

HR 295

FILED

2002 APR -3 P 7:01

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**

*Regular Session, 2002*

**ENROLLED**

*Com. Sub. for Com. Sub. for*

**SENATE BILL NO.** 244

(By Senator Tomblin, Mr. President, and ~~+~~  
Sprouse, By Request of the Executive)

**PASSED** March 9, 2002

**In Effect** ninety days from **Passage**

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COMMITTEE SUBSTITUTE

FOR

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### Senate Bill No. 244

(BY SENATORS TOMBLIN, MR. PRESIDENT, AND SPROUSE,  
BY REQUEST OF THE EXECUTIVE)

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[Passed March 9, 2002; in effect ninety days from passage.]

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AN ACT to amend and reenact article eleven-b, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to tax increment financing; making legislative findings; stating legislative purpose; defining certain terms and phrases; imposing public bid and prevailing wage rate requirements and exceptions thereto; providing certain powers to county commissions relating to implementation of tax increment financing plan; requiring notice and public hearing on proposal to create a development or redevelopment area; requiring approval of plan by director of West Virginia development office; establishing and providing for distribution of tax revenues and the tax

increment portion thereof; providing restrictions on implementation of plan; providing for modification of plan; providing certain requirements for plan; providing for valuation of property in development or redevelopment project area; providing for distribution of payment in lieu of taxes receipts; authorizing issuance of tax increment obligation instruments; providing terms and conditions of obligations issued; providing for payment of obligations; providing tax exemption for obligations; providing for distribution of excess funds received; providing for computation of local share for support of schools; and providing effective date for provisions of act.

*Be it enacted by the Legislature of West Virginia:*

That article eleven-b, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 11B. WEST VIRGINIA TAX INCREMENT FINANCING ACT.**

**§7-11B-1. Short title.**

1 This article may be known and cited as "The West  
2 Virginia Tax Increment Financing Act".

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

1 (a) It is found and declared to be the policy of this state  
2 to promote and facilitate the orderly development and  
3 economic stability of its communities. County commis-  
4 sions need the ability to raise revenue to finance public  
5 improvements that are designed to encourage economic  
6 growth and development in geographic areas characterized  
7 by high levels of unemployment, stagnate employment,  
8 slow income growth, contaminated property or inadequate  
9 infrastructure. The construction of necessary public  
10 improvements in accordance with local economic develop-  
11 ment plans will encourage investing in job-producing  
12 private development and expand the public tax base.

13 (b) It is also found and declared that capital improve-  
14 ments or facilities in any area that result in the increase in  
15 the value of property located in the area or encourage  
16 increased employment within the area will serve a public  
17 purpose for each taxing unit possessing the authority to  
18 impose ad valorem taxes in the area.

19 (c) It is the purpose of this article:

20 (1) To encourage local levying bodies to cooperate in the  
21 allocation of future tax revenues that are used to finance  
22 public improvements designed to encourage private  
23 development in selected areas; and

24 (2) To assist local governments that have a competitive  
25 disadvantage in their ability to attract business, private  
26 investment or commercial development due to their  
27 location; to encourage remediation of contaminated  
28 property; to prevent or arrest the decay of selected areas  
29 due to the inability of existing financing methods to  
30 provide public improvements; and to encourage private  
31 investment designed to promote and facilitate the orderly  
32 development or redevelopment of selected areas.

**§7-11B-3. Definitions.**

1 (a) *General.* – When used in this article, words and  
2 phrases defined in this section shall have the meanings  
3 ascribed to them in this section, unless a different meaning  
4 is clearly required either by the context in which the word  
5 or phrase is used or by specific definition in this article.

6 (b) *Words and phrases defined.* –

7 (1) “Agency” includes a municipality, a county or  
8 municipal development agency established pursuant to  
9 authority granted in section one, article twelve of this  
10 chapter, a port authority, an airport authority or any other  
11 entity created by this state or an agency or instrumentality  
12 of this state that engages in economic development  
13 activity.

14 (2) "Base assessed value" means:

15 (A) The taxable assessed value of real and tangible  
16 personal property of a project developer having a tax situs  
17 within a development or redevelopment project area or  
18 district as shown upon the landbook and personal property  
19 records of the assessor on the first day of July of the year  
20 preceding the effective date of the order authorizing the  
21 tax increment financing plan; or

22 (B) The taxable assessed value of all real and tangible  
23 personal property having a tax situs within a development  
24 or redevelopment project area or district as shown upon  
25 the landbooks and personal property books of the assessor  
26 on the first day of July preceding the formation of the  
27 development or redevelopment project area or district.

28 (3) "Blighted area" means an area in which the struc-  
29 tures, buildings or improvements, by reason of dilapida-  
30 tion, deterioration, age or obsolescence, inadequate  
31 provision for access, ventilation, light, air, sanitation, or  
32 open spaces, high density of population and overcrowding  
33 or the existence of conditions which endanger life or  
34 property, are detrimental to the public health, safety,  
35 morals or welfare. "Blighted area" includes any area  
36 which, by reason of the presence of a substantial number  
37 of substandard, slum, deteriorated or deteriorating  
38 structures, predominance of defective or inadequate street  
39 layout, faulty lot layout in relation to size, adequacy,  
40 accessibility, or usefulness, unsanitary or unsafe condi-  
41 tions, deterioration of site or other improvements, diver-  
42 sity of ownership, defective or unusual conditions of title,  
43 or the existence of conditions which endanger life or  
44 property by fire and other causes, or any combination of  
45 such factors, substantially impairs or arrests the sound  
46 growth of a municipality, retards the provision of housing  
47 accommodations, or constitutes an economic or social  
48 liability and is a menace to the public health, safety,  
49 morals or welfare in its present condition and use, or any  
50 area which is predominantly open and which because of

51 lack of accessibility, obsolete platting, diversity of owner-  
52 ship, deterioration of structures or of site improvements,  
53 or otherwise, substantially impairs or arrests the sound  
54 growth of the community.

55 (4) "Conservation area" means any improved area within  
56 the boundaries of a development or redevelopment project  
57 area or district located within the territorial limits of a  
58 municipality or county in which fifty percent or more of  
59 the structures in the area have an age of thirty-five years  
60 or more. A conservation area is not yet a blighted area but  
61 is detrimental to the public health, safety, morals, or  
62 welfare and may become a blighted area because of any  
63 one or more of the following factors: Dilapidation;  
64 obsolescence; deterioration; illegal use of individual  
65 structures; presence of structures below minimum code  
66 standards; abandonment; excessive vacancies; overcrowd-  
67 ing of structures and community facilities; lack of ventila-  
68 tion, light or sanitary facilities; inadequate utilities;  
69 excessive land coverage; deleterious land use or layout;  
70 depreciation of physical maintenance; and lack of commu-  
71 nity planning. A conservation area shall meet at least  
72 three of the factors provided in this subdivision.

73 (5) "County commission" means the governing body of  
74 a county of this state and, for purposes of this article only,  
75 includes the governing body of a Class I or II municipality  
76 in this state.

77 (6) "Current assessed value" means:

78 (A) The annual taxable assessed value of all real and  
79 tangible personal property of a project developer having a  
80 tax situs within a development project area as shown upon  
81 the landbook and personal property records of the asses-  
82 sor; or

83 (B) The annual taxable assessed value of real and  
84 tangible personal property having a tax situs within a  
85 development or redevelopment project area or district as

86 shown upon the landbook and personal property records  
87 of the assessor.

88 (7) "Development office" means the West Virginia  
89 development office created in section one, article two,  
90 chapter five-b of this code.

91 (8) "Development project" or "redevelopment project"  
92 means a project undertaken by a county commission or the  
93 governing body of a municipality in a development or  
94 redevelopment project area or district for eliminating or  
95 preventing the development or spread of slums or deterior-  
96 rated, deteriorating, or blighted areas, for discouraging the  
97 loss of commerce, industry, or employment, for increasing  
98 employment, or for any combination thereof in accordance  
99 with a tax increment financing plan. A development or  
100 redevelopment project may include one or more of the  
101 following:

102 (A) The acquisition of land and improvements, if any  
103 within the development or redevelopment project area and  
104 clearance of the land so acquired; or

105 (B) The development, redevelopment, revitalization or  
106 conservation of the project area whenever necessary to  
107 provide land for needed public facilities, public housing,  
108 or industrial or commercial development or revitalization,  
109 to eliminate unhealthful unsanitary, or unsafe conditions,  
110 to lessen density, mitigate or eliminate traffic congestion,  
111 reduce traffic hazards, eliminate obsolete or other uses  
112 detrimental to public welfare, or otherwise remove or  
113 prevent the spread of blight or deterioration;

114 (C) The financial or other assistance in the relocation of  
115 persons and organizations displaced as a result of carrying  
116 out the development or redevelopment project and other  
117 improvements necessary for carrying out the project plan,  
118 together with those site improvements that are necessary  
119 for the preparation of any sites and making any land or  
120 improvements acquired in the project area available, by

121 sale or lease, for public housing or for development,  
122 redevelopment or rehabilitation by private enterprise for  
123 commercial or industrial uses in accordance with the plan;

124 (D) The construction of capital improvements within a  
125 development or redevelopment project area or district  
126 designed to increase or enhance the development of  
127 commerce, industry, or housing within the development  
128 project area; or

129 (E) Any other projects the county commission or the  
130 agency deems appropriate to carry out the purposes of this  
131 article.

