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WEST VIRGINIA LEGISLATURE

Regular Session, 2003



ENROLLED

Committee Substitute for

SENATE BILL NO. 558

**(By Senator Tomblin, Mr. President, and Sprouse, Jr
By Request of the Executive)**



PASSED March 16, 2003

In Effect July 1, 2003 ~~Passage~~

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COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 558

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

[Passed March 8, 2003; in effect from passage.]

AN ACT to amend chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-two; to amend chapter eight of said code by adding thereto a new article, designated article thirty-eight; to amend and reenact section eleven-a, article ten, chapter eleven of said code; and to amend and reenact section nine-f, article fifteen of said chapter, all relating generally to economic development for public purposes; authorizing counties and certain municipalities to create economic opportunity development districts and to use a special district excise tax to finance economic development within the districts; describing purposes for expenditures; providing for notice and hearing; providing for

approval by council for community and economic development; establishing a special revenue account; providing for the Legislature's authorization to levy a special district excise tax; describing order or ordinance required to establish district; creating a district board to administer district; authorizing imposition of special district excise tax by order or ordinance; modifying district boundaries; procedures for abolition and dissolution of district; authorizing issuance of bonds or notes to finance development expenditures; providing for administration of special district excise tax by tax commissioner; and exempting certain sales and services in district from consumers sales and service tax.

Be it enacted by the Legislature of West Virginia:

That chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article twenty-two; that chapter eight of said code be amended by adding thereto a new article, designated article thirty-eight; that section eleven-a, article ten, chapter eleven of said code be amended and reenacted; and that section nine-f, article fifteen of said chapter be amended and reenacted, all to read as follows:

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 22. COUNTY ECONOMIC OPPORTUNITY DEVELOPMENT DISTRICTS.

§7-22-1. Short title.

- 1 This article is known and may be cited as the "County
- 2 Economic Opportunity Development District Act".

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

- 1 The Legislature finds that many significant business
- 2 opportunities initiated within the counties of this state
- 3 face financial and other economic obstacles. This ad-
- 4 versely affects the economic and general well-being of the
- 5 citizens of those counties. Establishment of economic
- 6 opportunity development districts within counties of the

7 state, in accordance with the purpose and powers set forth
8 in this article, will serve a public purpose and promote the
9 health, safety, prosperity, security and general welfare of
10 all citizens in the state. It will also promote the vitality of
11 significant business opportunities within counties while
12 serving as an effective means for developing or restoring
13 and promoting retail and other business activity within the
14 economic opportunity development districts created
15 herein. This will be of special benefit to the tax base of the
16 counties within which any economic development district
17 is created under this article and will stimulate economic
18 growth and job creation.

§7-22-3. Definitions.

1 For purposes of this article, the term:

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

5 (2) "County commission" means the governing body of
6 a county of this state;

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

12 (4) "District" means an economic opportunity develop-
13 ment district created pursuant to this article;

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

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

19 (7) "Gross annual district tax revenue amount" means
20 the total amount of consumers sales and service tax

21 actually remitted to the tax commissioner by retailers
22 maintaining places of business within the district with
23 respect to sales made and services rendered by retailers
24 from a location within the district for the twelve full
25 calendar months immediately preceding the filing of an
26 application pursuant to section seven of this article.

**§7-22-4. Authorization to create economic opportunity develop-
ment districts.**

1 A county commission may, in accordance with the
2 procedures and subject to the limitations set forth in this
3 article:

4 (1) Create one or more economic opportunity develop-
5 ment districts within its county;

6 (2) Provide for the administration and financing of
7 development expenditures within the districts; and

8 (3) Provide for the administration and financing of a
9 continuing program of development and redevelopment
10 expenditures within the districts.

§7-22-5. Development expenditures.

1 Any county commission that has established an eco-
2 nomic opportunity development district under this article
3 may make, or authorize to be made by a district board and
4 other public or private parties, development expenditures
5 as will promote the economic vitality of the district and
6 the general welfare of the county, including, but not
7 limited to, expenditures for the following purposes:

8 (1) Beautification of the district by means such as
9 landscaping and construction and erection of fountains,
10 shelters, benches, sculptures, signs, lighting, decorations
11 and similar amenities;

12 (2) Provision of special or additional public services such
13 as sanitation, security for persons and property and the
14 construction and maintenance of public facilities, includ-

15 ing, but not limited to, sidewalks, parking lots, parking
16 garages and other public areas;

