WEST VIRGINIA LEGISLATURE
Second Extraordinary Session, 2003

ENROLLED

SENATE BILL NO. 2010

(By Senators Tomblin, Mr. President, and Sproat,)
By Request of the Executive)

PASSED June 14, 2003

In Effect from Passage
ENROLLED

Senate Bill No. 2010

(BY SENATORS TOMBLIN, MR. PRESIDENT, AND SPROUSE,

BY REQUEST OF THE EXECUTIVE)

[Passed June 14, 2003; in effect from passage.]

AN ACT to amend and reenact section two, article two, chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections two, three, six, seven, eight, nine, ten, twelve, fourteen, fifteen, seventeen and nineteen, article twenty-two, chapter seven of said code; to amend and reenact sections two, three, six, seven, eight, nine, ten, eleven, twelve, fourteen, fifteen, sixteen, seventeen and nineteen, article thirty-eight, chapter eight of said code; to amend and reenact section eleven-a, article ten, chapter eleven of said code; to amend and reenact section thirty-two, article fifteen-b of said chapter; and to further amend said article by adding thereto four new sections, designated sections thirty-three, thirty-four, thirty-five and thirty-six, all relating generally to creation and administration of economic opportunity districts by county commissions and Class I and II municipalities and the imposition, administration and collection of special district excise taxes to finance district economic
development projects approved by council for community and economic development.

Be it enacted by the Legislature of West Virginia:

That section two, article two, chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections two, three, six, seven, eight, nine, ten, twelve, fourteen, fifteen, seventeen and nineteen, article twenty-two, chapter seven of said code be amended and reenacted; that sections two, three, six, seven, eight, nine, ten, eleven, twelve, fourteen, fifteen, sixteen, seventeen and nineteen, article thirty-eight, chapter eight of said code be amended and reenacted; that section eleven-a, article ten, chapter eleven of said code be amended and reenacted; that section thirty-two, article fifteen-b of said chapter be amended and reenacted; and that said article be further amended by adding thereto four new sections, designated sections thirty-three, thirty-four, thirty-five and thirty-six, all to read as follows:

CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.

ARTICLE 2. WEST VIRGINIA DEVELOPMENT OFFICE.

§5B-2-2. Council for community and economic development; members, appointment and expenses; meetings; appointment and compensation of director.

(a) The council for community and economic development, within the West Virginia development office, is a body corporate and politic, constituting a public corporation and government instrumentality. Membership on the council consists of:

(1) No less than nine nor more than eleven members to be appointed by the governor, with the advice and consent of the Senate, representing community or regional interests, including economic development, commerce, banking, manufacturing, the utility industry, the mining industry, the telecommunications/data processing industry, small business, labor, tourism or agriculture: Provided, That one
member appointed pursuant to this subsection shall be a member of a regional planning and development council. Of the members representing community or regional interests, there shall be at least three members from each congressional district of the state and they shall be appointed in such a manner as to provide a broad geographical distribution of members of the council;

(2) Four at-large members to be appointed by the governor with the advice and consent of the Senate;

(3) One member to be appointed by the governor from a list of two persons recommended by the speaker of the House of Delegates: Provided, That on and after the effective date of the amendment and reenactment of this section in the year two thousand three, this subdivision shall be of no force or effect and the term of the member previously appointed pursuant to this subdivision shall expire;

(4) One member to be appointed by the governor from a list of two persons recommended by the president of the Senate: Provided, That on and after the effective date of the amendment and reenactment of this section in the year two thousand three, this subdivision shall be of no force or effect and the term of the member previously appointed pursuant to this subdivision shall expire;

(5) The president of the West Virginia economic development council; and

(6) The chair, or his or her designee, of the tourism commission created pursuant to the provisions of section eight of this article.

In addition, the president of the Senate and the speaker of the House of Delegates, or his or her designee, shall serve as ex officio nonvoting members.

(b) The governor shall appoint the appointed members of the council to four-year terms. Any member whose term
has expired shall serve until his or her successor has been
duly appointed and qualified. Any person appointed to fill
a vacancy shall serve only for the unexpired term. Except
as otherwise provided in this section, any member is
eligible for reappointment. In cases of any vacancy in the
office of a member, the vacancy shall be filled by the
governor in the same manner as the original appointment.

(c) Members of the council are not entitled to compensa-
tion for services performed as members, but are entitled to
reimbursement for all reasonable and necessary expenses
actually incurred in the performance of their duties. A
majority of the voting members constitute a quorum for
the purpose of conducting business. The council shall elect
its chair for a term to run concurrent with the term of
office of the member elected as chair. The chair is eligible
for successive terms in that position.

(d) The council shall employ an executive director of the
West Virginia development office who is qualified for the
position by reason of his or her extensive education and
experience in the field of professional economic develop-
ment. The executive director shall serve at the will and
pleasure of the council. The salary of the director shall be
fixed by the council. The director shall have overall
management responsibility and administrative control and
supervision within the West Virginia development office.
It is the intention of the Legislature that the director
provide professional and technical expertise in the field of
professional economic and tourism development in order
to support the policy-making functions of the council, but
that the director not be a public officer, agent, servant or
contractor within the meaning of section thirty-eight,
article VI of the constitution of West Virginia and not be
a statutory officer within the meaning of section one,
article two, chapter five-f of this code. Subject to the
provisions of the contract provided in section four of this
article, the director may hire and fire economic develop-
ment representatives employed pursuant to the provisions of section five of this article.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 22. COUNTY ECONOMIC OPPORTUNITY DEVELOPMENT DISTRICTS.

§7-22-2. Legislative findings and declaration of purpose.

The Legislature finds that many significant business opportunities initiated within the counties of this state face financial and other economic obstacles. This adversely affects the economic and general well-being of the citizens of those counties.

The Legislature further finds that there are undeveloped, underdeveloped or seriously deteriorated development areas within certain counties of this state which are uniquely situated relative to large populations in other states or to other specific economic recreational or cultural activities or facilities which will attract large populations from this state and other states who would be likely to make substantial retail purchases of tangible personal property and services offered in modern and modernized structures and facilities constructed, supplemented, reconstructed or repaired in such undeveloped, underdeveloped or seriously deteriorated areas within certain counties of this state. The Legislature further finds that economic inducements provided by the state are necessary and appropriate to enable the construction, supplementation, reconstruction and repair of such modern and modernized structures and facilities in such undeveloped, underdeveloped or seriously deteriorated areas within certain counties of this state. Establishment of economic opportunity development districts within counties of the state, in accordance with the purpose and powers set forth in this article, will serve a public purpose and promote the health, safety, prosperity, security and general welfare of all citizens in the state. It will also promote the establishment and vitality of significant
business opportunities within counties while serving as an effective means for developing or restoring and promoting retail and other business activity within the economic opportunity development districts created herein. This will be of special benefit to the tax base of the counties within which any economic development district is created pursuant to this article and will specifically generate substantial incremental increases in excise taxes on sales within such economic opportunity development districts of tangible personal property and services and thereby and otherwise will stimulate economic growth and job creation.

§7-22-3. Definitions.

For purposes of this article, the term:

(1) “Council” means the council for community and economic development established in section two, article two, chapter five-b of this code;

(2) “County commission” means the governing body of a county of this state;

(3) “Development expenditures” means payments for governmental functions, programs, activities, facility construction, improvements and other goods and services which a district board is authorized to perform or provide under section five of this article;

(4) “District” means an economic opportunity development district created pursuant to this article;

(5) “District board” means a district board created pursuant to section ten of this article; and

(6) “Eligible property” means any taxable or exempt real property located in a district established pursuant to this article.

§7-22-6. Notice; hearing.
(a) General. – A county commission desiring to create an economic opportunity development district shall conduct a public hearing.

(b) Notice of hearing. – Notice of the public hearing shall be published as a Class I-0 legal advertisement in compliance with article three, chapter fifty-nine of this code at least twenty days prior to the scheduled hearing. In addition to the time and place of the hearing, the notice must also state:

(1) The purpose of the hearing;
(2) The name of the proposed district;
(3) The general purpose of the proposed district;
(4) The geographic boundaries of the property proposed to be included in the district; and
(5) The proposed method of financing any costs involved, including the base and rate of special district excise tax that may be imposed upon sales of tangible personal property and taxable services from business locations situated within the proposed district.

(c) Opportunity to be heard. – At the time and place set forth in the notice, the county commission shall afford the opportunity to be heard to any owner of real property situated in the proposed district and any residents of the county.

(d) Application to council. – If the county commission, following the public hearing, determines it advisable and in the public interest to establish an economic opportunity development district, it shall apply to the council for community and economic development for approval of the economic opportunity development district project pursuant to the procedures provided in section seven of this article.
§7-22-7. Application to council for community and economic development for approval of an economic opportunity development district project.