132 (9) "Development or redevelopment project area or  
133 district" means an area proposed by one or more agencies  
134 as a development or redevelopment project area or district,  
135 which may include one or more counties, one or more  
136 municipalities or any combination thereof, that has been  
137 approved by the county commission of each county in  
138 which the project area is located if the project is located  
139 outside the corporate limits of a municipality, or by the  
140 governing body of a municipality if the project area is  
141 located within a municipality, or by both the county  
142 commission and the governing body of the municipality  
143 when the development or redevelopment project area or  
144 district is located both within and without a municipality.

145 (10) "Economic development area" means any area or  
146 portion of an area located within the territorial limits of a  
147 municipality or county that does not meet the require-  
148 ments of subdivisions (3) and (4) of this subsection and for  
149 which the county commission finds that development or  
150 redevelopment will not be solely used for development of  
151 commercial businesses that will unfairly compete in the  
152 local economy and that development or redevelopment is  
153 in the public interest because it will:

154 (A) Discourage commerce, industry or manufacturing  
155 from moving their operations to another state;



156 (B) Result in increased employment in the municipality  
157 or county, whichever is applicable; or

158 (C) Result in preservation or enhancement of the tax  
159 base of the county or municipality.

160 (11) "Governing body of a municipality" means the city  
161 council of a Class I or Class II municipality in this state.

162 (12) "Incremental value," for any development or  
163 redevelopment project area or district, means the differ-  
164 ence between the base assessed value and the current  
165 assessed value. The incremental value will be positive if  
166 the current value exceeds the base value, and the incre-  
167 mental value will be negative if the current value is less  
168 than the base assessed value.

169 (13) "Includes" and "including" when used in a defini-  
170 tion contained in this article shall not be deemed to  
171 exclude other things otherwise within the meaning of the  
172 term being defined.

173 (14) "Local levying body" means the county board of  
174 education, and the county commission and includes the  
175 governing bodies of a municipality when the development  
176 or redevelopment project area or district is located in  
177 whole or in part within the boundaries of the municipality.

178 (15) "Obligations" or "tax increment financing obliga-  
179 tions" means bonds, loans, debentures, notes, special  
180 certificates, or other evidences of indebtedness issued by  
181 a county commission or municipality pursuant to this  
182 article to carry out a development or redevelopment  
183 project or to refund outstanding obligations under this  
184 article.

185 (16) "Order" means an order of the county commission  
186 adopted in conformity with the provisions of this article  
187 and as provided in chapter seven of this code.

188 (17) "Ordinance" means a law adopted by the governing  
189 body of a municipality in conformity with the provisions  
190 of this article and as provided in chapter eight of this code.

191 (18) "Payment in lieu of taxes" means those estimated  
192 revenues from real property and tangible personal prop-  
193 erty having a tax situs in the area selected for a develop-  
194 ment or redevelopment project, which revenues according  
195 to the development or redevelopment project or plan are to  
196 be used for a private use, which levying bodies would have  
197 received had a county or municipality not adopted one or  
198 more tax increment financing plans, and which would  
199 result from levies made after the date of adoption of a tax  
200 increment financing plan during the time the current  
201 assessed value of all taxable real and tangible personal  
202 property in the area selected for the development or  
203 redevelopment project exceeds the total base assessed  
204 value of all taxable real and tangible personal property in  
205 the development or redevelopment project area or district  
206 until the designation is terminated as provided in this  
207 article.

208 (19) "Person" means any natural person, and any  
209 corporation, association, partnership, limited partnership,  
210 limited liability company or other entity, regardless of its  
211 form, structure or nature, other than a government agency  
212 or instrumentality.

213 (20) "Private project" means any project that is subject  
214 to ad valorem property taxation in this state or to a  
215 payment in lieu of tax agreement that is undertaken by a  
216 project developer in accordance with a tax increment  
217 financing plan in a development or redevelopment project  
218 area or district.

219 (21) "Project" means any facility requiring an invest-  
220 ment of capital, including extensions, additions or im-  
221 provements to existing facilities including water or  
222 wastewater facilities, and the remediation of contaminated  
223 property as provided for in article twenty-two, chapter  
224 twenty-two of this code, but does not include performance  
225 of any governmental service by a county or municipal  
226 government.

227 (22) "Project costs" means expenditures made in prepa-  
228 ration of the development or redevelopment project plan  
229 and made, or estimated to be made, or monetary obliga-  
230 tions incurred, or estimated to be incurred, by the county  
231 commission which are listed in the project plan as costs of  
232 public works or improvements within a development or  
233 redevelopment project area or district, plus any costs  
234 incidental thereto. "Project costs" include, but are not  
235 limited to:

236 (A) Capital costs, including, but not limited to, the actual  
237 costs of the construction of public works or improvements,  
238 new buildings, structures, and fixtures, the demolition,  
239 alteration, remodeling, repair, or reconstruction of existing  
240 buildings, structures, and fixtures, environmental  
241 remediation, parking and landscaping, the acquisition of  
242 equipment, and site clearing, grading and preparation;

243 (B) Financing costs, including, but not limited to, a  
244 interest paid to holders of evidences of indebtedness issued  
245 to pay for project costs, all costs of issuance and any  
246 redemption premiums, credit enhancement or other related  
247 costs;

248 (C) Real property assembly costs, meaning any deficit  
249 incurred resulting from the sale or lease as lessor by the  
250 county commission of real or personal property having a  
251 tax situs within a development or redevelopment project  
252 area or district for consideration that is less than its cost  
253 to the county commission;

254 (D) Professional service costs, including, but not limited  
255 to, those costs incurred for architectural planning, engi-  
256 neering and legal advice and services;

257 (E) Imputed administrative costs, including, but not  
258 limited to, reasonable charges for time spent by county  
259 employees or municipal employees in connection with the  
260 implementation of a project plan;

261 (F) Relocation costs, including, but not limited to, those  
262 relocation payments made following condemnation and  
263 job training and retraining;

264 (G) Organizational costs, including, but not limited to,  
265 the costs of conducting environmental impact and other  
266 studies, and the costs of informing the public with respect  
267 to the creation of a project development area and the  
268 implementation of project plans;

269 (H) Payments made, in the discretion of the county  
270 commission or the governing body of a municipality,  
271 which are found to be necessary or convenient to creation  
272 of development or redevelopment project areas or districts  
273 or the implementation of project plans; and

274 (I) That portion of costs related to the construction of  
275 environmental protection devices, storm or sanitary sewer  
276 lines, water lines, amenities or streets or the rebuilding or  
277 expansion of streets, or the construction, alteration,  
278 rebuilding or expansion of which is necessitated by the  
279 project plan for a development or redevelopment project  
280 area or district, whether or not the construction, alter-  
281 ation, rebuilding or expansion is within the area or on land  
282 contiguous thereto.

283 (23) "Project developer" means any person who engages  
284 in the development of projects in the state.

285 (24) "Project development or redevelopment area" means  
286 a contiguous geographic area within a county, or within  
287 two contiguous counties, in which a development or  
288 redevelopment project will be undertaken, as defined and  
289 created by order of the county commission, or county  
290 commissions in the case of an area located in two counties.

291 (25) "Project plan" means the plan for a development or  
292 redevelopment project that is adopted by a county com-  
293 mission or governing body of a municipality in conformity  
294 with the requirements of this article and chapter seven or  
295 eight of this code.

296 (26) "Real property" means all lands, including improve-  
297 ments and fixtures on them and property of any nature  
298 appurtenant to them or used in connection with them and  
299 every estate, interest, and right, legal or equitable, in them,  
300 including terms of years and liens by way of judgment,  
301 mortgage, or otherwise, and indebtedness secured by the  
302 liens.

303 (27) "Redevelopment area" means an area designated by  
304 a county commission, or the governing body of a municipi-  
305 pality, in respect to which the commission or governing  
306 body has made a finding that there exist conditions which  
307 cause the area to be classified as a blighted area, a conser-  
308 vation area, an economic development area, or a combina-  
309 tion thereof, which area includes only those parcels of real  
310 property directly and substantially benefitted by the  
311 proposed redevelopment project located within the  
312 development or redevelopment project area or district, or  
313 land contiguous thereto.