17 (3) Making payments for principal, interest, issuance
18 costs, any of the costs described in section twenty of this
19 article and appropriate reserves for bonds and other
20 instruments and arrangements issued or entered into by
21 the county commission for financing the expenditures of
22 the district described in this section and to otherwise
23 implement the purposes of this article;

24 (4) Providing financial support for public transportation
25 and vehicle parking facilities open to the general public,
26 whether physically situate within the district's boundaries
27 or on adjacent land;

28 (5) Acquiring, building, demolishing, razing, construct-
29 ing, repairing, reconstructing, refurbishing, renovating,
30 rehabilitating, expanding, altering, otherwise developing,
31 operating and maintaining real property generally,
32 parking facilities, commercial structures and other capital
33 improvements to real property, fixtures and tangible
34 personal property, whether or not physically situate within
35 the district's boundaries: *Provided*, That the expenditure
36 directly benefits the district;

37 (6) Developing plans for the architectural design of the
38 district and portions thereof and developing plans and
39 programs for the future development of the district;

40 (7) Developing, promoting and supporting community
41 events and activities open to the general public that
42 benefit the district;

43 (8) Providing the administrative costs for a district
44 management program;

45 (9) Providing for the usual and customary maintenance
46 and upkeep of all improvements and amenities in the
47 district as are commercially reasonable and necessary to
48 sustain its economic viability on a permanent basis;

49 (10) Providing any other services that the county com-
50 mission or district board is authorized to perform and
51 which the county commission does not also perform to the
52 same extent on a countywide basis;

53 (11) Making grants to the owners or tenants of economic
54 opportunity development district for the purposes de-
55 scribed in this section;

56 (12) Acquiring an interest in any entity or entities that
57 own any portion of the real property situate in the district
58 and contributing capital to any entity or entities; and

59 (13) To do any and all things necessary, desirable or
60 appropriate to carry out and accomplish the purposes of
61 this article notwithstanding any provision of this code to
62 the contrary.

§7-22-6. Notice; hearing.

1 (a) *General.* — A county commission desiring to create
2 an economic opportunity development district shall
3 conduct a public hearing.

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

10 (1) The purpose of the hearing;

11 (2) The name of the proposed district;

12 (3) The general purpose of the proposed district;

13 (4) The proposed property included in the district; and

14 (5) The proposed method of financing any costs involved,
15 including the base and rate of special district excise tax
16 that may be imposed upon sales of tangible personal

17 property and taxable services from business locations
18 situated within the proposed district.

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

24 (d) *Application to council.* — If the county commission,
25 following the public hearing, determines it advisable and
26 in the public interest to establish an economic opportunity
27 development district, it shall apply to the council for
28 community and economic development for approval of the
29 economic opportunity development district project
30 pursuant to the procedures provided in section seven of
31 this article.

**§7-22-7. Application to council for community and economic
development for approval of an economic
opportunity development district project.**

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

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

7 (2) A general description of the capital improvements,
8 additional or extended services and other proposed
9 development expenditures to be made in the district;

10 (3) A description of the proposed method of financing the
11 development expenditures, together with a description of
12 the reserves to be established for financing ongoing
13 development or redevelopment expenditures necessary to
14 permanently maintain the optimum economic viability of
15 the district following its inception: *Provided*, That the
16 amounts of the reserves shall not exceed the amounts that

17 would be required by ordinary commercial capital market
18 considerations;

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

24 (5) A description of the financial contribution of the
25 county commission to the funding of development expen-
26 ditures;

27 (6) Identification of any businesses that the county
28 commission expects to relocate their business locations
29 from the district to another place in the state in connection
30 with the establishment of the district or from another
31 place in this state to the district: *Provided*, That for
32 purposes of this article, any entities shall be designated
33 "relocated entities";

34 (7) Identification of any businesses currently conducting
35 business in the proposed economic opportunity develop-
36 ment district that the county commission expects to
37 continue doing business there after the district is created;

38 (8) A good faith estimate of the aggregate amount of
39 consumers sales and service tax that was actually remitted
40 to the tax commissioner by all business locations identified
41 as provided in subdivisions (6) and (7) of this subsection
42 with respect to their sales made and services rendered
43 from their then current business locations that will be
44 relocated from, or to, or remain in the district for the
45 twelve full calendar months next preceding the date of the
46 application: *Provided*, That for purposes of this article, the
47 aggregate amount is designated as "the base tax revenue
48 amount"; a good faith estimate of the gross annual district
49 tax revenue amount; and the proposed application of any
50 surplus from all funding sources to further the objectives
51 of this article: *Provided, however*, That the amount of all
52 development expenditures proposed to be made in the first

53 twenty-four months following the creation of the district
54 shall be not less than fifty million dollars.