(a) General. — The council for community and economic development shall receive and act on applications filed with it by county commissions pursuant to section six of this article. Each application must include:

(1) A true copy of the notice described in section six of this article;

(2) The total cost of the project;

(3) A reasonable estimate of the number of months needed to complete the project;

(4) A general description of the capital improvements, additional or extended services and other proposed development expenditures to be made in the district as part of the project;

(5) A description of the proposed method of financing the development expenditures, together with a description of the reserves to be established for financing ongoing development or redevelopment expenditures necessary to permanently maintain the optimum economic viability of the district following its inception: Provided, That the amounts of the reserves shall not exceed the amounts that would be required by ordinary commercial capital market considerations;

(6) A description of the sources and anticipated amounts of all financing, including, but not limited to, proceeds from the issuance of any bonds or other instruments, revenues from the special district excise tax and enhanced revenues from property taxes and fees;

(7) A description of the financial contribution of the county commission to the funding of development expenditures;
(8) Identification of any businesses that the county commission expects to relocate their business locations from the district to another place in the state in connection with the establishment of the district or from another place in this state to the district: Provided, That for purposes of this article, any entities shall be designated "relocated entities";

(9) Identification of any businesses currently conducting business in the proposed economic opportunity development district that the county commission expects to continue doing business there after the district is created;

(10) A good faith estimate of the aggregate amount of consumers sales and service tax that was actually remitted to the tax commissioner by all business locations identified as provided in subdivisions (8) and (9) of this subsection with respect to their sales made and services rendered from their then current business locations that will be relocated from, or to, or remain in the district, for the twelve full calendar months next preceding the date of the application: Provided, That for purposes of this article, the aggregate amount is designated as "the base tax revenue amount";

(11) A good faith estimate of the gross annual district tax revenue amount;

(12) The proposed application of any surplus from all funding sources to further the objectives of this article;

(13) The tax commissioner's certification of: (i) The amount of consumers sales and service taxes collected from businesses located in the economic opportunity district during the twelve calendar months preceding the calendar quarter during which the application will be submitted to the council; (ii) the estimated amount of economic opportunity district excise tax that will be collected during the first twelve months after the month in which the tax commissioner would first begin to collect that tax; and (iii) the estimated amount of economic
opportunity district excise tax that will be collected during the first thirty-six months after the month in which the tax commissioner would first begin to collect that tax; and

(14) Any additional information the council may require.

(b) Review of applications. — The council shall review all project proposals for conformance to statutory and regulatory requirements, the reasonableness of the project's budget and timetable for completion, and the following criteria:

(1) The quality of the proposed project and how it addresses economic problems in the area in which the project will be located;

(2) The merits of the project determined by a cost-benefit analysis that incorporates all costs and benefits, both public and private;

(3) Whether the project is supported by significant private sector investment and substantial credible evidence that but for the existence of sales tax increment financing the project would not be feasible;

(4) Whether the economic opportunity district excise tax dollars will leverage or be the catalyst for the effective use of private, other local government, state or federal funding that is available;

(5) Whether there is substantial and credible evidence that the project is likely to be started and completed in a timely fashion;

(6) Whether the project will, directly or indirectly, improve the opportunities, in the area where the project will be located, for the successful establishment or expansion of other industrial or commercial businesses;

(7) Whether the project will, directly or indirectly, assist in the creation of additional long-term employment opportunities in the area and the quality of jobs created in
all phases of the project, to include, but not be limited to,
wages and benefits;

(8) Whether the project will fulfill a pressing need for the
area, or part of the area, in which the economic opportu-
nity district is located;

(9) Whether the county commission has a strategy for
economic development in the county and whether the
project is consistent with that strategy;

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

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

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

(13) The ability of the county commission and the project
developer or project team to carry out the project: Provided,
That no project may be approved by the council
unless the amount of all development expenditures
proposed to be made in the first twenty-four months
following the creation of the district results in capital
investment of more than fifty million dollars in the district
and the county submits clear and convincing information,
to the satisfaction of the council, that such investment will
be made if the council approves the project and the
Legislature authorizes the county commission to levy an
excise tax on sales of goods and services made within the
economic opportunity district as provided in this article.

(c) Additional criteria. – The council for community and
economic development may establish other criteria for
consideration when approving the applications.

(d) Action on the application. – The council for commu-
nity and economic development shall act to approve or not
approve any application within thirty days following the
receipt of the application or the receipt of any additional
information requested by the council, whichever is the
later.

(e) Certification of project. — If the council for commu-
nity and economic development approves a county's
economic opportunity district project application, it shall
issue to the county commission a written certificate
evidencing the approval.

The certificate shall expressly state a base tax revenue
amount, the gross annual district tax revenue amount and
the estimated net annual district tax revenue amount
which, for purposes of this article, is the difference
between the gross annual district tax revenue amount and
the base tax revenue amount, all of which the council has
determined with respect to the district's application based
on any investigation it considers reasonable and necessary,
including, but not limited to, any relevant information the
council for community and economic development re-
quests from the tax commissioner and the tax commis-
ioner provides to the council: Provided, That in deter-
mining the net annual district tax revenue amount, the
council may not use a base tax revenue amount less than
that amount certified by the tax commissioner but, in lieu
of confirmation from the tax commissioner of the gross
annual district tax revenue amount, the council may use
the estimate of the gross annual district tax revenue
amount provided by the county commission pursuant to
subsection (a) of this section.

(f) Certification of enlargement of geographic boundaries
of previously certified district. — If the council for commu-
nity and economic development approves a county's
economic opportunity district project application to
expand the geographic boundaries of a previously certified
district, it shall issue to the county commission a written
certificate evidencing the approval.

The certificate shall expressly state a base tax revenue
amount, the gross annual district tax revenue amount and
the estimated net annual district tax revenue amount which, for purposes of this article, is the difference between the gross annual district tax revenue amount and the base tax revenue amount, all of which the council has determined with respect to the district's application based on any investigation it considers reasonable and necessary, including, but not limited to, any relevant information the council requests from the tax commissioner and the tax commissioner provides to the council: Provided, That in determining the net annual district tax revenue amount, the council may not use a base tax revenue amount less than that amount certified by the tax commissioner but, in lieu of confirmation from the tax commissioner of the gross annual district tax revenue amount, the council may use the estimate of the gross annual district tax revenue amount provided by the county commission pursuant to subsection (a) of this section.

(g) Promulgation of rules. — The council for community and economic development may promulgate rules to implement the economic opportunity development district project application approval process and to describe the criteria and procedures it has established in connection therewith. These rules are not subject to the provisions of chapter twenty-nine-a of this code but shall be filed with the secretary of state.

§7-22-8. Establishment of the economic opportunity development district fund.

(a) General. — There is hereby created a special revenue account in the state treasury designated the “economic opportunity development district fund” which is an interest-bearing account and shall be invested in the manner described in section nine-c, article six, chapter twelve of this code with the interest income a proper credit to the fund.

(b) District subaccount. — A separate and segregated subaccount within the account shall be established for
each economic opportunity development district that is
approved by the council. In addition to the economic
opportunity district excise tax levied and collected as
provided in this article, funds paid into the account for the
credit of any subaccount may also be derived from the
following sources:

(1) All interest or return on the investment accruing to
the subaccount;

(2) Any gifts, grants, bequests, transfers, appropriations
or donations which are received from any governmental
entity or unit or any person, firm, foundation or corpora-
tion; and

(3) Any appropriations by the Legislature which are
made for this purpose.


(a) General. — County commissions have no inherent
to levy taxes and have only that authority
expressly granted to them by the Legislature. The Legisla-
ture is specifically extended, and intends by this article, to
exercise certain relevant powers expressed in section six-a,
article X of the constitution of this state as follows: (1)
The Legislature may appropriate state funds for use in
matching or maximizing grants-in-aid for public purposes
from the United States or any department, bureau, com-
mission or agency thereof, or any other source, to any
county, municipality or other political subdivision of the
state, under such circumstances and subject to such terms,
conditions and restrictions as the Legislature may pre-
scribe by law; and (2) the Legislature may impose a state
tax or taxes or dedicate a state tax or taxes or any portion
thereof for the benefit of and use by counties, municipali-
ties or other political subdivisions of the state for public
purposes, the proceeds of any such imposed or dedicated
tax or taxes or portion thereof to be distributed to such
counties, municipalities or other political subdivisions of
the state under such circumstances and subject to such
terms, conditions and restrictions as the Legislature may
prescribe.

Because a special district excise tax would have the
effect of diverting, for a specified period of years, tax
dollars which to the extent, if any, are not essentially
incremental to tax dollars currently paid into the general
revenue fund of the state, the Legislature finds that in
order to substantially ensure that such special district
excise taxes will not adversely impact the current level of
the general revenue fund of the state, it is necessary for the
Legislature to separately consider and act upon each and
every economic development district which is proposed,
including the unique characteristics of location, current
condition and activity of and within the area included in
such proposed economic opportunity development district
and that for such reasons a statute more general in ulti-
mate application is not feasible for accomplishment of the
intention and purpose of the Legislature in enacting this
article. Therefore, no economic opportunity development
district excise tax may be levied by a county commission
until after the Legislature expressly authorizes the county
commission to levy a special district excise tax on sales of
tangible personal property and services made within
district boundaries approved by the Legislature.

(b) Authorizations. — The Legislature authorizes the
following county commission to levy special district excise
taxes on sales of tangible personal property and services
made from business locations in the following economic
opportunity development districts:

The Ohio County commission may levy a special district
excise tax for the benefit of the “Fort Henry” economic
opportunity development project district which comprises
three hundred contiguous acres of land.