314 (28) "Redevelopment plan" means the comprehensive  
315 program under this article of a county or municipality for  
316 redevelopment intended by the payment of redevelopment  
317 costs to reduce or eliminate those conditions, the existence  
318 of which qualified the redevelopment project area or  
319 district as a blighted area, conservation area, economic  
320 development area, or combination thereof, and to thereby  
321 enhance the tax bases of the levying bodies which extend  
322 into the redevelopment project area or district. Each  
323 redevelopment plan shall conform to the requirements of  
324 this article.

325 (29) "Tax increment" means:

326 (A) The amount of regular levy property taxes attribut-  
327 able to the amount by which the current assessed value of  
328 a private project in a development or redevelopment  
329 project area or district exceeds the base assessed value, if  
330 any, of the private project; or

331 (B) The amount of regular levy property taxes attribut-  
332 able to the amount by which the current assessed value of  
333 real and tangible personal property having a tax situs in a  
334 development or redevelopment project area or district  
335 exceeds the base assessed value of the property.

336 (30) "Tax increment financing fund" means a separate  
337 fund for a development or redevelopment project or for a  
338 development or redevelopment project area or district  
339 established by the county commission, or governing body  
340 of the municipality, that issues tax increment financing  
341 obligations into which all tax increment revenues and  
342 other pledged revenues are deposited and from which  
343 projected project costs, debt service and other expendi-  
344 tures authorized by this article are paid.

345 (31) "This code" means the code of West Virginia, one  
346 thousand nine hundred thirty-one, as amended by the  
347 Legislature.

348 (32) "Total ad valorem property tax regular levy rate"  
349 means the aggregate levy rate of all levying bodies on all  
350 taxable property having a tax situs within a development  
351 or redevelopment project area or district in a tax year but  
352 does not include excess levies, levies for general obligation  
353 bonded indebtedness or any other levies that are not  
354 regular levies.

**§7-11B-4. Powers generally.**

1 In addition to any other powers conferred by law, a  
2 county commission or governing body of a Class I or II  
3 municipality may exercise any powers necessary and  
4 convenient to carry out the purpose of this article, includ-  
5 ing the power to:

6 (1) Create development and redevelopment areas or  
7 districts and to define the boundaries of those areas or  
8 districts;

9 (2) Cause project plans to be prepared, to approve the  
10 project plans, and to implement the provisions and effec-  
11 tuate the purposes of the project plans;

12 (3) Issue tax increment financing obligations and pledge  
13 tax increments and other revenues for repayment of the  
14 obligations;

15 (4) Deposit moneys into the tax increment financing fund  
16 for any development or redevelopment project area or  
17 district, or project;

18 (5) Enter into any contracts or agreements, including  
19 agreements with bondholders, determined by the county  
20 commission to be necessary or convenient to implement  
21 the provisions and effectuate the purposes of project plans;

22 (6) Receive from the federal government or the state  
23 loans and grants for, or in aid of, a development or rede-  
24 velopment project and to receive contributions from any  
25 other source to defray project costs;

26 (7) Exercise the right of eminent domain to condemn  
27 property for the purposes of implementing the project  
28 plan. The rules and procedures set forth in chapter fifty-  
29 four of this code shall govern all condemnation proceed-  
30 ings authorized in this article;

31 (8) Make relocation payments to those persons, busi-  
32 nesses, or organizations that are displaced as a result of  
33 carrying out the development or redevelopment project;

34 (9) Clear and improve property acquired by the county  
35 commission pursuant to the project plan and construct  
36 public facilities on it or contract for the construction,  
37 development, redevelopment, rehabilitation, remodeling,  
38 alteration, or repair of the property;

39 (10) Cause parks, playgrounds, or water, sewer, or  
40 drainage facilities, or any other public improvements,  
41 including, but not limited to, fire stations, community  
42 centers, and other public buildings, which the county

43 commission is otherwise authorized to undertake, to be  
44 laid out, constructed, or furnished in connection with the  
45 development or redevelopment project. When the public  
46 improvement of the county commission is to be located, in  
47 whole or in part, within the corporate limits of a municipi-  
48 pality, the county commission shall consult with the mayor  
49 and the governing body of the municipality regarding the  
50 public improvement and shall pay for the cost of the  
51 public improvement from the tax increment financing  
52 fund;

53 (11) Lay out and construct, alter, relocate, change the  
54 grade of, make specific repairs upon, or discontinue public  
55 ways and construct sidewalks in, or adjacent to, the  
56 development or redevelopment project: *Provided*, That  
57 when the public way or sidewalk is located within a  
58 municipality, the governing body of the municipality shall  
59 consent to the same and if the public way is a state road,  
60 the consent of the commissioner of highways shall be  
61 necessary;

62 (12) Cause private ways, sidewalks, ways for vehicular  
63 travel, playgrounds, or water, sewer, or drainage facilities  
64 and similar improvements to be constructed within the  
65 development or redevelopment project for the particular  
66 use of the development or redevelopment project area or  
67 district, or those dwelling or working in it;

68 (13) Construct any capital improvements of a public  
69 nature;

70 (14) Construct capital improvements to be leased or sold  
71 to private entities in connection with the goals of the  
72 development or redevelopment project;

73 (15) Designate one or more official or employee of the  
74 county commission to make decisions and handle the  
75 affairs of development and redevelopment project areas or  
76 districts created by the county commission pursuant to  
77 this article;



78 (16) Adopt orders, ordinances or bylaws or repeal or  
79 modify such ordinances or bylaws or establish exceptions  
80 to existing ordinances and bylaws regulating the design,  
81 construction, and use of buildings within the development  
82 or redevelopment project area or district created by a  
83 county commission or governing body of a municipality  
84 under this article;

85 (17) Enter orders, adopt bylaws or repeal or modify such  
86 orders or bylaws or establish exceptions to existing orders  
87 and bylaws regulating the design, construction, and use of  
88 buildings within the development or redevelopment  
89 project area or district created by a county commission or  
90 governing body of a municipality under this article;

91 (18) Sell, mortgage, lease, transfer, or dispose of any  
92 property, or interest therein, acquired by it pursuant to the  
93 project plan for development, redevelopment or rehabilita-  
94 tion in accordance with the project plan;

95 (19) Expend project revenues as provided in this article;  
96 and

97 (20) Do all things necessary or convenient to carry out  
98 the powers granted in this article.

**§7-11B-5. Powers supplemental.**

1 The powers conferred by this article are in addition and  
2 supplemental to the powers conferred upon county com-  
3 missions and municipalities by the Legislature relating to  
4 the issuance of industrial and commercial development  
5 bonds and refunding bonds.

**§7-11B-6. Application for development or redevelopment plan.**

1 (a) An agency or a project developer may apply to a  
2 county commission or the governing body of a municipal-  
3 ity for adoption of a development or redevelopment plan  
4 with respect to a development or redevelopment project to  
5 be developed in conjunction with a private project of a  
6 project developer. The application shall state the pro-

7 jects's economic impact, viability, estimated revenues and  
8 potential for job creation and such other information as  
9 the county commission or the governing body of the  
10 municipality may require.

11 (b) Copies of the application shall be made available to  
12 the public in the county clerk's office, or the municipal  
13 recorder's office when the application is filed with the  
14 governing body of a municipality.

**§7-11B-7. Creation of a development or redevelopment project  
area or district.**

1 (a) County commissions and the governing bodies of  
2 Class I and II municipalities, upon their own initiative or  
3 upon application of an agency or a developer, may propose  
4 creation of a development or redevelopment project area  
5 or district and designate the boundaries of the area or  
6 district: *Provided*, That an area or district may not include  
7 noncontiguous land.

8 (b) The county commission or municipality proposing  
9 creation of a development or redevelopment area or  
10 district shall then hold a public hearing at which inter-  
11 ested parties are afforded a reasonable opportunity to  
12 express their views on the proposed creation of a develop-  
13 ment or redevelopment project area or district and its  
14 proposed boundaries.

15 (1) Notice of the hearing shall be published once each  
16 week for three successive weeks immediately preceding the  
17 public hearing as a Class III legal advertisement in accor-  
18 dance with section two, article three, chapter fifty-nine of  
19 this code.

20 (2) The notice shall include the time, place and purpose  
21 of the public hearing, describe in sufficient detail the tax  
22 increment financing plan, the proposed boundaries of the  
23 development or redevelopment project area or district and  
24 the proposed tax increment financing obligations to be

25 issued to finance the development or redevelopment  
26 project costs.

