant to the provisions of articles one-c and three, chapter eleven of this code, the state board shall for each county compute by application of the levies for general current expense purposes, as defined in section two of this article, the amount of revenue which such levies would produce if levied upon one hundred percent of the assessed value of each of the several classes of property contained in the report or revised report of such value, made to it by the tax commissioner as follows:

18 (1) The state board shall first take ninety-five percent of the amount ascertained by applying these rates to the total assessed public utility valuation in each classification of property in the county.

22 (2) The state board shall then apply these rates to the
assessed taxable value of other property in each
classification in the county as determined by the tax
commissioner and shall deduct therefrom five percent as
an allowance for the usual losses in collections due to
discounts, exonerations, delinquencies and the like. All
of the amount so determined shall be added to the
ninety-five percent of public utility taxes computed as
provided above, and this total shall be further reduced
by the amount due each county assessor's office pursuant
to the provisions of section eight, article one-c, chapter
eleven of this code, and this amount shall be the local
share of the particular county.

As to any estimations or preliminary computations of
local share that may be required prior to the report to
the Legislature by the tax commissioner, the state board
of education shall use the most recent projections or
estimations that may be available from the tax
department for such purpose.

(b) Whenever in any year a county assessor or a county
commission shall fail or refuse to comply with the
provisions of this section in setting the valuations of
property for assessment purposes in any class or classes
of property in the county, the state tax commissioner
shall review the valuations for assessment purposes
made by the county assessor and the county commission
and shall direct the county assessor and the county
commission to make such corrections in the valuations as
may be necessary so that they shall comply with the
requirements of chapter eleven of this code and this
section, and the tax commissioner shall enter the county
and fix the assessments at the required ratios. Refusal of
the assessor or the county commission to make such
corrections shall constitute ground for removal from
office.

(c) For the purposes of any computation made in
accordance with the provisions of this section, in any
taxing unit in which tax increment financing is in effect
pursuant to the provisions of article eleven-b, chapter
seven of this code, the assessed value of a related private
project shall be the base assessed value as defined in
section two of said article.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the 21st day of March, 1995.

Governor