§7-22-10. Ordinance to create district as approved by council
and authorized by the Legislature.
(a) General. — If an economic opportunity development district project has been approved by the council and the levying of a special district excise tax for the district has been authorized by the Legislature, all in accordance with this article, the county commission may create the district by order entered of record as provided in article one of this chapter: Provided, That the county commission may not amend, alter or change in any manner the boundaries of the economic opportunity development district authorized by the Legislature. In addition to all other requirements, the order shall contain the following:

(1) The name of the district and a description of its boundaries;

(2) A summary of any proposed services to be provided and capital improvements to be made within the district and a reasonable estimate of any attendant costs;

(3) The base and rate of any special district excise tax that may be imposed upon sales by businesses for the privilege of operating within the district, which tax shall be passed on to and paid by the consumer, and the manner in which the taxes will be imposed, administered and collected, all of which shall be in conformity with the requirements of this article; and

(4) The district board members' terms, their method of appointment and a general description of the district board's powers and duties, which powers may include the authority:

(A) To make and adopt all necessary bylaws and rules for its organization and operations not inconsistent with any applicable laws;

(B) To elect its own officers, to appoint committees and to employ and fix compensation for personnel necessary for its operations;

(C) To enter into contracts with any person, agency, government entity, agency or instrumentality, firm,
(D) To amend or supplement any contracts or leases or to enter into new, additional or further contracts or leases upon the terms and conditions for consideration and for any term of duration, with or without option of renewal, as agreed upon by the district board and any person, agency, government entity, agency or instrumentality, firm, partnership, limited partnership, limited liability company or corporation;

(E) To, unless otherwise provided in, and subject to the provisions of any contracts or leases to operate, repair, manage and maintain buildings and structures and provide adequate insurance of all types and in connection with the primary use thereof and incidental thereto to provide services, such as retail stores and restaurants, and to effectuate incidental purposes, grant leases, permits, concessions or other authorizations to any person or persons upon the terms and conditions for consideration and for the term of duration as agreed upon by the district board and any person, agency, governmental department, firm or corporation;

(F) To delegate any authority given to it by law to any of its officers, committees, agents or employees;

(G) To apply for, receive and use grants-in-aid, donations and contributions from any source or sources and to accept and use bequests, devises, gifts and donations from any person, firm or corporation;

(H) To acquire real property by gift, purchase or construction or in any other lawful manner and hold title thereto in its own name and to sell, lease or otherwise dispose of all or part of any real property which it may
(I) To purchase or otherwise acquire, own, hold, sell, lease and dispose of all or part of any personal property which it may own, either by contract or at public auction;

(J) Pursuant to a determination by the district board that there exists a continuing need for redevelopment expenditures and that moneys or funds of the district are necessary therefor, to borrow money and execute and deliver the district's negotiable notes and other evidences of indebtedness therefor, on the terms as the district shall determine, and give security therefor as is requisite, including, without limitation, a pledge of the district's rights in its subaccount of the economic opportunity development district fund;

(K) To acquire (either directly or on behalf of the municipality) an interest in any entity or entities that own any real property situate in the district, to contribute capital to any entity or entities and to exercise the rights of an owner with respect thereto; and

(L) To expend its funds in the execution of the powers and authority given in this section, which expenditures, by the means authorized in this section, are hereby determined and declared as a matter of legislative finding to be for a public purpose and use, in the public interest and for the general welfare of the people of West Virginia, to alleviate and prevent economic deterioration and to relieve the existing critical condition of unemployment existing within the state.

(b) Additional contents of order. — The county commission's order shall also state the general intention of the county commission to develop and increase services and to make capital improvements within the district.

(c) Mailing of certified copies of order. — Upon entry of an order establishing an economic opportunity develop-
ment district excise tax, a certified copy of the order shall
be mailed to the state auditor, as ex officio the chief
inspector and supervisor of public offices, the state
treasurer and the tax commissioner.

§7-22-12. Special district excise tax authorized.

(a) General. — The county commission of a county,
authorized by the Legislature to levy a special district
excise tax for the benefit of an economic opportunity
development district, may, by order entered of record,
 impose that tax on the privilege of selling tangible per-
sonal property and rendering select services in the district
in accordance with this section.

(b) Tax base. — The base of a special district excise tax
imposed pursuant to this section shall be identical to the
base of the consumers sales and service tax imposed
pursuant to article fifteen, chapter eleven of this code on
sales made and services rendered within the boundaries of
the district: Provided, That except for the exemption
provided in section nine-f of said article, all exemptions
and exceptions from the consumers sales and service tax
shall also apply to the special district excise tax and sales
of gasoline and special fuel shall not be subject to special
district excise tax but shall remain subject to the tax
levied by said article.

(c) Tax rate. — The rate of a special district excise tax
levied pursuant to this section shall be stated in an order
entered of record by the county commission and equal to
the general rate of tax on each dollar of gross proceeds
from sales of tangible personal property and services
subject to the tax levied by section three, article fifteen,
chapter eleven of this code. The tax on fractional parts of
a dollar shall be levied and collected in conformity with
the provision of said section.

(d) Collection by tax commissioner. — The order of the
county commission imposing a special district excise tax
(e) Deposit of net tax collected. –

(1) The order of the county commission imposing a special district excise tax shall provide that the tax commissioner deposit the net amount of tax collected in the special economic opportunity development district fund to the credit of the county commission’s subaccount therein for the economic opportunity development district and that the money in the subaccount may only be used to pay for development expenditures as provided in this article except as provided in subsection (f) of this section.

(2) The state treasurer shall withhold from the county commission’s subaccount in the economic opportunity development district fund and shall deposit in the general revenue fund of this state, on or before the twentieth day of each calendar month next following the effective date of a special district excise tax, a sum equal to one twelfth of the base tax revenue amount last certified by the council pursuant to section seven of this article.

(f) Effective date of special district excise tax. – Any taxes imposed pursuant to the authority of this section shall be effective on the first day of the calendar month that begins sixty days after the date of adoption of an order entered of record imposing the tax or the first day of any later calendar month expressly designated in the order.

(g) Copies of order. – Upon entry of an order levying a special district excise tax, a certified copy of the order shall be mailed to the state auditor, as ex officio the chief inspector and supervisor of public offices, the state treasurer and the tax commissioner.

§7-22-14. Modification of included area; notice; hearing.
(a) General. — The order creating an economic opportunity development district may not be amended to include additional contiguous property until after the amendment is approved by the council in the same manner as an application to approve the establishment of the district is acted upon under section seven of this article and the amendment is authorized by the Legislature.

(b) Limitations. — Additional property may not be included in the district unless it is situated within the boundaries of the county and is contiguous to the then current boundaries of the district.

(c) Public hearing required. —

(1) The county commission of any county desiring to amend its order shall designate a time and place for a public hearing upon the proposal to include additional property. The notice shall meet the requirements set forth in section six of this article.

(2) At the time and place set forth in the notice, the county commission shall afford the opportunity to be heard to any owners of real property either currently included in or proposed to be added to the existing district and to any other residents of the county.

(d) Application to council. — Following the hearing, the county commission may, by resolution, apply to the council for community and economic development to approve inclusion of the additional property in the district.

(e) Consideration by council. — Before the council for community and economic development approves inclusion of the additional property in the district, the council shall determine the amount of taxes levied by article fifteen, chapter eleven of this code that were collected by businesses located in the area the county commission proposes to add to the district in the same manner as the base amount of tax was determined when the district was first created. The state treasurer shall also deposit one twelfth
of this additional tax base amount into the general revenue fund each month, as provided in section twelve of this article.

(f) Legislative action required. — After the council approves amending the boundaries of the district, the Legislature must amend section nine of this article to allow levy of the special district excise tax on business located in geographic area to be included in the district. After the Legislature amends said section, the county commission may then amend its order: Provided, That the order may not be effective any earlier than the first day of the calendar month that begins sixty days after the effective date of the act of the Legislature authorizing the levy on the special district excise tax on businesses located in the geographic area to be added to the boundaries of the district for which the tax is levied or a later date as set forth in the order of the county commission.

(g) Collection of special district excise tax. — All businesses included in a district because of the boundary amendment shall on the effective date of the order, determined as provided in subsection (f) of this section, collect the special district excise tax on all sales on tangible property or services made from locations in the district on or after the effective date of the county commission’s order or a later date as set forth in the order.

§7-22-15. Abolishment and dissolution of district; notice; hearing.

(a) General. — Except upon the express written consent of the council for community and economic development and of all the holders or obligees of any indebtedness or other instruments the proceeds of which were applied to any development or redevelopment expenditures or any indebtedness the payment of which is secured by revenues payable into the fund provided under section eight of this article or by any public property, a district may only be abolished by the county commission when there is no
outstanding indebtedness, the proceeds of which were applied to any development or redevelopment expenditures or the payment of which is secured by revenues payable into the fund provided under section eight of this article, or by any public property, and following a public hearing upon the proposed abolishment.

(b) Notice of public hearing. — Notice of the public hearing required by subsection (a) of this section shall be provided by first-class mail to all owners of real property within the district and shall be published as a Class I-0 legal advertisement in compliance with article three, chapter fifty-nine of this code at least twenty days prior to the public hearing.

(c) Transfer of district assets and funds. — Upon the abolishment of any economic opportunity development district, any funds or other assets, contractual rights or obligations, claims against holders of indebtedness or other financial benefits, liabilities or obligations existing after full payment has been made on all existing contracts, bonds, notes or other obligations of the district are transferred to and assumed by the county commission. Any funds or other assets transferred shall be used for the benefit of the area included in the district being abolished.

(d) Reinstatement of district. — Following abolishment of a district pursuant to this section, its reinstatement requires compliance with all requirements and procedures set forth in this article for the initial development, approval, establishment and creation of an economic opportunity development district.


(a) General. — Unless the county commission shall otherwise determine in the resolution authorizing the issuance of the bonds or notes under the authority of this article, there is hereby created a statutory lien upon the subaccount created pursuant to section eight of this article
and all special district excise tax revenues collected for the benefit of the district pursuant to section eleven-a, article ten, chapter eleven of this code for the purpose of securing the principal of the bonds or notes and the interest thereon.

(b) Security for debt service. — The principal of and interest on any bonds or notes issued under the authority of this article shall be secured by a pledge of the special district excise tax revenues derived from the economic opportunity development district project by the county commission issuing the bonds or notes to the extent provided in the resolution adopted by the county commission authorizing the issuance of the bonds or notes.

(c) Trust indenture. —

(1) In the discretion and at the option of the county commission, the bonds and notes may also be secured by a trust indenture by and between the county commission and a corporate trustee, which may be a trust company or bank having trust powers, within or without the state of West Virginia.