27 (3) Prior to the first day of publication, a copy of the  
28 notice shall be sent by first-class mail to the chief execu-  
29 tive officer of all other local levying bodies having the  
30 power to levy taxes on property located within the pro-  
31 posed development or redevelopment project area or  
32 district.

33 (4) All parties who appear at the hearing shall be af-  
34 forded an opportunity to express their views on the  
35 proposal to undertake and finance the project.

36 (c) After the public hearing, the county commission, or  
37 the governing body of the municipality, shall finalize the  
38 development or redevelopment project plan and the  
39 boundaries of the development or redevelopment project  
40 area or district and submit it to the director of the devel-  
41 opment office for his or her review and approval. The  
42 director, within sixty days after receipt of the plan, shall  
43 approve the plan as submitted, reject the plan, or return  
44 the plan to the county commission or governing body of  
45 the municipality for further development or review in  
46 accordance with instructions of the director of the devel-  
47 opment office. A plan may not be adopted by the county  
48 commission or the governing body of a municipality until  
49 after it has been approved by the executive director of the  
50 development office.

51 (d) Upon approval of the development or redevelopment  
52 plan by the development office, the county commission  
53 may enter an order, and the governing body of the munic-  
54 ipality proposing the plan may adopt an ordinance, that:

55 (1) Describes the boundaries of a development or rede-  
56 velopment project area or district sufficiently to identify  
57 with ordinary and reasonable certainty the territory  
58 included in the area or district, which boundaries shall  
59 create a contiguous area or district;

60 (2) Creates the development or redevelopment project  
61 area or district as of a date provided in the order or  
62 ordinance;

63 (3) Assigns a name to the development or redevelopment  
64 project area or district for identification purposes.

65 (A) The name may include a geographic or other designa-  
66 tion, shall identify the county or municipality authorizing  
67 the area or district, and shall be assigned a number,  
68 beginning with the number one.

69 (B) Each subsequently created area or district in the  
70 county or municipality shall be assigned the next consecu-  
71 tive number;

72 (4) Contains findings that the real property within the  
73 development or redevelopment project area or district will  
74 be benefitted by eliminating or preventing the develop-  
75 ment or spread of slums or blighted, deteriorated, or  
76 deteriorating areas, discouraging the loss of commerce,  
77 industry, or employment, increasing employment, or any  
78 combination thereof;

79 (5) Approves the development or redevelopment plan;

80 (6) Establishes a tax increment financing fund as a  
81 separate fund into which all tax increment revenues and  
82 other revenues designated by the county commission, or  
83 governing body of the municipality, for the benefit of the  
84 development or redevelopment project area or district  
85 shall be deposited, and from which all project costs shall  
86 be paid, which may be assigned to and held by a trustee  
87 for the benefit of bondholders if tax increment financing  
88 obligations are issued by the county commission, or the  
89 governing body of the municipality; and

90 (7) Provides that ad valorem property taxes on real and  
91 tangible personal property having a tax situs in the  
92 development or redevelopment project area or district  
93 shall be assessed, collected and allocated in the following

94 manner for so long as any tax increment financing obliga-  
95 tions payable from the tax increment financing fund,  
96 hereinafter authorized, are outstanding and unpaid;

97 (A) For each tax year, the county assessor shall record in  
98 the land and personal property books both the base  
99 assessed value and the current assessed value of the real  
100 and tangible personal property having a tax situs in the  
101 development or redevelopment project area or district;

102 (B) Ad valorem taxes collected from regular levies upon  
103 real and tangible personal property having a tax situs in  
104 the area or district that are attributable to the lower of the  
105 base assessed value or the current assessed value of real  
106 and tangible personal property located in the development  
107 project area shall be allocated to the levying bodies in the  
108 same manner as applicable to the tax year in which the  
109 development or redevelopment project plan is adopted by  
110 order of the county commission or by ordinance adopted  
111 by the governing body of the municipality;

112 (C) The tax increment with respect to real and tangible  
113 personal property in the development or redevelopment  
114 project area or district shall be allocated and paid into the  
115 tax increment financing fund and shall be used to pay the  
116 principal of and interest on tax increment financing  
117 obligations issued to finance the costs of the development  
118 or redevelopment projects in the development or redevel-  
119 opment project area or district. Any levying body having  
120 a development or redevelopment project area or district  
121 within its taxing jurisdiction shall not receive any portion  
122 of the annual tax increment except as otherwise provided  
123 in this article; and

124 (D) In no event shall the tax increment include any taxes  
125 collected from excess levies, levies for general obligation  
126 bonded indebtedness or any levies other than the regular  
127 levies provided for in article eight, chapter eleven of this  
128 code.

129 (e) Proceeds from tax increment financing obligations  
130 issued under this article may only be used to pay for costs  
131 of development and redevelopment projects to foster  
132 economic development in the development or redevelop-  
133 ment project area or district, or land contiguous thereto,  
134 including infrastructure and other public improvements  
135 prerequisite to private improvements, when such develop-  
136 ment or redevelopment project or projects would not  
137 reasonably be expected to occur without tax increment  
138 financing.

139 (f) Notwithstanding subsection (e) of this section, a  
140 county commission may not enter an order approving a  
141 development or redevelopment project plan unless the  
142 county commission expressly finds and states in the order  
143 that the primary development or redevelopment project is  
144 not reasonably expected to occur without the use of tax  
145 increment financing.

146 (g) Notwithstanding subsection (e) of this section, the  
147 governing body of a municipality may not adopt an  
148 ordinance approving a development or redevelopment  
149 project plan unless the governing body expressly finds and  
150 states in the ordinance that the primary development or  
151 redevelopment project is not reasonably expected to occur  
152 without the use of tax increment financing.

153 (h) No county commission shall establish a development  
154 or redevelopment project area or district any portion of  
155 which is within the boundaries of a municipality without  
156 the formal consent of the governing body of the municipal-  
157 ity.

158 (i) A tax increment financing plan that has been ap-  
159 proved by a county commission or the governing body of  
160 a municipality may be amended by following the proce-  
161 dures set forth in this article for adoption of a new devel-  
162 opment or redevelopment project plan.

163 (j) The county commission may modify the boundaries of  
164 the development or redevelopment project area or district

165 from time to time by entry of an order modifying the order  
166 creating the development or redevelopment project area or  
167 district.

168 (k) The governing body of a municipality may modify the  
169 boundaries of the development or redevelopment project  
170 area or district from time to time by amending the ordi-  
171 nance establishing the boundaries of the area or district.

172 (l) Before a county commission or the governing body of  
173 a municipality may enter such an order or amend the  
174 ordinance, the county commission or municipality shall  
175 give the public notice, hold a public hearing and obtain the  
176 approval of the director of the development office, follow-  
177 ing the procedures for establishing a new development or  
178 redevelopment project area or district. In the event any  
179 tax increment financing obligations are outstanding with  
180 respect to the development or redevelopment project area  
181 or district, any change in the boundaries shall not reduce  
182 the amount of tax increment available to secure the  
183 outstanding tax increment financing obligations.

**§7-11B-8. Project plan - Approval.**

1 (a) Upon the creation of the development or redevelo-  
2 pment area or district, the county commission or municipal-  
3 ity creating the area or district shall cause the preparation  
4 of a project plan for each development or redevelopment  
5 area or district, and the project plan shall be adopted by  
6 order of the county commission, or ordinance adopted by  
7 the governing body of the municipality, after it is ap-  
8 proved by the executive director of the development office.  
9 This process shall conform to the procedures set forth in  
10 this section.

11 (b) Each project plan shall include:

12 (1) A statement listing the kind, number, and location of  
13 all proposed public works or other improvements within  
14 the area or district and on land outside but contiguous to  
15 the area or district;

16 (2) A cost-benefit analysis showing the economic impact  
17 of the plan on each levying body that is at least partially  
18 within the boundaries of the development or redevelop-  
19 ment project area or district. This analysis shall show the  
20 impact on the economy if the project is not built, and is  
21 built pursuant to the development or redevelopment plan  
22 under consideration. The cost-benefit analysis shall  
23 include a fiscal impact study on every affected levying  
24 body, and sufficient information from the developer for  
25 the agency, if any proposing the plan, the county commis-  
26 sion be asked to approve the project and the development  
27 office to evaluate whether the project as proposed is  
28 financially feasible.