55 (b) *Additional criteria.* — The council may establish other
56 criteria for consideration when approving the applications:
57 *Provided*, That the council shall act to approve or not
58 approve any application within thirty days following the
59 receipt of the application.

60 (c) *Certification of project.* — If the committee approves
61 a county's economic opportunity district project applica-
62 tion, it shall issue to the county commission a written
63 certificate evidencing the approval.

64 (1) The certificate shall expressly state a base tax
65 revenue amount, the gross annual district tax revenue
66 amount and the estimated net annual district tax revenue
67 amount which, for purposes of this article, is the difference
68 between the gross annual district tax revenue amount and
69 the base tax revenue amount, all of which the council has
70 determined with respect to the district's application based
71 on any investigation it considers reasonable and necessary,
72 including, but not limited to, any relevant information the
73 council requests from the tax commissioner and the tax
74 commissioner provides to the council: *Provided*, That in
75 determining the net annual district tax revenue amount,
76 the council may not use a base tax revenue amount less
77 than that amount certified by the tax commissioner but, in
78 lieu of confirmation from the tax commissioner of the
79 gross annual district tax revenue amount, the council may
80 use the estimate of the gross annual district tax revenue
81 amount provided by the county commission pursuant to
82 subsection (a) of this section.

83 (d) *Promulgation of rules.* — The council may promul-
84 gate rules to implement the economic opportunity devel-
85 opment district project application approval process and
86 to describe the criteria and procedures it has established
87 in connection therewith. These rules are not subject to the

88 provisions of chapter twenty-nine-a of this code but shall
89 be filed with the secretary of state.

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

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

8 (b) *District subaccount.* — A separate and segregated
9 subaccount within the account shall be established for
10 each economic opportunity development district that is
11 approved by the council and authorized by the Legislature
12 pursuant to subdivision (3) of this subsection. Funds paid
13 into the account for the credit of any subaccount may also
14 be derived from the following sources:

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

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

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

§7-22-9. Authorization to levy special district excise tax.

1 (a) *General.* — County commissions have no inherent
2 authority to levy taxes and have only that authority
3 expressly granted to them by the Legislature. Because a
4 special district excise tax has the effect of diverting, for a
5 specified period of years, tax dollars that otherwise would
6 go into the general revenue fund of this state, no economic
7 opportunity development district excise tax may be levied

8 by a county commission until after the Legislature ex-
9 pressly authorizes the county commission to levy a special
10 district excise tax on sales of tangible personal property
11 and services made within district boundaries approved by
12 the Legislature.

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

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

**§7-22-10. Ordinance to create district as approved by council
and authorized by the Legislature.**

1 (a) *General.* — If an economic opportunity development
2 district project has been approved by the council and the
3 levying of a special district excise tax for the district has
4 been authorized by the Legislature, all in accordance with
5 this article, the county commission may create the district
6 by order entered of record as provided for in article one of
7 this chapter: *Provided*, That the county commission may
8 not amend, alter or change in any manner the boundaries
9 of the economic opportunity development district autho-
10 rized by the Legislature. In addition to all other require-
11 ments, the order shall contain the following:

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

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

17 (3) The base and rate of any special district excise tax
18 that may be imposed upon sales by businesses for the

19 privilege of operating within the district, which tax shall
20 be passed on to and paid by the consumer, and the manner
21 in which the taxes will be imposed, administered and
22 collected, all of which shall be in conformity with the
23 requirements of this article; and

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

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

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

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

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

50 (E) To, unless otherwise provided for in, and subject to
51 the provisions of any contracts or leases to operate, repair,
52 manage, and maintain buildings and structures and
53 provide adequate insurance of all types and in connection

54 with the primary use thereof and incidental thereto to
55 provide services, such as retail stores and restaurants, and
56 to effectuate incidental purposes, grant leases, permits,
57 concessions or other authorizations to any person or
58 persons upon the terms and conditions for consideration
59 and for the term of duration as agreed upon by the district
60 board and any person, agency, governmental department,
61 firm or corporation;

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

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

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

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

77 (J) Pursuant to a determination by the district board that
78 there exists a continuing need for redevelopment expendi-
79 tures and that moneys or funds of the district are neces-
80 sary therefor, to borrow money and execute and deliver
81 the district's negotiable notes and other evidences of
82 indebtedness therefor, on the terms as the district shall
83 determine, and give security therefor as is requisite,
84 including, without limitation, a pledge of the district's
85 rights in its subaccount of the downtown district redevel-
86 opment fund;

87 (K) To acquire (either directly or on behalf of the munic-
88 ipality) an interest in any entity or entities that own any

89 real property situate in the district, to contribute capital
90 to any entity or entities and to exercise the rights of an
91 owner with respect thereto; and

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

101 (b) *Additional contents of order.* — The county commis-
102 sion's order shall also state the general intention of the
103 county commission to develop and increase services and to
104 make capital improvements within the district.