(2) The resolution authorizing the bonds or notes and fixing the details thereof may provide that the trust indenture may contain provisions for the protection and enforcing the rights and remedies of the bondholders as are reasonable and proper, not in violation of law, including covenants setting forth the duties of the county commission in relation to the construction, acquisition or financing of an economic opportunity development district project, or part thereof or an addition thereto, and the improvement, repair, maintenance and insurance thereof and for the custody, safeguarding and application of all moneys and may provide that the economic opportunity development district project shall be constructed and paid for under the supervision and approval of the consulting engineers or architects employed and designated by the county commission or, if directed by the county commis-
sion in the resolution, by the district board, and satisfac-
tory to the purchasers of the bonds or notes, their succes-
sors, assigns or nominees who may require the security
given by any contractor or any depository of the proceeds
of the bonds or notes or the revenues received from the
district project be satisfactory to the purchasers, their
successors, assigns or nominees.

(3) The indenture may set forth the rights and remedies
of the bondholders, the county commission or trustee and
the indenture may provide for accelerating the maturity of
the revenue bonds, at the option of the bondholders or the
county commission issuing the bonds, upon default in the
payment of the amounts due under the bonds.

(4) The county commission may also provide by resolu-
tion and in the trust indenture for the payment of the
proceeds of the sale of the bonds or notes and the revenues
from the economic opportunity development district
project to any depository it determines, for the custody
and investment thereof and for the method of distribution
thereof, with safeguards and restrictions it determines to
be necessary or advisable for the protection thereof and
upon the filing of a certified copy of the resolution or of
the indenture for record in the office of the clerk of the
county commission of the county in which the economic
opportunity development project is located, the resolution
has the same effect, as to notice, as the recordation of a
deed of trust or other recordable instrument.

(5) In the event that more than one certified resolution or
indenture is recorded, the security interest granted by the
first recorded resolution or indenture has priority in the
same manner as an earlier filed deed of trust except to the
extent the earlier recorded resolution or indenture pro-
vides otherwise.

(d) Mortgage or deed of trust. –

(1) In addition to or in lieu of the indenture provided in
subsection (c) of this section, the principal of and interest
on the bonds or notes may, but need not, be secured by a mortgage or deed of trust covering all or any part of the economic opportunity development district project from which the revenues pledged are derived and the same may be secured by an assignment or pledge of the income received from the economic opportunity development district project.

(2) The proceedings under which bonds or notes are authorized to be issued, when secured by a mortgage or deed of trust, may contain the same terms, conditions and provisions provided for herein when an indenture is entered into between the county commission and a trustee and any mortgage or deed of trust may contain any agreements and provisions customarily contained in instruments securing bonds or notes, including, without limiting the generality of the foregoing, provisions respecting the fixing and collection of revenues from the economic opportunity development district project covered by the proceedings or mortgage, the terms to be incorporated in any lease, sale or financing agreement with respect to the economic opportunity development district project, the improvement, repair, maintenance and insurance of the economic opportunity district project, the creation and maintenance of special funds from the revenues received from the economic opportunity development district project and the rights and remedies available in event of default to the bondholders or note holders, the county commission, or to the trustee under an agreement, indenture, mortgage or deed of trust, all as the county commission body considers advisable and shall not be in conflict with the provisions of this article or any existing law:

Provided, That in making any agreements or provisions, a county commission shall not have the power to incur original indebtedness by indenture, order, resolution, mortgage or deed of trust except with respect to the economic opportunity development district project and the application of the revenues therefrom and shall not have the power to incur a pecuniary liability or a charge upon
its general credit or against its taxing powers unless
approved by the voters in accordance with article one,
chapter thirteen of this code or as otherwise permitted by
the constitution of this state.

(e) Enforcement of obligations. –

(1) The proceedings authorizing any bonds and any
indenture, mortgage or deed of trust securing the bonds
may provide that, in the event of default in payment of the
principal of or the interest on the bonds, or notes, or in the
performance of any agreement contained in the proceed-
ings, indenture, mortgage or deed of trust, payment and
performance may be enforced by the appointment of a
receiver in equity with power to charge and collect rents
or other amounts and to apply the revenues from the
economic opportunity development district project in
accordance with the proceedings or the provisions of the
agreement, indenture, mortgage or deed of trust.

(2) Any agreement, indenture, mortgage or deed of trust
may provide also that, in the event of default in payment
or the violation of any agreement contained in the mort-
gage or deed of trust, the agreement, indenture, mortgage
or deed of trust may be foreclosed either by sale at public
outcry or by proceedings in equity and may provide that
the holder or holders of any of the bonds secured thereby
may become the purchaser at any foreclosure sale, if the
highest bidder therefor.

(f) No pecuniary liability. – No breach of any agreement,
indenture, mortgage or deed of trust shall impose any
pecuniary liability upon a county or any charge upon its
general credit or against its taxing powers.


(a) Any bonds issued under this article and at any time
outstanding may at any time, and from time to time, be
refunded by a county commission by the issuance of its
refunding bonds in amount as the county commission
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5 considers necessary to refund the principal of the bonds to
6 be refunded, together with any unpaid interest thereon; to
7 make any improvements or alterations in the economic
8 opportunity development district project; and any premi-
9 ums and commissions necessary to be paid in connection
10 therewith.

11 (b) Any refunding may be effected whether the bonds to
12 be refunded shall have then matured or shall thereafter
13 mature, either by sale of the refunding bonds and the
14 application of the proceeds thereof for the redemption of
15 the bonds to be refunded thereby, or by exchange of the
16 refunding bonds for the bonds to be refunded thereby:
17 Provided, That the holders of any bonds to be refunded
18 shall not be compelled without their consent to surrender
19 their bonds for payment or exchange prior to the date on
20 which they are payable or, if they are called for redemp-
21 tion, prior to the date on which they are by their terms
22 subject to redemption.

23 (c) Any refunding bonds issued under the authority of
24 this article is subject to the provisions contained in section
25 sixteen of this article and shall be secured in accordance
26 with the provisions of section seventeen of this article.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 38. MUNICIPAL ECONOMIC OPPORTUNITY DEVELOPMENT
DISTRICTS.

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

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

4 The Legislature further finds that there are undeveloped,
5 underdeveloped or seriously deteriorated development
6 areas within certain municipalities of this state which are
7 uniquely situated relative to large populations in other
8 states or to other specific economic recreational or cultural
9 activities or facilities which will attract large populations
from this state and other states who would be likely to
make substantial retail purchases of tangible personal
property and services offered in modern and modernized
structures and facilities constructed, supplemented,
reconstructed or repaired in such undeveloped, underde-
veloped or seriously deteriorated areas within certain
municipalities of this state. The Legislature further finds
that economic inducements provided by the state are
necessary and appropriate to enable the construction,
supplementation, reconstruction and repair of such
modern and modernized structures and facilities in such
undeveloped, underdeveloped or seriously deteriorated
areas within certain municipalities of this state. This
adversely affects the economic and general well-being of
the citizens of those municipalities. Establishment of
economic opportunity development districts within
municipalities of the state, in accordance with the purpose
and powers set forth in this article, will serve a public
purpose and promote the health, safety, prosperity,
security and general welfare of all citizens in the state. It
will also promote the establishment and vitality of signifi-
cant business opportunities within those municipalities
while serving as an effective means for developing or
restoring and promoting retail and other business activity
within the economic opportunity development districts
created herein. This will be of special benefit to the tax
base of the municipalities within which any economic
development district is created pursuant to this article and
will specifically generate substantial incremental increases
in excise taxes on sales within such economic opportunity
development districts of tangible personal property and
services and thereby and otherwise will stimulate eco-
nomic growth and job creation.


For purposes of this article, the term:

(1) “Council” means the council for community and
economic development established in section two, article
two, chapter five-b of this code;
(2) "Development expenditures" means payments for governmental functions, programs, activities, facility construction, improvements and other goods and services which a district board is authorized to perform or provide under section five of this article;

(3) "District" means an economic opportunity development district created pursuant to this article;

(4) "District board" means a district board created pursuant to section ten of this article;

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

(6) "Municipality" is a word of art and shall mean, for the purposes of this article, only Class I and Class II cities as classified in section three, article one of this chapter.

§8-38-6. Notice; hearing.

(a) General. — A municipality desiring to create an economic opportunity development district shall conduct a public hearing.

(b) Notice of hearing. — Notice of the public hearing shall be published as a Class I-0 legal advertisement in compliance with article three, chapter fifty-nine of this code at least twenty days prior to the scheduled hearing. In addition to the time and place of the hearing, the notice must also state:

(1) The purpose of the hearing;

(2) The name of the proposed district;

(3) The general purpose of the proposed district;

(4) The geographic boundaries of the property proposed to be included in the district; and

(5) The proposed method of financing any costs involved, including the base and rate of special district excise tax
that may be imposed upon sales of tangible personal
property and taxable services from business locations
situated within the proposed district.

(c) Opportunity to be heard. — At the time and place set
forth in the notice, the municipality shall afford the
opportunity to be heard to any owner of real property
situated in the proposed district and any residents of the
municipality.

(d) Application to council. — If the municipality, follow-
ing the public hearing, determines it advisable and in the
public interest to establish an economic opportunity
development district, it shall apply to the council for
community and economic development for approval of the
economic opportunity development district project
pursuant to the procedures provided in section seven of
this article.

§8-38-7. Application to council for community and economic
development for approval of an economic opportu-
nity development district project.