29 (3) An economic feasibility study;

30 (4) A detailed list of estimated project costs;

31 (5) A description of the methods of financing all esti-  
32 mated project costs, including the issuance of tax incre-  
33 ment obligations, and the time when the costs or monetary  
34 obligations related thereto are to be incurred;

35 (6) A certification by the county assessor of the base  
36 assessed value of real and tangible personal property  
37 having a tax situs in a development or redevelopment  
38 project area or district;

39 (7) The type and amount of any other revenues that are  
40 expected to be deposited to the tax increment financing  
41 fund of the development or redevelopment project area or  
42 district;

43 (8) A map showing existing uses and conditions of real  
44 property in the development or redevelopment project area  
45 or district;

46 (9) A map of proposed improvements and uses in the area  
47 or district;

48 (10) Proposed changes of zoning ordinances, if any;



49 (11) Appropriate cross-references to any master plan,  
50 map, building codes, and municipal ordinances or county  
51 commission orders affected by the project plan;

52 (12) A list of estimated nonproject costs; and

53 (13) A statement of the proposed method for the reloca-  
54 tion of any persons, businesses or organizations to be  
55 displaced.

56 (c) If the project plan is to include tax increment financ-  
57 ing, the tax increment financing portion of the plan shall  
58 set forth:

59 (1) The amount of indebtedness to be incurred pursuant  
60 to this article;

61 (2) An estimate of the tax increment to be generated as  
62 a result of the project;

63 (3) The method for calculating the tax increment, which  
64 shall be in conformance with the provisions of this article,  
65 together with any provision for adjustment of the method  
66 of calculation;

67 (4) Any other revenues, such as payment in lieu of tax  
68 revenues, to be used to secure the tax increment financing;  
69 and

70 (5) Any other provisions as may be deemed necessary in  
71 order to carry out any tax increment financing to be used  
72 for the development or redevelopment project.

73 (d) If less than all of the tax increment is to be used to  
74 fund a development or redevelopment project or to pay  
75 project costs or retire tax increment financing, the project  
76 plan shall set forth the portion of the tax increment to be  
77 deposited in the tax increment financing fund of the  
78 development or redevelopment project area or district, and  
79 provide for the distribution of the remaining portion of the  
80 tax increment to the levying bodies in whose jurisdiction  
81 the area or district lies.

82 (e) The county commission or governing body of the  
83 municipality that established the tax increment financing  
84 fund shall hold a public hearing at which interested  
85 parties shall be afforded a reasonable opportunity to  
86 express their views on the proposed project plan being  
87 considered by the county commission or the governing  
88 body of the municipality.

89 (1) Notice of the hearing shall be published in a newspa-  
90 per of general circulation in the county or the municipal-  
91 ity, if the development or redevelopment project is located  
92 in a municipality, at least fifteen days prior to the hearing.

93 (2) Prior to this publication, a copy of the notice shall be  
94 sent by first-class mail to the chief executive officer of all  
95 other levying bodies having the power to levy taxes on  
96 property located within the proposed development or  
97 redevelopment area or district.

98 (f) Approval by the county commission of a development  
99 or redevelopment project plan must be within one year  
100 after the date of the county assessor's certification re-  
101 quired by subdivision (5), subsection (b) of this section.  
102 The approval shall be by order of the county commission  
103 or ordinance of the municipality, which shall contain a  
104 finding that the plan is economically feasible.

**§7-11B-9. Project plan – amendment.**

1 (a) The county commission may by order, or the govern-  
2 ing body of a municipality by ordinance, adopt an amend-  
3 ment to a project plan.

4 (b) Adoption of an amendment to a project plan shall be  
5 preceded by a public hearing held by the county commis-  
6 sion, or governing body of the municipality, at which  
7 interested parties shall be afforded a reasonable opportu-  
8 nity to express their views on the amendment.

9 (1) Notice of the hearing shall be published in a newspa-  
10 per of general circulation in the county or municipality in

11 which the project is to be located once a week for three  
12 consecutive weeks prior to the date of the public hearing.

13 (2) Prior to publication, a copy of the notice shall be sent  
14 by first-class mail to the chief executive officer of all other  
15 local levying bodies having the power to levy taxes on  
16 property within the development or redevelopment project  
17 area or district.

18 (3) Copies of the proposed plan amendments shall be  
19 made available to the public at the county clerk's office, or  
20 municipal clerk's office, at least fifteen days prior to the  
21 hearing.

22 (c) One or more existing development or redevelopment  
23 areas or districts may be combined pursuant to lawfully  
24 adopted amendments to the original plans for each area or  
25 district: *Provided*, That the county commission, or govern-  
26 ing body of the municipality, finds that the combination of  
27 the areas or districts will not impair the security for any  
28 tax increment financing obligations previously issued  
29 pursuant to this article.

**§7-11B-10. Termination of development or redevelopment  
project area or district.**

1 (a) No development or redevelopment project area or  
2 district may be in existence for a period longer than thirty  
3 years and no tax increment financing obligations may  
4 have a final maturity date later than the termination date  
5 of the area or district.

6 (b) The county commission or governing body of the  
7 municipality creating the development or redevelopment  
8 area or district may set a shorter period for the existence  
9 of the area or district. In this event, no tax increment  
10 financing obligations may have a final maturity date later  
11 than the termination date of the area or district.

12 (c) Upon termination of the area or district, no further ad  
13 valorem tax revenues shall be distributed to the tax  
14 increment financing fund of the area or district.

15 (d) The county commission shall adopt, upon the expira-  
16 tion of the time periods set forth in this section, an order  
17 terminating the development or redevelopment project  
18 area or district created by the county commission: *Pro-*  
19 *vided*, That no area or district shall be terminated so long  
20 as bonds with respect to the area or district remain  
21 outstanding.

22 (e) The governing body of county commission shall  
23 repeal, upon the expiration of the time periods set forth in  
24 this section, the ordinance establishing the development or  
25 redevelopment project area or district: *Provided*, That no  
26 area or district shall be terminated so long as bonds with  
27 respect to the area or district remain outstanding.

**§7-11B-11. Costs of formation of development or redevelopment  
project area or district.**

1 (a) The county commission, or the governing body of a  
2 municipality, may pay, but shall have no obligation to pay,  
3 the costs of preparing the project plan or forming the  
4 development or redevelopment project area or district  
5 created by them.

6 (b) If the county commission, or the governing body of  
7 the municipality, elects not to incur those costs, they shall  
8 be made project costs of the area or district and reim-  
9 bursed from bond proceeds or other financing, or may be  
10 paid by developers, property owners, or other persons  
11 interested in the success of the development or develop-  
12 ment project.

**§7-11B-12. Overlapping districts prohibited.**

1 The boundaries of any development and redevelopment  
2 project areas or districts shall not overlap with any other  
3 development or redevelopment project area or district.

**§7-11B-13. Conflicts of interest; required disclosures and ab-  
stention.**

1 (a) If any member of the governing body of the agency  
2 applying for a development or redevelopment project or a  
3 development or redevelopment project plan, a member of  
4 the county commission considering the application, a  
5 member of the governing body of a municipality consider-  
6 ing the application, or an employee or consultant of the  
7 agency, county commission or municipality involved in the  
8 planning and preparation of a development or redevelop-  
9 ment plan, or a development or redevelopment project for  
10 a development or redevelopment project area or district, or  
11 a proposed development or redevelopment project area or  
12 district, owns or controls an interest, direct or indirect, in  
13 any property included in any development or redevelop-  
14 ment project area or district, or a proposed development or  
15 redevelopment project area or district, he or she shall  
16 disclose the same in writing to the clerk of the county  
17 commission, or to recorder of the municipality if he or she  
18 is an official or employee of the municipality, and shall  
19 also so disclose the dates, terms, and conditions of any  
20 disposition of any such interest, which disclosures shall be  
21 acknowledged by county commission, or the governing  
22 body of the municipality if he or she is an official or  
23 employee of the municipality, and entered upon the  
24 minutes books of the county commission, or the governing  
25 body of the municipality, acknowledging the disclosure.

26 (b) If an individual holds or held an interest required to  
27 be disclosed under subsection (a) of this section, then that  
28 individual shall refrain from any further official involve-  
29 ment in regard to the development or redevelopment plan,  
30 the development or redevelopment project or the develop-  
31 ment or redevelopment project area or district, shall  
32 abstain from voting on any matter pertaining to the  
33 development or redevelopment plan, the development or  
34 redevelopment project or the development or redevelop-  
35 ment project area or district, and shall abstain from  
36 communicating with other members concerning any  
37 matter pertaining to that plan, project or area.

38 (c) Additionally, no member of the county commission or  
39 governing body of a municipality considering a project or  
40 plan, no member of the governing body of an agency  
41 proposing a project or plan, or any employee the county,  
42 municipality or agency shall acquire any interest, direct or  
43 indirect, in any property in a development or redevelop-  
44 ment project area or district, or a proposed development or  
45 redevelopment project area or district, after either: (1) the  
46 individual obtains knowledge of the plan or project; or (2)  
47 the first published public notice of the plan, project or  
48 area, whichever first occurs.