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

§7-22-11. District board; duties.

1 (a) *General.* — The county commission of a county that
2 has been authorized by the Legislature to establish an
3 economic opportunity development district, in accordance
4 with this article, shall provide, by order entered of record,
5 for the appointment of a district board to oversee the
6 operations of the district: *Provided,* That the county
7 commission may, by order, in lieu of appointing a separate
8 district board, designate itself to act as the district board.

9 (b) *Composition of board.* — If a separate district board
10 is to be appointed, it shall be made up of at least seven
11 members, two of which shall be owners, or representatives
12 of owners, of real property situated in the economic

13 opportunity development district and the other five shall
14 be residents of the county within which the district is
15 located.

16 (c) *Annual report.* — The district board, in addition to
17 the duties prescribed by the order creating the district,
18 shall submit an annual report to the county commission
19 and the council containing:

20 (1) An itemized statement of its receipts and disburse-
21 ments for the preceding fiscal year;

22 (2) A description of its activities for the preceding fiscal
23 year;

24 (3) A recommended program of services to be performed
25 and capital improvements to be made within the district
26 for the coming fiscal year; and

27 (4) A proposed budget to accomplish its objectives.

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

33 (e) *Compensation of board members.* — Each member of
34 the district board may receive reasonable compensation
35 for services on the board in the amount determined by the
36 county commission: *Provided*, That when a district board
37 is not created for the district but the work of the board is
38 done by the county commission, the county commissioners
39 shall receive no additional compensation.

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

1 (a) *General.* — The county commission of a county,
2 authorized by the Legislature to levy a special district
3 excise tax for the benefit of an economic opportunity
4 development district, may, by order entered of record,
5 impose that tax on the privilege of selling tangible per-

6 sonal property and rendering select services in the district
7 in accordance with this section.

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

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

29 (d) *Collection by tax commissioner.* — The order of the
30 county commission imposing a special district excise tax
31 shall provide for the tax to be collected by the tax commis-
32 sioner in the same manner as the tax levied by section
33 three, article fifteen, chapter eleven of this code is admin-
34 istered, assessed, collected and enforced.

35 (e) *Deposit of net tax collected.* —

36 (1) The order of the county commission imposing a
37 special district excise tax shall provide that the tax
38 commissioner deposit the net amount of tax collected in
39 the special economic opportunity development district
40 fund to the credit of the county commission's subaccount
41 therein for the economic opportunity development district

42 and that the money in the subaccount may only be used to
43 pay for development expenditures as provided in this
44 article except as provided in subsection (f) of this section.

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

53 (f) *Effective date of special district excise tax.* — Any
54 taxes imposed pursuant to the authority of this section
55 shall be effective on the first day of the calendar month
56 that begins on or after the date of adoption of an order
57 entered of record imposing the tax or at any later date
58 expressly designated in the ordinance that begins on the
59 first day of a calendar month.

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

§7-22-13. Requisition of district subaccount funds.

1 Sixty days after collection of a special district excise tax
2 begins, the state auditor shall, upon receipt of a monthly
3 requisition from the district board, issue his or her warrant
4 on the state treasurer for the funds requested from the
5 district's subaccount, which funds are applied for the
6 purposes described in section five of this article and the
7 state treasurer shall pay the warrant out of funds in the
8 subaccount.

§7-22-14. Modification of included area; notice; hearing.

1 (a) *General.* — The order creating an economic opportu-
2 nity development district may not be amended to include

3 additional contiguous property until after the amendment
4 is approved by the council in the same manner as an
5 application to approve the establishment of the district is
6 acted upon under section seven of this article and the
7 amendment is authorized by the Legislature.

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

12 (c) *Public hearing required.* —

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

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

23 (d) *Application to council.* — Following the hearing, the
24 county commission may, by resolution, apply to the
25 council to approve inclusion of the additional property in
26 the district.