(a) General. — The council for community and economic
development shall receive and act on applications filed
with it by municipalities pursuant to section six of this
article. Each application must include:

(1) A true copy of the notice described in section six of
this article;

(2) The total cost of the project;

(3) A reasonable estimate of the number of months
needed to complete the project;

(4) A general description of the capital improvements,
additional or extended services and other proposed
development expenditures to be made in the district as
part of the project;

(5) A description of the proposed method of financing the
development expenditures, together with a description of
the reserves to be established for financing ongoing development or redevelopment expenditures necessary to permanently maintain the optimum economic viability of the district following its inception: Provided, That the amounts of the reserves shall not exceed the amounts that would be required by ordinary commercial capital market considerations;

(6) A description of the sources and anticipated amounts of all financing, including, but not limited to, proceeds from the issuance of any bonds or other instruments, revenues from the special district excise tax and enhanced revenues from property taxes and fees;

(7) A description of the financial contribution of the municipality to the funding of development expenditures;

(8) Identification of any businesses that the municipality expects to relocate their business locations from the district to another place in the state in connection with the establishment of the district or from another place in this state to the district: Provided, That for purposes of this article, any entities shall be designated “relocated entities”;

(9) Identification of any businesses currently conducting business in the proposed economic opportunity development district that the municipality expects to continue doing business there after the district is created;

(10) A good faith estimate of the aggregate amount of consumers sales and service tax that was actually remitted to the tax commissioner by all business locations identified as provided in subdivisions (8) and (9) of this subsection with respect to their sales made and services rendered from their then current business locations that will be relocated from, or to, or remain in the district, for the twelve full calendar months next preceding the date of the application: Provided, That for purposes of this article, the aggregate amount is designated as “the base tax revenue amount”;}
(11) A good faith estimate of the gross annual district tax revenue amount;

(12) The proposed application of any surplus from all funding sources to further the objectives of this article;

(13) The tax commissioner's certification of: (i) The amount of consumers sales and service taxes collected from businesses located in the economic opportunity district during the twelve calendar months preceding the calendar quarter during which the application will be submitted to the council; (ii) the estimated amount of economic opportunity district excise tax that will be collected during the first twelve months after the month in which the tax commissioner would first begin to collect that tax; and (iii) the estimated amount of economic opportunity district excise tax that will be collected during the first thirty-six months after the month in which the tax commissioner would first begin to collect that tax; and

(14) Any additional information the council may require.

(b) Review of applications. — The council shall review all project proposals for conformance to statutory and regulatory requirements, the reasonableness of the project's budget and timetable for completion, and the following criteria:

(1) The quality of the proposed project and how it addresses economic problems in the area in which the project will be located;

(2) The merits of the project determined by a cost-benefit analysis that incorporates all costs and benefits, both public and private;

(3) Whether the project is supported by significant private sector investment and substantial credible evidence that but for the existence of sales tax increment financing the project would not be feasible;
(4) Whether the economic opportunity development district excise tax dollars will leverage or be the catalyst for the effective use of private, other local government, state or federal funding that is available;

(5) Whether there is substantial and credible evidence that the project is likely to be started and completed in a timely fashion;

(6) Whether the project will, directly or indirectly, improve the opportunities, in the area where the project will be located, for the successful establishment or expansion of other industrial or commercial businesses;

(7) Whether the project will, directly or indirectly, assist in the creation of additional long-term employment opportunities in the area and the quality of jobs created in all phases of the project, to include, but not be limited to, wages and benefits;

(8) Whether the project will fulfill a pressing need for the area, or part of the area, in which the economic opportunity district is located;

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

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

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

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

(13) The ability of the municipality and the project developer or project team to carry out the project: Provided, That no project may be approved by the council unless the amount of all development expenditures
proposed to be made in the first twenty-four months following the creation of the district results in capital investment of more than fifty million dollars in the district and the municipality submits clear and convincing information, to the satisfaction of the council, that such investment will be made if the council approves the project and the Legislature authorizes the municipality to levy an excise tax on sales of goods and services made within the economic opportunity development district as provided in this article.

(c) **Additional criteria.** — The council for community and economic development may establish other criteria for consideration when approving the applications.

(d) **Action on the application.** — The council for community and economic development shall act to approve or not approve any application within thirty days following the receipt of the application or the receipt of any additional information requested by the council, whichever is the later.

(e) **Certification of project.** — If the council for community and economic development approves a municipality’s economic opportunity district project application, it shall issue to the municipality a written certificate evidencing the approval.

The certificate shall expressly state a base tax revenue amount, the gross annual district tax revenue amount and the estimated net annual district tax revenue amount which, for purposes of this article, is the difference between the gross annual district tax revenue amount and the base tax revenue amount, all of which the council for community and economic development has determined with respect to the district’s application based on any investigation it considers reasonable and necessary, including, but not limited to, any relevant information the council for community and economic development requests from the tax commissioner and the tax commis-
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Provided, That in determining the net annual district tax revenue amount, the council may not use a base tax revenue amount less than that amount certified by the tax commissioner but, in lieu of confirmation from the tax commissioner of the gross annual district tax revenue amount, the council may use the estimate of the gross annual district tax revenue amount provided by the municipality pursuant to subsection (a) of this section.

(f) Certification of enlargement of geographic boundaries of previously certified district. — If the council for community and economic development approves a municipality's economic opportunity district project application to expand the geographic boundaries of a previously certified district, it shall issue to the municipality a written certificate evidencing the approval.

The certificate shall expressly state a base tax revenue amount, the gross annual district tax revenue amount and the estimated net annual district tax revenue amount which, for purposes of this article, is the difference between the gross annual district tax revenue amount and the base tax revenue amount, all of which the council has determined with respect to the district's application based on any investigation it considers reasonable and necessary, including, but not limited to, any relevant information the council requests from the tax commissioner and the tax commissioner provides to the council: Provided, That in determining the net annual district tax revenue amount, the council may not use a base tax revenue amount less than that amount certified by the tax commissioner but, in lieu of confirmation from the tax commissioner of the gross annual district tax revenue amount, the council may use the estimate of the gross annual district tax revenue amount provided by the municipality pursuant to subsection (a) of this section.

(g) Promulgation of rules. — The council for community and economic development may promulgate rules to
implement the economic opportunity development district project application approval process and to describe the criteria and procedures it has established in connection therewith. These rules are not subject to the provisions of chapter twenty-nine-a of this code but shall be filed with the secretary of state.

§8-38-8. Establishment of the economic opportunity development district fund.

(a) General. — There is hereby created a special revenue account in the state treasury designated the “economic opportunity development district fund” which is an interest-bearing account and shall be invested in the manner described in section nine-c, article six, chapter twelve of this code with the interest income a proper credit to the fund.

(b) District subaccount. — A separate and segregated subaccount within the account shall be established for each economic opportunity development district that is approved by the council. In addition to the economic opportunity district excise tax levied and collected as provided in this article, funds paid into the account for the credit of any subaccount may also be derived from the following sources:

(1) All interest or return on the investment accruing to the subaccount;

(2) Any gifts, grants, bequests, transfers, appropriations or donations which are received from any governmental entity or unit or any person, firm, foundation or corporation; and

(3) Any appropriations by the Legislature which are made for this purpose.


(a) General. — Municipalities have no inherent authority to levy taxes and have only that authority expressly
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granted to them by the Legislature. The Legislature is specifically extended, and intends by this article to exercise certain relevant powers expressed in section six-a, article X of the constitution of this state as follows: (1) The Legislature may appropriate state funds for use in matching or maximizing grants-in-aid for public purposes from the United States or any department, bureau, commission or agency thereof, or any other source, to any county, municipality or other political subdivision of the state, under such circumstances and subject to such terms, conditions and restrictions as the Legislature may prescribe by law; and (2) the Legislature may impose a state tax or taxes or dedicate a state tax or taxes or any portion thereof for the benefit of and use by counties, municipalities or other political subdivisions of the state for public purposes, the proceeds of any such imposed or dedicated tax or taxes or portion thereof to be distributed to such counties, municipalities or other political subdivisions of the state under such circumstances and subject to such terms, conditions and restrictions as the Legislature may prescribe.

Because a special district excise tax would have the effect of diverting, for a specified period of years, tax dollars which to the extent, if any, are not essentially incremental to tax dollars currently paid into the general revenue fund of the state, the Legislature finds that in order to substantially ensure that such special district excise taxes will not adversely impact the current level of the general revenue fund of the state, it is necessary for the Legislature to separately consider and act upon each and every economic development district which is proposed, including the unique characteristics of location, current condition and activity of and within the area included in such proposed economic opportunity development district and that for such reasons a statute more general in ultimate application is not feasible for accomplishment of the intention and purpose of the Legislature in enacting this article. Therefore, no economic opportunity development
district excise tax may be levied by a municipality until
after the Legislature expressly authorizes the municipality
to levy a special district excise tax on sales of tangible
personal property and services made within district
boundaries approved by the Legislature.

(b) Authorizations. — The Legislature authorizes the
following municipalities to levy special district excise
taxes on sales of tangible personal property and services
made from business locations in the following economic
opportunity development districts.

§8-38-10. Ordinance to create district as approved by council
and authorized by the Legislature.