**§7-11B-14. Projects financed by tax increment financing consid-  
ered to be public improvements subject to prevail-  
ing wage, local labor preference and competitive  
bid requirements.**

1 (a) Any project acquired, constructed, or financed, in  
2 whole or in part, by a county commission or municipality  
3 under this article shall be considered to be a "public  
4 improvement" within the meaning of the provisions of  
5 articles one-c and five-a, chapter twenty-one of this code.

6 (b) The county commission or municipality shall, except  
7 as provided in subsection (c) of this section, solicit or  
8 require solicitation of competitive bids and require the  
9 payment of prevailing wage rates as provided in article  
10 five-a, chapter twenty-one of this code and compliance  
11 with article one-c of said chapter for every project or  
12 infrastructure project funded pursuant to this article  
13 exceeding twenty-five thousand dollars in total cost.

14 (c) Following the solicitation of the bids, the construc-  
15 tion contract shall be awarded to the lowest qualified  
16 responsible bidder, who shall furnish a sufficient perfor-  
17 mance and payment bond: *Provided*, That the county  
18 commission, municipality or other person soliciting the  
19 bids may reject all bids and solicit new bids on the project.

20 (d) This section does not:

21 (1) Apply to work performed on construction projects not  
22 exceeding a total cost of fifty thousand dollars by regular  
23 full-time employees of the county commission or the  
24 municipality: *Provided*, That no more than fifty thousand  
25 dollars shall be expended on an individual project in a  
26 single location in a twelve-month period;

27 (2) Prevent students enrolled in vocational educational  
28 schools from being used in construction or repair projects  
29 when such use is a part of the students' training program;

30 (3) Apply to emergency repairs to building components  
31 and systems: *Provided*, That the term "emergency repairs"  
32 means repairs that, if not made immediately, will seriously  
33 impair the use of the building components and systems or  
34 cause danger to those persons using the building compo-  
35 nents and systems; or

36 (4) Apply to any situation where the county commission  
37 or municipality comes to an agreement with volunteers, or  
38 a volunteer group, by which the governmental body will  
39 provide construction or repair materials, architectural,  
40 engineering, technical or any other professional services  
41 and the volunteers will provide the necessary labor  
42 without charge to, or liability upon, the governmental  
43 body: *Provided*, That the total cost of the construction or  
44 repair projects does not exceed fifty thousand dollars.

45 (e) The provisions of subsection (b) of this section apply  
46 to privately owned projects or infrastructure projects  
47 constructed on lands not owned by the county commission,  
48 a municipality or a government agency or instrumentality  
49 when the owner or the owner's agent or person financing  
50 the owner's project receives money from the tax increment  
51 financing fund for the owner's project.

**§7-11B-15. Reports by county commissions and municipalities,  
contents, and publication; procedure to deter-  
mine progress of project; reports by development  
office, content of reports; rule-making authority;**

**development office to provide manual and assistance.**

1 (a) Each year, the county commission, or its designee,  
2 and the governing body of a municipality, or its designee,  
3 that has approved a development or redevelopment project  
4 plan shall prepare a report giving the status of each plan  
5 and each development and redevelopment project include  
6 in the plan and file it with the executive director of the  
7 development office by the first day of October each year.  
8 The report shall include the following information:

9 (1) The aggregate amount and the amount by source of  
10 revenue in the tax increment financing fund;

11 (2) The amount and purpose of expenditures from the tax  
12 increment financing fund;

13 (3) The amount of any pledge of revenues, including  
14 principal and interest on any outstanding tax increment  
15 financing indebtedness;

16 (4) The base assessed value of the development or  
17 redevelopment project, or the development or redevelop-  
18 ment project area or district, as appropriate;

19 (5) The assessed value for the current tax year of the  
20 development or redevelopment project property, or of the  
21 taxable property having a tax situs in the development or  
22 redevelopment project area or district, as appropriate;

23 (5) The assessed value added to base assessed value of  
24 the development or redevelopment project, or the taxable  
25 property having a tax situs in the development or redevelop-  
26 opment area or district, as the case may be;

27 (6) Payments made in lieu of taxes received and ex-  
28 pended;

29 (7) Reports on contracts made incidental to the imple-  
30 mentation and furtherance of a development or redevelop-  
31 ment plan or project;



32 (8) A copy of any development or redevelopment plan,  
33 which shall include the required findings and cost-benefit  
34 analysis;

35 (9) The cost of any property acquired, disposed of,  
36 rehabilitated, reconstructed, repaired or remodeled;

37 (10) The number of parcels of land acquired by or  
38 through initiation of eminent domain proceedings;

39 (11) The number and types of jobs projected by the  
40 project developer to be created, if any, and the estimated  
41 annualized wages and benefits paid or to be paid to  
42 persons filling those jobs;

43 (12) The number, type and duration of the jobs created,  
44 if any, and the annualized wages and benefits paid;

45 (13) The amount of disbursements from the tax incre-  
46 ment financing fund during the most recently completed  
47 fiscal year, in the aggregate and in such detail as the  
48 executive director of the development office may require;

49 (14) An annual statement showing payments made in lieu  
50 of taxes received and expended during the fiscal year;

51 (15) The status of the development or redevelopment  
52 plan and projects therein;

53 (16) The amount of outstanding tax increment financing  
54 obligations; and

55 (17) Any additional information the county commission  
56 or the municipality preparing the report deems necessary  
57 or that the executive director of the development office  
58 may by procedural rule require.

59 (b) Data contained in the report required by subsection  
60 (a) of this section shall be deemed a public record, as  
61 defined in article one, chapter twenty-nine-b of this code.

62 (1) The county commission's annual report shall be  
63 published on its web site, if it has a web site. If the county

64 does not have a web site, the annual report shall be  
65 published on the web site of the development office.

66 (2) The municipality's annual report shall be published  
67 on its web site, if it has a web site. If the municipality  
68 does not have a web site, the annual report shall be  
69 published on the web site of the development office.

70 (c) After the close of the fiscal year, but on or before the  
71 first day of October each year, the county commission and  
72 the governing body of a municipality that approved a  
73 development or redevelopment plan shall publish in a  
74 newspaper of general circulation in the county or munici-  
75 pality, as appropriate, an annual statement showing for  
76 each development or redevelopment project or plan for  
77 which tax increment financing obligations have been  
78 issued:

79 (1) A summary of receipts and disbursements, by major  
80 category, of moneys in the tax increment financing fund  
81 during that fiscal year;

82 (2) A summary of the status of the development or  
83 redevelopment plan and each project therein;

84 (3) The amount of tax increment financing principal  
85 outstanding as of the close of the fiscal year; and

86 (4) Any additional information the county commission or  
87 municipality deems necessary or appropriate to publish.

88 (d) Five years after the establishment of a development  
89 or redevelopment plan, and every five years thereafter, the  
90 county commission or municipality that approved the plan  
91 shall hold a public hearing regarding that development or  
92 redevelopment plan and the projects created or to be  
93 created in the development or redevelopment project area  
94 or district pursuant to this article.

95 (1) The purpose of the public hearing is to determine if  
96 the development or redevelopment plan and the proposed  
97 project or projects are making satisfactory progress under

98 the proposed time schedule contained within the approved  
99 plans for completion of the projects.

100 (2) Notice of this public hearing shall be given in a  
101 newspaper of general circulation in the county, or in the  
102 municipality for a municipal plan, once each week for four  
103 successive weeks immediately prior to the hearing.

104 (3) Public hearings on development and redevelopment  
105 plans and projects may be held as part of a regular or  
106 special meeting of the county commission, or governing  
107 body of the municipality, that adopted the plan.

108 (e) The executive director of the development office shall  
109 submit a report to the governor, the speaker of the House  
110 of Delegates and the president of the Senate no later than  
111 February first of each year. The report shall contain a  
112 summary of all information received by the executive  
113 director pursuant to this section.

114 (f) For the purpose of facilitating and coordinating the  
115 reports required by this section, the executive director of  
116 the development office may promulgate procedural rules  
117 in the manner provided in article three, chapter twenty-  
118 nine-a of this code, to ensure compliance with this section.

119 (g) The executive director of the development office shall  
120 provide information and technical assistance, as requested  
121 by a county commission or the governing body of a  
122 municipality, on the requirements of this article. The  
123 information and technical assistance shall be provided in  
124 the form of a manual, written in an easy-to-follow man-  
125 ner, and through consultations with staff of the develop-  
126 ment office.