27 (e) *Consideration by council.* — Before the council
28 approves inclusion of the additional property in the
29 district, the council shall determine the amount of taxes
30 levied by article fifteen, chapter eleven of this code that
31 were collected by businesses located in the area the county
32 commission proposes to add to the district in the same
33 manner as the base amount of tax was determined when
34 the district was first created. The state treasurer shall also
35 deposit one twelfth of this additional tax base amount into
36 the general revenue fund each month, as provided in
37 section twelve of this article.

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

52 (g) *Collection of special district excise tax.* — All busi-
53 nesses included in a district because of the boundary
54 amendment shall on the effective date of the order,
55 determined as provided in subsection (f) of this section,
56 collect the special district excise tax on all sales on
57 tangible property or services made from locations in the
58 district on or after the effective date of the county commis-
59 sion's order or a later date as set forth in the order.

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

1 (a) *General.* — Except upon the express written consent
2 of the council and of all the holders or obligees of any
3 indebtedness or other instruments the proceeds of which
4 were applied to any development or redevelopment
5 expenditures or any indebtedness the payment of which is
6 secured by revenues payable into the fund provided under
7 section eight of this article or by any public property, a
8 district may only be abolished by the county commission
9 when there is no outstanding indebtedness, the proceeds of
10 which were applied to any development or redevelopment
11 expenditures or the payment of which is secured by
12 revenues payable into the fund provided under section

13 eight of this article, or by any public property, and follow-
14 ing a public hearing upon the proposed abolishment.

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

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

32 (d) *Reinstatement of district.* — Following abolishment
33 of a district pursuant to this section, its reinstatement
34 requires compliance with all requirements and procedures
35 set forth in this article for the initial development, ap-
36 proval, establishment and creation of an economic oppor-
37 tunity development district.

**§7-22-16. Bonds issued to finance economic opportunity devel-
opment district projects.**

1 (a) *General.* — The county commission that established
2 the economic opportunity development district may issue
3 bonds or notes for the purpose of financing development
4 expenditures, as described in section five of this article,
5 with respect to one or more projects within the economic
6 opportunity development district.

7 (b) *Limited obligations.* — All bonds and notes issued by
8 a county commission under the authority of this article are
9 limited obligations of the county.

10 (c) *Term of obligations.* — No county commission may
11 issue notes, bonds or other instruments for funding district
12 projects or improvements that exceed a repayment sched-
13 ule of thirty years.

14 (d) *Debt service.* — The principal and interest on the
15 bonds shall be payable out of the funds on deposit in the
16 subaccount established for the economic opportunity
17 development district pursuant to section eight of this
18 article, including, without limitation, any funds derived
19 from the special district excise tax imposed by section
20 twelve of this article or other revenues derived from the
21 economic opportunity development district to the extent
22 pledged for the purpose by the county commission in the
23 resolution authorizing the bonds.

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

35 (f) *Debt not general obligation of county.* — Neither the
36 notes or bonds and any interest coupons issued under the
37 authority of this article shall ever constitute an indebted-
38 ness of the county commission issuing the notes or bonds
39 within the meaning of any constitutional provision or
40 statutory limitation and shall never constitute or give rise
41 to a pecuniary liability of the county commission issuing
42 the notes or bonds.

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

48 (h) *Issuance of bonds or notes.* —

49 (1) Bonds or notes allowed under this section may be
50 executed, issued and delivered at any time and from time
51 to time, may be in a form and denomination, may be of a
52 tenor, must be negotiable but may be registered as to the
53 principal thereof or as to the principal and interest
54 thereof, may be payable in any amounts and at any time or
55 times, may be payable at any place or places, may bear
56 interest at any rate or rates payable at any place or places
57 and evidenced in any manner and may contain any provi-
58 sions therein not inconsistent herewith, all as provided in
59 the order or orders of the county commission whereunder
60 the bonds or notes are authorized to be issued.

61 (2) The bonds may be sold by the county commission at
62 public or private sale at, above or below par as the county
63 commission authorizes.

64 (3) Bonds and notes issued pursuant to this article shall
65 be signed by the president of the county commission, or
66 other chief officer thereof, and attested by the county clerk
67 and be under the seal of the county.

68 (4) Any coupons attached to the bonds shall bear the
69 facsimile signature of the president of the commission or
70 other chief officer thereof. In case any of the officials
71 whose signatures appear on the bonds, notes or coupons
72 cease to be officers before the delivery of the bonds or
73 notes, their signatures shall, nevertheless, be valid and
74 sufficient for all purposes to the same extent as if they had
75 remained in office until the delivery.