(a) General. — If an economic opportunity development
district project has been approved by the council for
community and economic development and the levying of
a special district excise tax for the district has been
authorized by the Legislature, all in accordance with this
article, the municipality may create the district by ordi-
nance entered of record as provided in article one of this
chapter: Provided, That the municipality may not amend,
alter or change in any manner the boundaries of the
economic opportunity development district authorized by
the Legislature. In addition to all other requirements, the
ordinance shall contain the following:

(1) The name of the district and a description of its
boundaries;

(2) A summary of any proposed services to be provided
and capital improvements to be made within the district
and a reasonable estimate of any attendant costs;

(3) The base and rate of any special district excise tax
that may be imposed upon sales by businesses for the
privilege of operating within the district, which tax shall
be passed on to and paid by the consumer, and the manner
in which the taxes will be imposed, administered and
collected, all of which shall be in conformity with the
requirements of this article; and

(4) The district board members' terms, their method of
appointment and a general description of the district
board's powers and duties, which powers may include the
authority:

(A) To make and adopt all necessary bylaws and rules for
its organization and operations not inconsistent with any
applicable laws;

(B) To elect its own officers, to appoint committees and
to employ and fix compensation for personnel necessary
for its operations;

(C) To enter into contracts with any person, agency,
government entity, agency or instrumentality, firm,
partnership, limited partnership, limited liability company
or corporation, including both public and private corpora-
tions, and for-profit and not-for-profit organizations and
generally to do any and all things necessary or convenient
for the purpose of promoting, developing and advancing
the purposes described in section two of this article;

(D) To amend or supplement any contracts or leases or to
enter into new, additional or further contracts or leases
upon the terms and conditions for consideration and for
any term of duration, with or without option of renewal,
as agreed upon by the district board and any person,
agency, government entity, agency or instrumentality,
firm, partnership, limited partnership, limited liability
company or corporation;

(E) To, unless otherwise provided in, and subject to the
provisions of any contracts or leases to operate, repair,
manage, and maintain buildings and structures and
provide adequate insurance of all types and in connection
with the primary use thereof and incidental thereto to
provide services, such as retail stores and restaurants, and
to effectuate incidental purposes, grant leases, permits,
concessions or other authorizations to any person or persons upon the terms and conditions for consideration and for the term of duration as agreed upon by the district board and any person, agency, governmental department, firm or corporation;

(F) To delegate any authority given to it by law to any of its officers, committees, agents or employees;

(G) To apply for, receive and use grants-in-aid, donations and contributions from any source or sources and to accept and use bequests, devises, gifts and donations from any person, firm or corporation;

(H) To acquire real property by gift, purchase or construction or in any other lawful manner and hold title thereto in its own name and to sell, lease or otherwise dispose of all or part of any real property which it may own, either by contract or at public auction, upon the approval by the district board;

(I) To purchase or otherwise acquire, own, hold, sell, lease and dispose of all or part of any personal property which it may own, either by contract or at public auction;

(J) Pursuant to a determination by the district board that there exists a continuing need for redevelopment expenditures and that moneys or funds of the district are necessary therefor, to borrow money and execute and deliver the district's negotiable notes and other evidences of indebtedness therefor, on the terms as the district shall determine, and give security therefor as is requisite, including, without limitation, a pledge of the district's rights in its subaccount of the economic opportunity development district fund;

(K) To acquire (either directly or on behalf of the municipality) an interest in any entity or entities that own any real property situate in the district, to contribute capital to any entity or entities and to exercise the rights of an owner with respect thereto; and
(L) To expend its funds in the execution of the powers and authority given in this section, which expenditures, by the means authorized in this section, are hereby deter-
mined and declared as a matter of legislative finding to be for a public purpose and use, in the public interest and for the general welfare of the people of West Virginia, to alleviate and prevent economic deterioration and to relieve the existing critical condition of unemployment existing within the state.

(b) Additional contents of ordinance. — The municipal-
ity's ordinance shall also state the general intention of the municipality to develop and increase services and to make capital improvements within the district.

(c) Mailing of certified copies of ordinance. — Upon enactment of an ordinance establishing an economic opportunity development district excise tax, a certified copy of the ordinance shall be mailed to the state auditor, as ex officio the chief inspector and supervisor of public offices, the state treasurer and the tax commissioner.

§8-38-11. District board; duties.

(a) General. — The council of a municipality that has been authorized by the council for community and economic development to establish an economic opportunity development district, in accordance with this article, shall provide, by ordinance, for the appointment of a district board to oversee the operations of the district: Provided,

That the municipality may, in the ordinance, in lieu of appointing a separate district board, designate itself to act as the district board.

(b) Composition of board. — If a separate district board is to be appointed, it shall be made up of at least seven members, two of which shall be owners, or representatives of owners, of real property situated in the economic opportunity development district and the other five shall be residents of the municipality within which the district is located.
(c) **Annual report.** — The district board, in addition to
the duties prescribed by the ordinance creating the
district, shall submit an annual report to the municipality
and the council containing:

1. An itemized statement of its receipts and disburse-
ments for the preceding fiscal year;
2. A description of its activities for the preceding fiscal
year;
3. A recommended program of services to be performed
and capital improvements to be made within the district
for the coming fiscal year; and
4. A proposed budget to accomplish its objectives.

(d) **Conflict of interest exception.** — Nothing in this
article prohibits any member of the district board from
also serving on the board of directors of a nonprofit
corporation with which the municipality may contract to
provide specified services within the district.

(e) **Compensation of board members.** — Each member of
the district board may receive reasonable compensation
for services on the board in the amount determined by the
municipality: Provided, That when a district board is not
created for the district but the work of the board is done
by the municipality, the members shall receive no addi-
tional compensation.

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

(a) **General.** — The council of a municipality, authorized
by the Legislature to levy a special district excise tax for
the benefit of an economic opportunity development
district, may, by ordinance, impose that tax on the privi-
lege of selling tangible personal property and rendering
select services in the district in accordance with this
section.

(b) **Tax base.** — The base of a special district excise tax
imposed pursuant to this section shall be identical to the
base of the consumers sales and service tax imposed
pursuant to article fifteen, chapter eleven of this code on
sales made and services rendered within the boundaries of
the district. Provided, That except for the exemption
provided in section nine-f of said article, all exemptions
and exceptions from the consumers sales and service tax
shall also apply to the special district excise tax and sales
of gasoline and special fuel shall not be subject to special
district excise tax but shall remain subject to the tax
levied by said article.

(c) Tax rate. — The rate of a special district excise tax
levied pursuant to this section shall be stated in an ordi-
nance enacted by the municipality and equal to the general
rate of tax on each dollar of gross proceeds from sales of
tangible personal property and services subject to the tax
levied by section three, article fifteen, chapter eleven of
this code. The tax on fractional parts of a dollar shall be
levied and collected in conformity with the provision of
said section.

(d) Collection by tax commissioner. — The ordinance of
the municipality imposing a special district excise tax
shall provide for the tax to be collected by the tax commis-
sioner in the same manner as the tax levied by section
three, article fifteen, chapter eleven of this code is admin-
istered, assessed, collected and enforced.

(e) Deposit of net tax collected. —

(1) The ordinance of the municipality imposing a special
district excise tax shall provide that the tax commissioner
deposit the net amount of tax collected in the special
economic opportunity development district fund to the
credit of the municipality's subaccount therein for the
economic opportunity development district and that the
money in the subaccount may only be used to pay for
development expenditures as provided in this article
except as provided in subsection (f) of this section.
(2) The state treasurer shall withhold from the municipality's subaccount in the economic opportunity development district fund and shall deposit in the general revenue fund of this state, on or before the twentieth day of each calendar month next following the effective date of a special district excise tax, a sum equal to one twelfth of the base tax revenue amount last certified by the council pursuant to section seven of this article.

(f) **Effective date of special district excise tax.** — Any taxes imposed pursuant to the authority of this section shall be effective on the first day of the calendar month that begins at least sixty days after the date of enactment of the ordinance imposing the tax or at any later date expressly designated in the ordinance that begins on the first day of a calendar month.

(g) **Copies of ordinance.** — Upon enactment of an ordinance levying a special district excise tax, a certified copy of the ordinance shall be mailed to the state auditor, as ex officio the chief inspector and supervisor of public offices, the state treasurer and the tax commissioner.

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

(a) **General.** — The ordinance creating an economic opportunity development district may not be amended to include additional contiguous property until after the amendment is approved by the council for community and economic development in the same manner as an application to approve the establishment of the district is acted upon under section seven of this article.

(b) **Limitations.** — Additional property may not be included in the district unless it is situated within the boundaries of the municipality and is contiguous to the then current boundaries of the district.

(c) **Public hearing required.** —

(1) The council of any municipality desiring to amend its ordinance shall designate a time and place for a public
hearing upon the proposal to include additional property. The notice shall meet the requirements set forth in section six of this article.

(2) At the time and place set forth in the notice, the municipality shall afford the opportunity to be heard to any owners of real property either currently included in or proposed to be added to the existing district and to any other residents of the municipality.

(d) Application to council. — Following the hearing, the municipality may, by resolution, apply to the council for community and economic development to approve inclusion of the additional property in the district.

(e) Consideration by council. — Before the council for community and economic development approves inclusion of the additional property in the district, the council shall determine the amount of taxes levied by article fifteen, chapter eleven of this code that were collected by businesses located in the area the municipality proposes to add to the district in the same manner as the base amount of tax was determined when the district was first created. The state treasurer shall also deposit one twelfth of this additional tax base amount into the general revenue fund each month, as provided in section twelve of this article.

(f) Legislative action required. — After the council for community and economic development approves amending the boundaries of the district, the Legislature must amend section nine of this article to allow levy of the special district excise tax on business located in geographic area to be included in the district. After the Legislature amends said section, the municipality may then amend its ordinance: Provided, That the ordinance may not be effective any earlier than the first day of the calendar month that begins sixty days after the effective date of the amended ordinance imposing the levy of the special district excise tax on businesses located in the geographic area to be added to the boundaries of the district for which the tax is
levied or the first day of a later calendar month as set forth in the ordinance of the municipality.

(g) Collection of special district excise tax. — All businesses included in a district because of the boundary amendment shall on the effective date of the ordinance, determined as provided in subsection (f) of this section, collect the special district excise tax on all sales on tangible property or services made from locations in the district on or after the effective date of the municipality's ordinance or a later date as set forth in the ordinance.

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

(a) General. — Except upon the express written consent of the council for community and economic development and of all the holders or obligees of any indebtedness or other instruments the proceeds of which were applied to any development or redevelopment expenditures or any indebtedness, the payment of which is secured by revenues payable into the fund provided under section eight of this article or by any public property, a district may only be abolished by the municipality when there is no outstanding indebtedness the proceeds of which were applied to any development or redevelopment expenditures or the payment of which is secured by revenues payable into the fund provided under section eight of this article, or by any public property, and following a public hearing upon the proposed abolishment.