127 (i) By the first day of October each year, each agency  
128 that proposed a development or redevelopment plan that  
129 was approved by a county commission, or the governing  
130 body of a municipality, and each county commission, or  
131 governing body of a municipality, that approved a devel-  
132 opment or redevelopment plan that was not proposed by

133 an agency shall report to the executive director of the  
134 development office the name, address, phone number and  
135 primary line of business of any business that relocates to  
136 the development or redevelopment project area or district  
137 during the immediately preceding fiscal year of the state.  
138 The executive director shall compile and report the same  
139 to the governor, the speaker of the House of Delegates and  
140 the president of the Senate by the first day of February of  
141 the next calendar year.

**§7-11B-16. Valuation of real property.**

1 (a) Upon and after the effective date of the creation of a  
2 development or redevelopment project area or district, the  
3 county assessor of the county in which the area or district  
4 is located shall transmit to the county clerk a certified  
5 statement of the base value, total ad valorem regular levy  
6 rate, total general obligation bond debt service ad valorem  
7 rate, and total excess levy rate applicable for the develop-  
8 ment or redevelopment area or district.

9 (1) The assessor shall undertake, upon request of the  
10 county commission, or the governing body of the municipi-  
11 lity, creating the development or redevelopment project  
12 area or district, an investigation, examination, and  
13 inspection of the taxable real and tangible personal  
14 property having a tax situs in the area or district and shall  
15 reaffirm or revalue the base value for assessment of the  
16 property in accordance with the findings of the investiga-  
17 tion, examination, and inspection.

18 (2) The county assessor shall determine, according to his  
19 or her best judgment from all sources available to him or  
20 her, the full aggregate assessed value of the taxable  
21 property in the area or district, which aggregate assessed  
22 valuation, upon certification thereof by the assessor to the  
23 clerk, constitutes the base value of the development or  
24 redevelopment project area or district.

25 (b) The county assessor shall give notice annually to the  
26 designated finance officer of each levying body having the

27 power to levy taxes on property within each area or  
28 district of the current value and the incremental value of  
29 the property in the development or redevelopment project  
30 area or district.

31 (c) The assessor shall also determine the tax increment  
32 by applying the applicable ad valorem regular levy rates  
33 to the incremental value.

34 (d) The notice shall also explain that the entire amount  
35 of the tax increment allocable to property within the  
36 development or redevelopment project area or district will  
37 be paid to the tax increment financing fund of the devel-  
38 opment or redevelopment project area or district until it is  
39 terminated.

40 (e) The assessor shall identify upon the landbooks those  
41 parcels of property that are within each existing develop-  
42 ment or redevelopment project area or district, specifying  
43 on landbooks the name of each area or district.

**§7-11B-17. Division of ad valorem real property tax revenue.**

1 (a) For so long as the development or redevelopment  
2 project area or district exists, the county sheriff shall  
3 divide the ad valorem tax revenue collected, with respect  
4 to taxable property in the area or district, as follows:

5 (1) The assessor shall determine for each tax year:

6 (A) The amount of ad valorem property tax revenue that  
7 should be generated by multiplying the assessed value of  
8 the property for the then current tax year by the aggregate  
9 of applicable levy rates for the tax year;

10 (B) The amount of ad valorem tax revenue that should be  
11 generated by multiplying the base assessed value of the  
12 property by the applicable regular ad valorem levy rates  
13 for the tax year;

14 (C) The amount of ad valorem tax revenue that should be  
15 generated by multiplying the assessed value of the prop-

16 erty for the current tax year by the applicable levy rates  
17 for general obligation bond debt service for the tax year;

18 (D) The amount of ad valorem property tax revenue that  
19 should be generated by multiplying the assessed value of  
20 the property for the current tax year by the applicable  
21 excess levy rates for the tax year; and

22 (E) The amount of ad valorem property tax revenue that  
23 should be generated by multiplying the incremental value  
24 by the applicable regular levy rates for the tax year.

25 (2) The sheriff shall determine from the calculations set  
26 forth in subdivision (1), subsection (a) of this section the  
27 percentage share of total ad valorem revenue for each  
28 levying body according to paragraphs (B) through (D),  
29 subdivision (1), subsection (a) of this section, by dividing  
30 each of such amounts by the total ad valorem revenue  
31 figure determined by the calculation in paragraph (A),  
32 subdivision (1), subsection (a) of this section; and

33 (3) On each date on which ad valorem tax revenue is to  
34 be distributed to the levying bodies, such revenue shall be  
35 distributed by:

36 (A) Applying the percentage share determined according  
37 to paragraph (B), subdivision (1), subsection (a) of this  
38 section to the revenues received and distributing such  
39 share to the levying bodies entitled to such distribution  
40 pursuant to current law;

41 (B) Applying the percentage share determined according  
42 to paragraph (C), subdivision (1), subsection (a) of this  
43 section to the revenues received and distributing such  
44 share to the levying bodies entitled to such distribution by  
45 reason of having general obligation bonds outstanding;

46 (C) Applying the percentage share determined according  
47 to paragraph (D), subdivision (1), subsection (a) of this  
48 section to the revenues received and distributing such  
49 share to the levying bodies entitled to such distribution by

50 reason of having excess levies in effect for the tax year;  
51 and

52 (D) Applying the percentage share determined according  
53 to paragraph (E), subdivision (1), subsection (a) of this  
54 section to the revenues received and distributing such  
55 share to the tax increment financing fund of the develop-  
56 ment or redevelopment project area or district.

57 (b) In each year for which there is a positive tax incre-  
58 ment, the county sheriff shall remit to the tax increment  
59 financing fund of the development or redevelopment  
60 project area or district that portion of the ad valorem  
61 property taxes collected that consists of the tax increment.

62 (c) Any additional moneys appropriated to the develop-  
63 ment or redevelopment project area or district pursuant to  
64 an appropriation by the county commission that created  
65 the district and any additional moneys dedicated to the  
66 fund from other sources shall be deposited to the tax  
67 increment financing fund for the development or redevel-  
68 opment project area or district by the sheriff.

69 (d) Any funds deposited into the tax increment financing  
70 fund of the development or redevelopment project area or  
71 district may be used to pay project costs, principal and  
72 interest on bonds, and the cost of any other improvements  
73 in the development or redevelopment project area or  
74 district deemed proper by the county commission.

75 (e) Unless otherwise directed pursuant to any agreement  
76 with the holders of tax increment financing obligations,  
77 moneys in the tax increment financing fund may be  
78 temporarily invested in the same manner as other funds of  
79 the county commission, or the municipality, that estab-  
80 lished the fund.

81 (f) If less than all of the tax increment is to be used for  
82 project costs or pledged to secure tax increment financing  
83 as provided in the plan for the development or redevelop-  
84 ment project area or district, the sheriff shall account for

85 that fact in distributing the ad valorem property tax  
86 revenues.

**§7-11B-18. Payments in lieu of taxes and other revenues.**

1 (a) The county commission or municipality that created  
2 the development or redevelopment project area or district  
3 shall deposit in the tax increment financing fund of the  
4 development or redevelopment project area or district all  
5 payments in lieu of taxes on tax exempt property located  
6 within the development or redevelopment project area or  
7 district.

8 (b) As a condition of receiving tax increment financing,  
9 the lessee of property that is exempt from property taxes  
10 because it is owned by this state, a political subdivision of  
11 this state or an agency or instrumentality thereof, the  
12 lessee shall execute a payment in lieu of tax agreement  
13 that shall remain in effect until the tax increment financ-  
14 ing obligations are paid, during which period of time the  
15 lessee agrees to pay to the county sheriff an amount equal  
16 to the amount of ad valorem property taxes that would  
17 have been levied against the assessed value of the property  
18 were it owned by the lessee rather than a tax exempt  
19 entity. The portion of the payment in lieu of taxes attrib-  
20 utable to the incremental value shall be deposited in the  
21 tax increment financing fund. The remaining portion of  
22 the in lieu payment shall be distributed among the levying  
23 bodies as follows:

24 (1) The portion of the in lieu tax payment attributable to  
25 the base value of the property shall be distributed to the  
26 levying bodies in the same manner as taxes attributable to  
27 the base value of other property in the area or district are  
28 distributed; and

29 (2) The portions of the in lieu tax payment attributable  
30 to levies for bonded indebtedness and excess levies shall be  
31 distributed in the same manner as those levies on other  
32 property in the area or district are distributed.



33 (c) Other revenues to be derived from the development or  
34 redevelopment project area or district may also be depos-  
35 ited in the tax increment financing fund at the direction of  
36 the county commission.

**§7-11B-19. Tax increment obligations generally.**

1 (a) Tax increment obligations may be issued by a county  
2 commission, or the governing body of the municipality, to  
3 pay project costs for projects included in the development  
4 or redevelopment plan approved by the development office  
5 and adopted by the county commission, or the governing  
6 body of the municipality, that are located in a develop-  
7 ment or redevelopment project area or district, or on land  
8 not in the district that is contiguous to the area or district.