76 (i) *Additional bonds or notes.* — If the proceeds of the
77 bonds or notes, by error of calculation or otherwise, are
78 less than the cost of the economic opportunity develop-
79 ment district project, or if additional real or personal
80 property is to be added to the district project or if it is
81 determined that financing is needed for additional devel-
82 opment or redevelopment expenditures, additional bonds
83 or notes may, in like manner, be issued to provide the
84 amount of the deficiency or to defray the cost of acquiring

85 or financing any additional real or personal property or
86 development or redevelopment expenditures and, unless
87 otherwise provided for in the trust agreement, mortgage or
88 deed of trust, are considered to be of the same issue and
89 shall be entitled to payment from the same fund, without
90 preference or priority, and shall be of equal priority as to
91 any security.

§7-22-17. Security for bonds.

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

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

19 (c) *Trust indenture.* —

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

26 (2) The resolution authorizing the bonds or notes and
27 fixing the details thereof may provide that the trust

28 indenture may contain provisions for the protection and
29 enforcing the rights and remedies of the bondholders as
30 are reasonable and proper, not in violation of law, includ-
31 ing covenants setting forth the duties of the county
32 commission in relation to the construction, acquisition or
33 financing of an economic opportunity development district
34 project, or part thereof or an addition thereto, and the
35 improvement, repair, maintenance and insurance thereof
36 and for the custody, safeguarding and application of all
37 moneys and may provide that the economic opportunity
38 development district project shall be constructed and paid
39 for under the supervision and approval of the consulting
40 engineers or architects employed and designated by the
41 county commission or, if directed by the county commis-
42 sion in the resolution, by the district board, and satisfac-
43 tory to the purchasers of the bonds or notes, their succes-
44 sors, assigns or nominees who may require the security
45 given by any contractor or any depository of the proceeds
46 of the bonds or notes or the revenues received from the
47 district project be satisfactory to the purchasers, their
48 successors, assigns or nominees.

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

55 (4) The county commission may also provide by resolu-
56 tion and in the trust indenture for the payment of the
57 proceeds of the sale of the bonds or notes and the revenues
58 from the economic opportunity development district
59 project to any depository it determines, for the custody
60 and investment thereof and for the method of distribution
61 thereof, with safeguards and restrictions it determines to
62 be necessary or advisable for the protection thereof and
63 upon the filing of a certified copy of the resolution or of
64 the indenture for record in the office of the clerk of the

65 county commission of the county in which the economic
66 opportunity development project is located, the resolution
67 has the same effect, as to notice, as the recordation of a
68 deed of trust or other recordable instrument.

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

75 (d) *Mortgage or deed of trust.* —

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

85 (2) The proceedings under which bonds or notes are
86 authorized to be issued, when secured by a mortgage or
87 deed of trust, may contain the same terms, conditions and
88 provisions provided for herein when an indenture is
89 entered into between the county commission and a trustee
90 and any mortgage or deed of trust may contain any
91 agreements and provisions customarily contained in
92 instruments securing bonds or notes, including, without
93 limiting the generality of the foregoing, provisions respect-
94 ing the fixing and collection of revenues from the eco-
95 nomic opportunity development district project covered by
96 the proceedings or mortgage, the terms to be incorporated
97 in any lease, sale or financing agreement with respect to
98 the economic opportunity development district project, the
99 improvement, repair, maintenance and insurance of the
100 downtown redevelopment district project, the creation and

101 maintenance of special funds from the revenues received
102 from the economic opportunity development district
103 project and the rights and remedies available in event of
104 default to the bondholders or note holders, the county
105 commission, or to the trustee under an agreement, inden-
106 ture, mortgage or deed of trust, all as the county commis-
107 sion body considers advisable and shall not be in conflict
108 with the provisions of this article or any existing law:
109 *Provided*, That in making any agreements or provisions, a
110 county commission shall not have the power to incur
111 original indebtedness by indenture, ordinance, resolution,
112 mortgage or deed of trust except with respect to the
113 economic opportunity development district project and the
114 application of the revenues therefrom and shall not have
115 the power to incur a pecuniary liability or a charge upon
116 its general credit or against its taxing powers unless
117 approved by the voters in accordance with article one,
118 chapter thirteen of this code or as otherwise permitted by
119 the constitution of this state.

120 (e) *Enforcement of obligations.* —

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

133 (2) Any agreement, indenture, mortgage or deed of trust
134 may provide also that, in the event of default in payment
135 or the violation of any agreement contained in the mort-
136 gage or deed of trust, the agreement, indenture, mortgage
137 or deed of trust may be foreclosed either by sale at public

138 outcry or by proceedings in equity and may provide that
139 the holder or holders of any of the bonds secured thereby
140 may become the purchaser at any foreclosure sale, if the
141 highest bidder therefor.

