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SENATE OF WEST VIRGINIA

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1995



ENROLLED

SENATE BILL NO. 550

(By Senator CRAIGO)



PASSED MARCH 9, 1995

In Effect 90 days from Passage

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Senate Bill No. 550

(BY SENATOR CRAIGO)

[Passed March 9, 1995; in effect ninety 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.

1 This article may be known and cited as “The Tax
2 Increment Financing Act”.

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

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

§7-11B-3. Definitions.

1 As used in this article, the term or phrase:

2 (a) “Agency” means a county or municipal
3 development agency established by section one, article
4 twelve, chapter seven of this code.

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

12 (c) “Current assessed value” means the annual taxable
13 assessed value of real and tangible personal property of
14 a project developer within a development project area as
15 shown upon the land book and personal property records

16 of the assessor.

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

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

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

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

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

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

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

46 (k) "Tax increment financing plan" means a plan
47 proposed by either an agency or a project developer
48 requesting that a specific development project be
49 developed in conjunction with a private project of such
50 project developer, which plan is approved by the county

51 commission for the county in which the development
52 project area is located in accordance with the procedures
53 set forth in section four of this article.

54 (l) "Taxing unit" means a municipal corporation, a
55 county commission or a county board of education.

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

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

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

23 (2) Ad valorem taxes upon real and tangible personal
24 property of the project developer which are attributable
25 to the lower of the base assessed value or current
26 assessed value of real and tangible personal property
27 located in the development project area shall be
28 allocated to the taxing units in the same manner as
29 applicable in the year preceding adoption of the tax
30 increment financing order.

31 (3) The tax increment with respect to the private
32 project of the project developer in the development
33 project area shall be allocated and paid into a separate
34 special fund created for each development project
35 entitled the "Tax Increment Financing Fund" and used
36 to pay the principal of and interest on tax increment
37 financing obligations issued to finance the costs of such
38 development project. Any taxing unit having a private
39 project or any portion thereof within its borders shall
40 allocate its tax increment to such fund, provided,
41 however, that the portion of property taxes allocable to
42 the state shall be paid over to the state in accordance
43 with law.

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

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

65 (c) Proceeds from tax increment financing obligations
66 issued under this article may be used only to pay for
67 costs of development projects to foster economic

68 development, including infrastructure and other public
69 improvements prerequisite to private improvements,
70 when such development projects would not reasonably
71 be expected to occur without tax increment financing.
72 There shall be a finding by any county commission which
73 issues tax increment financing obligations that a
74 development project is not reasonably expected to occur
75 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,
2 sheriff and the director of the division of finance,
3 department of administration, a copy of the tax
4 increment financing order; a description of all real and
5 tangible personal property of the project developer
6 located within the development project area; a map
7 indicating the boundaries of the development project
8 area; and a description of the manner of collecting and
9 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
2 the purpose of financing the cost of acquisition and
3 construction of one or more development projects in a
4 development project area within the county which will
5 be sold, leased with an option by the lessee to purchase,
6 leased or otherwise disposed of to a project developer.
7 Such bonds or notes shall be issued and the payment of
8 such bonds or notes secured in the manner provided by
9 the applicable provisions of sections seven, eight, nine,
10 ten, eleven, twelve, thirteen, except to the extent that the
11 provisions of said section thirteen are modified hereby
12 with respect to the tax increment financing fund,
13 fourteen, fifteen, seventeen, nineteen and twenty, article
14 two-c, chapter thirteen of this code: *Provided*, That the
15 principal and interest on such bonds or notes shall be

16 payable out of the tax increment financing fund
17 attributable to the related private project: *Provided,*
18 *however,* That in the event the moneys on deposit in such
19 tax increment financing fund are not sufficient to fully
20 pay the debt service on such bonds or notes, then such
21 bonds or notes shall be payable out of the revenues
22 derived from the lease, lease with an option by the lessee
23 to purchase, sale or other disposition in connection with
24 the development project for which the bonds or notes are
25 issued, or any other revenue derived from such project.

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

40 (1) The reasons for issuing the bonds or notes;

41 (2) The purpose or purposes for which the proceeds of
42 bonds or notes are to be expended;

43 (3) The amount of the proposed bond or note issue;

44 (4) The date of the election;

45 (5) If a special election, the names of commissioners for
46 holding same; and

47 (6) That the tax increment attributable to the related
48 private project shall be used to pay the principal and
49 interest on such bonds or notes and will not be available
50 for other purposes until such bonds or notes are paid in

51 full.

52 Any other provision which does not violate any
53 provision of law, or transgress any principle of public
54 policy, may be incorporated in the order. The cost of
55 such election, if any, shall be reimbursed by the project
56 developer of the related private project: *Provided*, That
57 no election is required in a municipality in which a
58 project development area is located if the municipality
59 is within a county holding an election. The order
60 authorizing the issuance of tax increment obligations
61 shall pledge all or such part of the funds deposited in the
62 tax increment financing fund as are necessary for the
63 payment of the debt service on such tax increment
64 obligations.

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

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

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

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

15 increment financing order.

§7-11B-8. Severability.

1 If any provision of this article or the application
2 thereof to any person or circumstance is held
3 unconstitutional or otherwise invalid, such unconsti-
4 tutionality or invalidity shall not affect, impair or
5 invalidate other provisions or applications of this article
6 and, to this end, the provisions of this article are
7 declared to be severable.

CHAPTER 18. EDUCATION.

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

**§18-9A-11. Computation of local share; appraisal and
assessment of property.**

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

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

22 (2) The state board shall then apply these rates to the

23 assessed taxable value of other property in each
24 classification in the county as determined by the tax
25 commissioner and shall deduct therefrom five percent as
26 an allowance for the usual losses in collections due to
27 discounts, exonerations, delinquencies and the like. All
28 of the amount so determined shall be added to the
29 ninety-five percent of public utility taxes computed as
30 provided above, and this total shall be further reduced
31 by the amount due each county assessor's office pursuant
32 to the provisions of section eight, article one-c, chapter
33 eleven of this code, and this amount shall be the local
34 share of the particular county.

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

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

57 (c) For the purposes of any computation made in
58 accordance with the provisions of this section, in any
59 taxing unit in which tax increment financing is in effect

60 pursuant to the provisions of article eleven-b, chapter
61 seven of this code, the assessed value of a related private
62 project shall be the base assessed value as defined in
63 section two of said article.

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That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Randy Schroyer
.....
Chairman Senate Committee

Ernest C Moore
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Russell White
.....
Clerk of the Senate

Donald L. Kapp
.....
Clerk of the House of Delegates

Carl Roy Tomblin
.....
President of the Senate

Carl Rubin
.....
Speaker House of Delegates

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

Yaston C. Gent
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 3/16/95

Time 10:41 AM