9 (1) Tax increment financing obligations may be issued  
10 for project costs, as defined in section three of this article,  
11 which may include interest prior to and during the carry-  
12 ing out of a project and for a reasonable time thereafter,  
13 with such reserves as may be required by any agreement  
14 securing the obligations and all other expenses incidental  
15 to planning, carrying out and financing the project.

16 (2) The proceeds of tax increment financing obligations  
17 may also be used to reimburse the costs of any interim  
18 financing entered on behalf of projects in the development  
19 or redevelopment project area or district.

20 (b) Tax increment financing obligations issued under this  
21 article shall be payable solely from the tax increment or  
22 other revenues deposited to the credit of the tax increment  
23 financing fund of the development or redevelopment  
24 project area or district.

25 (c) Under no event shall tax increment financing obliga-  
26 tions be secured or be deemed to be secured by the full  
27 faith and credit of the county commission or the munici-  
28 pality issuing the tax increment financing obligations.

29 (d) Every tax increment financing bond, note or other  
30 obligation issued under this article shall recite on its face

31 that it is a special obligation payable solely from the tax  
32 increment and other revenues pledged for its repayment.

**§7-11B-20. Tax increment financing obligations – Authority to issue.**

1 For the purpose of paying project costs, or for the  
2 purpose of refunding notes issued under this article for the  
3 purpose of paying project costs, the county commission or  
4 municipality creating the development or redevelopment  
5 project area or district may issue tax increment financing  
6 obligations payable out of positive tax increments and  
7 other revenues deposited to the tax increment financing  
8 fund of the development or redevelopment project area or  
9 district.

**§7-11B-21. Tax increment financing obligations – Authorizing resolution.**

1 (a) Issuance of tax increment financing obligations shall  
2 be authorized by order of the county commission, or  
3 resolution of the municipality, that created the develop-  
4 ment or redevelopment project area or district.

5 (b) The order, or resolution, shall state the name of the  
6 development or redevelopment project area or district, the  
7 amount of tax increment financing obligations authorized,  
8 the type of obligation authorized, and the interest rate to  
9 be borne by the bonds, notes or other tax increment  
10 financing obligations.

11 (c) The order or ordinance may prescribe the terms, form,  
12 and content of the tax increment financing obligations and  
13 other particulars or information the county commission, or  
14 governing body of the municipality, issuing the obligations  
15 deems useful, or it may include by reference the terms and  
16 conditions set forth in a trust indenture or other document  
17 securing the development or redevelopment project tax  
18 increment financing obligations.

**§7-11B-22. Tax increment financing obligations - Terms, conditions.**

1 (a) Tax increment financing obligations may not be  
2 issued in an amount exceeding the estimated aggregate  
3 project costs, including all costs of issuance of the tax  
4 increment financing obligations.

5 (b) Tax increment financing obligations shall not be  
6 included in the computation of the constitutional debt  
7 limitation of the county commission or municipality  
8 issuing the tax increment financing obligations.

9 (c) Tax increment financing obligations shall mature  
10 over a period not exceeding thirty years from the date of  
11 entry of the county commission's order, or the effective  
12 date of the municipal ordinance, creating the development  
13 or redevelopment project area or district and approving  
14 the development or redevelopment plan, or a period  
15 terminating with the date of termination of the develop-  
16 ment or redevelopment project area or district, whichever  
17 period terminates earlier.

18 (d) Tax increment financing obligations may contain a  
19 provision authorizing their redemption, in whole or in  
20 part, at stipulated prices, at the option of the county  
21 commission or municipality issuing the obligations, on any  
22 interest payment date and, if so, the obligations shall  
23 provide the method of selecting the tax increment financ-  
24 ing obligations to be redeemed.

25 (e) The principal and interest on tax increment financing  
26 obligations may be payable at any place set forth in the  
27 resolution, trust indenture, or other document governing  
28 the obligations.

29 (f) Bonds or notes shall be issued in registered form.

30 (g) Bonds or notes may be issued in any denomination.

31 (h) Each tax increment financing obligation issued under  
32 this article is declared to be a negotiable instrument.

33 (i) The tax increment financing obligations may be sold  
34 at public or private sale.

35 (j) Insofar as they are consistent with subdivision (1),  
36 subsection (a) and subsections (b) and (c) of this section,  
37 the procedures for issuance, form, contents, execution,  
38 negotiation, and registration of county and municipal  
39 industrial or commercial revenue bonds set forth in article  
40 two-c, chapter thirteen of this code are incorporated by  
41 reference herein.

42 (k) The bonds may be refunded or refinanced and  
43 refunding bonds may be issued in any principal amount:  
44 *Provided*, That the last maturity of the refunding bonds  
45 shall not be later than the last maturity of the bonds being  
46 refunded.

**§7-11B-23. Tax increment financing obligations – Security –  
marketability.**

1 To increase the security and marketability of tax incre-  
2 ment financing obligations, the county commission or  
3 municipality issuing the obligations may:

4 (1) Create a lien for the benefit of the holders of the  
5 obligations upon any public improvements or public works  
6 financed by the obligations; or

7 (2) Make such covenants and do any and all such actions,  
8 not inconsistent with the constitution of this state, which  
9 may be necessary, convenient or desirable in order to  
10 additionally secure the obligations, or which tend to make  
11 the obligations more marketable according to the best  
12 judgment of the county commission or municipality  
13 issuing the tax increment financing obligations.

**§7-11B-24. Tax increment financing obligations – Special fund  
for repayment.**

1 (a) Tax increment financing obligations issued by a  
2 county commission or municipality are payable out of the  
3 tax increment financing fund created for each develop-

4 ment and redevelopment project area or district created  
5 under this article.

6 (b) The county commission or municipality issuing the  
7 tax increment financing obligations shall irrevocably  
8 pledge all or part of the tax increment financing fund to  
9 the payment of the obligations. The tax increment financ-  
10 ing fund, or the designated part thereof, may thereafter be  
11 used only for the payment of the obligations and their  
12 interest until they have been fully paid.

13 (c) A holder of the tax increment financing obligations  
14 shall have a lien against the tax increment financing fund  
15 for payment of the obligations and interest on them and  
16 may bring suit to enforce the lien.

**§7-11B-25. Tax increment financing obligations – Tax exemp-  
tion.**

1 Tax increment financing obligations issued under this  
2 article, together with the interest and income therefrom,  
3 shall be exempt from all state income taxes, whether  
4 imposed on individuals, corporations or other persons,  
5 from state business franchise taxes and from ad valorem  
6 property taxes.

**§7-11B-26. Excess funds.**

1 (a) Moneys received in the tax increment financing fund  
2 of the development or redevelopment project area or  
3 district in excess of amounts needed to pay project costs  
4 and debt service may be used by the county commission or  
5 municipality that created the development or redevelop-  
6 ment project area or district for other projects within the  
7 area or district, or distributed to the levying bodies as  
8 provided in this article.

9 (b) Upon termination of the area or district, all amounts  
10 in the tax increment financing fund of the area or district  
11 shall be paid over to the levying bodies in the same  
12 proportion that ad valorem property taxes on the base

13 value was paid over to those levying bodies for the tax  
14 year in which the area or district is terminated.

**§7-11B-27. Computation of local share for support of public schools when tax increment financing is used.**

1 For purposes of any computation made in accordance  
2 with the provisions of section eleven, article nine-a,  
3 chapter eighteen of this code, for a county in which there  
4 is tax increment financing in effect pursuant to this  
5 article, the assessed value shall be the current assessed  
6 value minus the amount of assessed value used to deter-  
7 mine the tax increment amount, minus any other adjust-  
8 ments allowed by section eleven of said article nine-a.

**§7-11B-28. Effective date.**

1 Notwithstanding the effective date of this act of the  
2 Legislature, this article shall not become operational and  
3 shall have no force and effect until the day the people  
4 ratify an amendment to the constitution of this state  
5 authorizing tax increment financing secured by ad valo-  
6 rem property taxes.

The Joint Committee on Enrolled Bills hereby certifies that the forgoing bill is correctly enrolled.

*[Signature]*  
.....  
Chairman Senate Committee

*[Signature]*  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*[Signature]*  
.....  
Clerk of the Senate

*[Signature]*  
.....  
Clerk of the House of Delegates

*[Signature]*  
.....  
President of the Senate

*[Signature]*  
.....  
Speaker House of Delegates

The within *is appended* this the *28<sup>th</sup>*  
Day of *March* ....., 2002.

*[Signature]*  
.....  
Governor

PRESENTED TO THE

COMMISSION

Date 3/26/02

Time 3:05 p