142 (f) *No pecuniary liability.* — No breach of any agree-
143 ment, indenture, mortgage or deed of trust shall impose
144 any pecuniary liability upon a municipality or any charge
145 upon its general credit or against its taxing powers.

§7-22-18. Redemption of bonds.

1 The revenue bonds issued pursuant to this article may
2 contain a provision therein to the effect that they, or any
3 of them, may be called for redemption at any time prior to
4 maturity by the county commission and at the redemption
5 prices or premiums, which terms shall be stated in the
6 bond.

§7-22-19. Refunding bonds.

1 (a) Any bonds issued under this article and at any time
2 outstanding may at any time, and from time to time, be
3 refunded by a county commission by the issuance of its
4 refunding bonds in amount as the county commission
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 downtown
8 redevelopment district project; and any premiums and
9 commissions necessary to be paid in connection therewith.

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

20 tion, prior to the date on which they are by their terms
21 subject to redemption.

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

§7-22-20. Use of proceeds from sale of bonds.

1 (a) *General.* — The proceeds from the sale of any bonds
2 issued under authority of this article shall be applied only
3 for the purpose for which the bonds were issued: *Provided,*
4 That any accrued interest received in any sale shall be
5 applied to the payment of the interest on the bonds sold:
6 *Provided, however,* That if for any reason any portion of
7 the proceeds may not be needed for the purpose for which
8 the bonds were issued, then the unneeded portion of the
9 proceeds may be applied to the purchase of bonds for
10 cancellation or payment of the principal of or the interest
11 on the bonds, or held in reserve for the payment thereof.

12 (b) *Payment of costs.* — The costs that may be paid with
13 the proceeds of the bonds include all development and
14 redevelopment costs described in section five of this article
15 and may also include, but not be limited to, the following:

16 (1) The cost of acquiring any real estate determined
17 necessary;

18 (2) The actual cost of the construction of any part of an
19 economic opportunity development district project which
20 may be constructed, including architects', engineers',
21 financial or other consultants' and legal fees;

22 (3) The purchase price or rental of any part of an eco-
23 nomic opportunity development district project that may
24 be acquired by purchase or lease;

25 (4) All expenses incurred in connection with the authori-
26 zation, sale and issuance of the bonds to finance the
27 acquisition and the interest on the bonds for a reasonable

28 time prior to construction during construction and for not
29 exceeding twelve months after completion of construction;
30 and

31 (5) Any other costs and expenses reasonably necessary in
32 the establishment and acquisition of an economic opportu-
33 nity development district project and the financing
34 thereof.

§7-22-21. Bonds made legal investments.

1 Bonds issued under the provisions of this article are legal
2 investments for banks, building and loan associations and
3 insurance companies organized under the laws of this state
4 and for a business development corporation organized
5 pursuant to chapter thirty-one, article fourteen of this
6 code.

§7-22-22. Exemption from taxation.

1 The revenue bonds and notes issued pursuant to this
2 article and the income therefrom are exempt from taxation
3 except inheritance, estate and transfer taxes; and the real
4 and personal property which a county commission or
5 district board acquires pursuant to the provisions of this
6 article are exempt from taxation by the state, or any
7 county, municipality or other levying body, as public
8 property so long as the property is owned by the county
9 commission or district board.

CHAPTER 8. MUNICIPAL CORPORATIONS.

**ARTICLE 38. MUNICIPAL ECONOMIC OPPORTUNITY DEVELOPMENT
DISTRICTS.**

§8-38-1. Short title.

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

§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. This ad-
4 versely affects the economic and general well-being of the
5 citizens of those municipalities. Establishment of eco-
6 nomic opportunity development districts within munici-
7 palities of the state, in accordance with the purpose and
8 powers set forth in this article, will serve a public purpose
9 and promote the health, safety, prosperity, security and
10 general welfare of all citizens in the state. It will also
11 promote the vitality of significant business opportunities
12 within those municipalities while serving as an effective
13 means for developing or restoring and promoting retail
14 and other business activity within the economic opportu-
15 nity development districts created herein. This will be of
16 special benefit to the tax base of the municipalities within
17 which any economic development district is created under
18 this article and will stimulate economic growth and job
19 creation.

§8-38-3. Definitions.