(b) Notice of public hearing. — Notice of the public hearing required by subsection (a) of this section shall be provided by first-class mail to all owners of real property within the district and shall be published as a Class I-0 legal advertisement in compliance with article three, chapter fifty-nine of this code at least twenty days prior to the public hearing.

(c) Transfer of district assets and funds. — Upon the abolishment of any economic opportunity development
district, any funds or other assets, contractual rights or obligations, claims against holders of indebtedness or other financial benefits, liabilities or obligations existing after full payment has been made on all existing contracts, bonds, notes or other obligations of the district are transferred to and assumed by the municipality. Any funds or other assets transferred shall be used for the benefit of the area included in the district being abolished.

(d) Reinstatement of district. — Following abolishment of a district pursuant to this section, its reinstatement requires compliance with all requirements and procedures set forth in this article for the initial development, approval, establishment and creation of an economic opportunity development district.

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

(a) General. — The municipality that established the economic opportunity development district may issue bonds or notes for the purpose of financing development expenditures, as described in section five of this article, with respect to one or more projects within the economic opportunity development district.

(b) Limited obligations. — All bonds and notes issued by a municipality under the authority of this article are limited obligations of the municipality.

(c) Term of obligations. — No municipality may issue notes, bonds or other instruments for funding district projects or improvements that exceed a repayment schedule of thirty years.

(d) Debt service. — The principal and interest on the bonds shall be payable out of the funds on deposit in the subaccount established for the economic opportunity development district pursuant to section eight of this article, including, without limitation, any funds derived from the special district excise tax imposed by section
twelve of this article or other revenues derived from the
economic opportunity development district to the extent
pledged for the purpose by the municipality in the resolu-
tion authorizing the bonds.

(e) Surplus funds. — To the extent that the average daily
amount on deposit in the subaccount established for a
district pursuant to section eight of this article exceeds, for
more than six consecutive calendar months, the sum of: (1)
One hundred thousand dollars; plus (2) the amount
required to be kept on deposit pursuant to the documents
authorizing, securing or otherwise relating to the bonds or
notes issued under this section, then the excess shall be
used by the district either to redeem the bonds or notes
previously issued or remitted to the general fund of this
state.

(f) Debt not general obligation of municipality. —
Neither the notes or bonds and any interest coupons issued
under the authority of this article shall ever constitute an
indebtedness of the municipality issuing the notes or
bonds within the meaning of any constitutional provision
or statutory limitation and shall never constitute or give
rise to a pecuniary liability of the municipality issuing the
notes or bonds.

(g) Debt not a charge general credit or taxing powers of
municipality. — Neither the bonds or notes, nor interest
thereon, is a charge against the general credit or taxing
powers of the municipality and that fact shall be plainly
stated on the face of each bond or note.

(h) Issuance of bonds or notes. —

(1) Bonds or notes allowed under this section may be
executed, issued and delivered at any time, and from time
to time, may be in a form and denomination, may be of a
tenor, must be negotiable but may be registered as to the
principal thereof or as to the principal and interest
thereof, may be payable in any amounts and at any time or
times, may be payable at any place or places, may bear
interest at any rate or rates payable at any place or places
and evidenced in any manner and may contain any provi-
sions therein not inconsistent herewith, all as provided in
the ordinance of the municipality whereunder the bonds or
notes are authorized to be issued.

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

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

(4) Any coupons attached to the bonds shall bear the
facsimile signature of the authorized representative of the
municipality. In case any of the officials whose signatures
appear on the bonds, notes or coupons cease to be officers
before the delivery of the bonds or notes, their signatures
shall, nevertheless, be valid and sufficient for all purposes
to the same extent as if they had remained in office until
the delivery.

(i) Additional bonds or notes. — If the proceeds of the
bonds or notes, by error of calculation or otherwise, are
less than the cost of the economic opportunity develop-
ment district project, or if additional real or personal
property is to be added to the district project or if it is
determined that financing is needed for additional devel-
opment or redevelopment expenditures, additional bonds
or notes may, in like manner, be issued to provide the
amount of the deficiency or to defray the cost of acquiring
or financing any additional real or personal property or
development or redevelopment expenditures and, unless
otherwise provided in the trust agreement, mortgage or
deed of trust, are considered to be of the same issue and
shall be entitled to payment from the same fund, without
preference or priority, and shall be of equal priority as to
any security.

(a) General. — Unless the municipality shall otherwise determine in the resolution authorizing the issuance of the bonds or notes under the authority of this article, there is hereby created a statutory lien upon the subaccount created pursuant to section eight of this article and all special district excise tax revenues collected for the benefit of the district pursuant to section eleven-a, article ten, chapter eleven of this code for the purpose of securing the principal of the bonds or notes and the interest thereon.

(b) Security for debt service. — The principal of and interest on any bonds or notes issued under the authority of this article shall be secured by a pledge of the special district excise tax revenues derived from the economic opportunity development district project by the municipality issuing the bonds or notes to the extent provided in the resolution adopted by the municipality authorizing the issuance of the bonds or notes.

(c) Trust indenture. —

(1) In the discretion and at the option of the municipality, the bonds and notes may also be secured by a trust indenture by and between the municipality and a corporate trustee, which may be a trust company or bank having trust powers, within or without the state of West Virginia.

(2) The resolution authorizing the bonds or notes and fixing the details thereof may provide that the trust indenture may contain provisions for the protection and enforcing the rights and remedies of the bondholders as are reasonable and proper, not in violation of law, including covenants setting forth the duties of the municipality in relation to the construction, acquisition or financing of an economic opportunity development district project, or part thereof or an addition thereto, and the improvement, repair, maintenance and insurance thereof and for the custody, safeguarding and application of all moneys and
may provide that the economic opportunity development
district project shall be constructed and paid for under the
supervision and approval of the consulting engineers or
architects employed and designated by the municipality or,
if directed by the municipality in the resolution, by the
district board, and satisfactory to the purchasers of the
bonds or notes, their successors, assigns or nominees who
may require the security given by any contractor or any
depository of the proceeds of the bonds or notes or the
revenues received from the district project be satisfactory
to the purchasers, their successors, assigns or nominees.

(3) The indenture may set forth the rights and remedies
of the bondholders, the municipality or trustee and the
indenture may provide for accelerating the maturity of the
revenue bonds, at the option of the bondholders or the
municipality issuing the bonds, upon default in the pay-
ment of the amounts due under the bonds.

(4) The municipality may also provide by resolution and
in the trust indenture for the payment of the proceeds of
the sale of the bonds or notes and the revenues from the
economic opportunity development district project to any
depository it determines, for the custody and investment
thereof and for the method of distribution thereof, with
safeguards and restrictions it determines to be necessary or
advisable for the protection thereof and upon the filing of
a certified copy of the resolution or of the indenture for
record with the clerk of the municipality in which the
economic opportunity development project is located, the
resolution has the same effect, as to notice, as the
recordation of a deed of trust or other recordable instru-
ment.

(5) In the event that more than one certified resolution or
indenture is recorded, the security interest granted by the
first recorded resolution or indenture has priority in the
same manner as an earlier filed deed of trust except to the
extent the earlier recorded resolution or indenture provides
otherwise.
(d) Mortgage or deed of trust. –

(1) In addition to or in lieu of the indenture provided in subsection (c) of this section, the principal of and interest on the bonds or notes may, but need not, be secured by a mortgage or deed of trust covering all or any part of the economic opportunity development district project from which the revenues pledged are derived and the same may be secured by an assignment or pledge of the income received from the economic opportunity development district project.

(2) The proceedings under which bonds or notes are authorized to be issued, when secured by a mortgage or deed of trust, may contain the same terms, conditions and provisions provided for herein when an indenture is entered into between the municipality and a trustee and any mortgage or deed of trust may contain any agreements and provisions customarily contained in instruments securing bonds or notes, including, without limiting the generality of the foregoing, provisions respecting the fixing and collection of revenues from the economic opportunity development district project covered by the proceedings or mortgage, the terms to be incorporated in any lease, sale or financing agreement with respect to the economic opportunity development district project, the improvement, repair, maintenance and insurance of the economic opportunity development district project, the creation and maintenance of special funds from the revenues received from the economic opportunity development district project and the rights and remedies available in event of default to the bondholders or note holders, the municipality, or to the trustee under an agreement, indenture, mortgage or deed of trust, all as the municipality considers advisable and shall not be in conflict with the provisions of this article or any existing law: Provided, That in making any agreements or provisions, a municipality shall not have the power to incur original indebtedness by indenture, ordinance, resolution, mortgage or deed of trust except with respect to the economic opportunity development district
project and the application of the revenues therefrom and
shall not have the power to incur a pecuniary liability or a
charge upon its general credit or against its taxing powers
unless approved by the voters in accordance with article
one, chapter thirteen of this code or as otherwise permitted
by the constitution of this state.

(e) Enforcement of obligations. –

(1) The proceedings authorizing any bonds and any
indenture, mortgage or deed of trust securing the bonds
may provide that, in the event of default in payment of the
principal of or the interest on the bonds, or notes, or in the
performance of any agreement contained in the proceed-
ings, indenture, mortgage or deed of trust, payment and
performance may be enforced by the appointment of a
receiver in equity with power to charge and collect rents or
other amounts and to apply the revenues from the eco-
nomic opportunity development district project in accor-
dance with the proceedings or the provisions of the agree-
ment, indenture, mortgage or deed of trust.

(2) Any agreement, indenture, mortgage or deed of trust
may provide also that, in the event of default in payment
or the violation of any agreement contained in the mort-
gage or deed of trust, the agreement, indenture, mortgage
or deed of trust may be foreclosed either by sale at public
outcry or by proceedings in equity and may provide that
the holder or holders of any of the bonds secured thereby
may become the purchaser at any foreclosure sale, if the
highest bidder therefor.

(f) No pecuniary liability. – No breach of any agreement,
indenture, mortgage or deed of trust shall impose any
pecuniary liability upon a municipality or any charge upon
its general credit or against its taxing powers.


(a) Any bonds issued under this article and at any time
outstanding may at any time, and from time to time, be
refunded by a municipality by the issuance of its refunding
bonds in amount as the municipality considers necessary
to refund the principal of the bonds to be refunded,
together with any unpaid interest thereon; to make any
improvements or alterations in the economic opportunity
development district project; and any premiums and
commissions necessary to be paid in connection therewith.

(b) Any refunding may be effected whether the bonds to
be refunded shall have then matured or shall thereafter
mature, either by sale of the refunding bonds and the
application of the proceeds thereof for the redemption of
the bonds to be refunded thereby, or by exchange of the
refunding bonds for the bonds to be refunded thereby:
Provided, That the holders of any bonds to be refunded
shall not be compelled without their consent to surrender
their bonds for payment or exchange prior to the date on
which they are payable or, if they are called for redemp-
tion, prior to the date on which they are by their terms
subject to redemption.

(c) Any refunding bonds issued under the authority of
this article are subject to the provisions contained in
section sixteen of this article and shall be secured in
accordance with the provisions of section seventeen of this
article.

CHAPTER 11. TAXATION.

ARTICLE 10. TAX PROCEDURE AND ADMINISTRATION.

§11-10-11a. Administration of special district excise tax; commis-
sion authorized.

(a) Any municipality or county commission which,
pursuant to section twelve, article twenty-two, chapter
seven of this code, section eleven, article thirteen-b,
chapter eight of this code or section twelve, article thirty-
eight, chapter eight of this code imposes a special district
excise tax shall, by express provision in the order or
ordinance imposing that tax, authorize the state tax
commissioner to administer, assess, collect and enforce
that tax on behalf of and as its agent.
(1) The county commission or municipality shall make such authorization by the adoption of a provision in its order or ordinance levying a special district excise tax stating its purpose and referring to this section and providing that the order or ordinance shall be effective on the first day of a month at least sixty days after its adoption.

(2) A certified copy of the order or ordinance shall be forwarded to the state auditor, the state treasurer and the tax commissioner so that it will be received within five days after its adoption or enactment.

(b) Any special district excise tax administered under this section shall be administered and collected by the tax commissioner in the same manner and subject to the same interest, additions to tax and penalties as provided for the tax imposed in article fifteen of this chapter.

(c) All special district excise tax moneys collected by the tax commissioner under this section shall be paid into the state treasury to the credit of each county commission's subaccount in the economic opportunity development district fund created pursuant to section nine, article twenty-two, chapter seven of this code, or to the credit of each municipality's subaccount in the economic opportunity development district fund created pursuant to section nine, article thirty-eight, chapter eight of this code, for the particular economic opportunity development district. The special district excise tax moneys shall be credited to the subaccount of each particular county commission or municipality levying a special district excise tax being administered under this section. The credit shall be made to the subaccount of the county commission or municipality for the economic opportunity development district in which the taxable sales were made and services rendered as shown by the records of the tax commissioner and certified by him or her monthly to the state treasurer, namely, the location of each place of business of every vendor collecting and paying the tax to the tax commis-
sioner without regard to the place of possible use by the purchaser.

(d) As soon as practicable after the special district excise tax moneys have been paid into the state treasury in any month for the preceding reporting period, the district board may issue a requisition to the auditor requesting issuance of a state warrant for the proper amount in favor of each county commission or municipality entitled to the monthly remittance of its special district excise tax moneys.

(1) Upon receipt of the requisition, the auditor shall issue his or her warrant on the state treasurer for the funds requested and the state treasurer shall pay the warrant out of the subaccount.

(2) If errors are made in any payment, or adjustments are otherwise necessary, whether attributable to refunds to taxpayers or to some other fact, the errors shall be corrected and adjustments made in the payments for the next six months as follows: One sixth of the total adjustment shall be included in the payments for the next six months. In addition, the payment shall include a refund of amounts erroneously not paid to the county commission or the municipality and not previously remitted during the three years preceding the discovery of the error.

(3) A correction and adjustment in payments described in this subsection due to the misallocation of funds by the vendor shall be made within three years of the date of the payment error.

(e) Notwithstanding any other provision of this code to the contrary, the tax commissioner shall deduct and retain for the benefit of his or her office for expenditure pursuant to appropriation of the Legislature from each payment into the state treasury, as provided in subsection (c) of this section, one percent thereof as a commission to compensate his or her office for the discharge of the duties described in this section.
ARTICLE 15B. STREAMLINED SALES AND USE TAX ADMINISTRATION.

§11-15B-32. Effective date.

(a) The provisions of this article, as amended or added during the regular legislative session in the year two thousand three, shall take effect the first day of January, two thousand four, and apply to all sales made on or after that date and to all returns and payments due on or after that day, except as otherwise expressly provided in section five of this article.

(b) The provisions of this article, as amended or added during the second extraordinary legislative session in the year two thousand three, shall take effect the first day of January, two thousand four, and apply to all sales made on or after that date.

§11-15B-33. State administration of local sales and use taxes.

The tax commissioner shall conduct, or authorize others to conduct on his or her behalf, all audits of sellers registered under the streamlined sales and use tax agreement for compliance with the sales and use tax laws of this state and the sales and use tax laws of its local jurisdictions. A local jurisdiction may not conduct independent sales or use tax audits of sellers registered under the streamlined sales and use tax agreement.

§11-15B-34. State and local sales and use tax bases.

(a) General. — The tax base of a local jurisdiction that levies a local sales or use tax pursuant to authority granted by the Legislature shall be identical to the sales and use tax base of this state, unless otherwise prohibited by federal law, except as provided in subsection (b) of this section.

(b) Exceptions. — This section does not apply to sales or use taxes levied on: (1) The wholesale sale of gasoline or special fuel, which local jurisdictions are prohibited from taxing; or (2) the retail sale or transfer of motor vehicles,
§11-15B-35. Local rate and boundary changes.

(a) General. — Local tax rate changes shall be effective only on the first day of a calendar quarter after a minimum of sixty days' notice to seller, except as provided in subsection (b) of this section.

(b) Printed catalogs. — Local tax rate changes shall apply to purchases from printed catalogs where the purchaser computed the tax based upon the local tax rate published in the catalog only on and after the first day of a calendar quarter after a minimum of one hundred twenty days' notice to the sellers.

(c) Local boundary changes. — A local jurisdiction boundary change shall first apply for purposes of computation of a local sales and use tax on the first day of a calendar quarter after a minimum of sixty days' notice to sellers.

(d) Database of local jurisdiction boundaries. —

(1) The state shall provide and maintain a database that describes boundary changes for all taxing jurisdictions. This database shall include a description of the change and the effective date of the change for sales and use tax purposes.

(2) The state shall provide and maintain a database of all sales and use tax rates for all of the jurisdictions levying taxes within the state. For the identification of states, counties and cities, codes corresponding to the rates must be provided according to federal information processing standards (FIPS) as developed by the national institute of standards and technology. For the identification of all other jurisdictions, codes corresponding to the rates must be in the format determined by the members of the streamlined sales and use tax agreement.
(3) The state shall provide and maintain a database that assigns each five-digit and nine-digit zip code within a member state to the proper tax rates and jurisdictions. The state must apply the lowest combined tax rate imposed in the zip code area if the area includes more than one tax rate in any level of taxing jurisdictions. If a nine-digit zip code designation is not available for a street address or if a seller is unable to determine the nine-digit zip code designation of a purchaser after exercising due diligence to determine the designation, the seller may apply the rate for the five-digit zip code area. For the purposes of this section, there is a rebuttable presumption that a seller has exercised due diligence if the seller has attempted to determine the nine-digit zip code designation by utilizing software approved by the members of the streamlined sales and use tax agreement that makes this designation from the street address and the five-digit zip code of the purchaser.

(4) This state shall participate with other member states in the development of an address-based system for assigning taxing jurisdictions. The system shall meet the requirements developed pursuant to the federal Mobile Telecommunications Sourcing Act (4 U.S. C. §119). The governing board of the streamlined sales and use tax agreement may allow a member state to require sellers that register under this agreement to use an address-based system provided by that member state. If any member state develops an address-based assignment system pursuant to the Mobile Telecommunications Sourcing Act, a seller may use that system in place of the system provided in subdivision (3) of this subsection.

§11-15B-36. Relief from certain liability for local taxes.

(a) General. — Sellers and certified service providers registered under the streamlined sales and use tax agreement to collect sales and use taxes imposed by local jurisdiction of this state who charged and collected the incorrect amount of sales or use taxes resulting from the
seller or the certified service provider relying on erroneous
data provided by this state on tax rates, boundaries or
taxing jurisdiction assignments shall be held harmless by
the tax commissioner and the local taxing jurisdiction.

(b) Exception. — A state that is a member of the stream-
lined sales and use tax agreement and provides an address-
based system for assigning taxing jurisdictions pursuant
to subsection (G), section three hundred five of the agree-
ment, or pursuant to the federal Mobile Telecommunica-
tions Sourcing Act, is not required to provide liability
relief for errors resulting from reliance on information
provided by the member state under subsection (F) of
section three hundred five.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within............................................ this the...........................

Day of............................................., 2003.

Governor
RESIGNED TO THE GOVERNOR

Date 6/19/03
Time 4:45p