1 For purposes of this article, the term:

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

5 (2) "County commission" means the governing body of
6 a county of this state;

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

12 (4) "District" means an economic opportunity develop-
13 ment district created pursuant to this article;

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

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

19 (7) "Gross annual district tax revenue amount" means
20 the total amount of consumers sales and service tax
21 actually remitted to the tax commissioner by retailers
22 maintaining places of business within the district with
23 respect to sales made and services rendered by retailers
24 from a location within the district for the twelve full
25 calendar months immediately preceding the filing of an
26 application pursuant to section seven of this article; and

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

**§8-38-4. Authorization to create economic opportunity develop-
ment districts.**

1 A municipality may, in accordance with the procedures
2 and subject to the limitations set forth in this article:

3 (1) Create one or more economic opportunity develop-
4 ment districts within its limits;

5 (2) Provide for the administration and financing of
6 development expenditures within the districts; and

7 (3) Provide for the administration and financing of a
8 continuing program of development and redevelopment
9 expenditures within the districts.

§8-38-5. Development expenditures.

1 Any municipality that has established an economic
2 opportunity development district under this article may
3 make, or authorize to be made by a district board and
4 other public or private parties, development expenditures
5 as will promote the economic vitality of the district and
6 the general welfare of the municipality, including, but not
7 limited to, expenditures for the following purposes:

8 (1) Beautification of the district by means such as
9 landscaping and construction and erection of fountains,
10 shelters, benches, sculptures, signs, lighting, decorations
11 and similar amenities;

12 (2) Provision of special or additional public services such
13 as sanitation, security for persons and property and the
14 construction and maintenance of public facilities, includ-
15 ing, but not limited to, sidewalks, parking lots, parking
16 garages and other public areas;

17 (3) Making payments for principal, interest, issuance
18 costs, any of the costs described in section twenty of this
19 article and appropriate reserves for bonds and other
20 instruments and arrangements issued or entered into by
21 the municipality for financing the expenditures of the
22 district described in this section and to otherwise imple-
23 ment the purposes of this article;

24 (4) Providing financial support for public transportation
25 and vehicle parking facilities open to the general public,
26 whether physically situate within the district's boundaries
27 or on adjacent land;

28 (5) Acquiring, building, demolishing, razing, construct-
29 ing, repairing, reconstructing, refurbishing, renovating,
30 rehabilitating, expanding, altering, otherwise developing,
31 operating and maintaining real property generally,
32 parking facilities, commercial structures and other capital
33 improvements to real property, fixtures and tangible
34 personal property, whether or not physically situate within
35 the district's boundaries: *Provided*, That the expenditure
36 directly benefits the district;

37 (6) Developing plans for the architectural design of the
38 district and portions thereof and developing plans and
39 programs for the future development of the district;

40 (7) Developing, promoting and supporting community
41 events and activities open to the general public that
42 benefit the district;

43 (8) Providing the administrative costs for a district
44 management program;

45 (9) Providing for the usual and customary maintenance
46 and upkeep of all improvements and amenities in the
47 district as are commercially reasonable and necessary to
48 sustain its economic viability on a permanent basis;

49 (10) Providing any other services that the municipality
50 or district board is authorized to perform and which the
51 municipality does not also perform to the same extent on
52 a countywide basis;

53 (11) Making grants to the owners or tenants of economic
54 opportunity development district for the purposes de-
55 scribed in this section;

56 (12) Acquiring an interest in any entity or entities that
57 own any portion of the real property situate in the district
58 and contributing capital to any entity or entities; and

59 (13) To do any and all things necessary, desirable or
60 appropriate to carry out and accomplish the purposes of
61 this article notwithstanding any provision of this code to
62 the contrary.

§8-38-6. Notice; hearing.

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

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

10 (1) The purpose of the hearing;

11 (2) The name of the proposed district;

12 (3) The general purpose of the proposed district;

13 (4) The proposed property included in the district; and

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

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

24 (d) *Application to council.* — If the municipality,
25 following the public hearing, determines it advisable and
26 in the public interest to establish an economic opportunity
27 development district, it shall apply to the council for
28 community and economic development for approval of the
29 economic opportunity development district project
30 pursuant to the procedures provided in section seven of
31 this article.

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

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

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

7 (2) A general description of the capital improvements,
8 additional or extended services and other proposed
9 development expenditures to be made in the district;

10 (3) A description of the proposed method of financing the
11 development expenditures, together with a description of

12 the reserves to be established for financing ongoing
13 development or redevelopment expenditures necessary to
14 permanently maintain the optimum economic viability of
15 the district following its inception: *Provided*, That the
16 amounts of the reserves shall not exceed the amounts that
17 would be required by ordinary commercial capital market
18 considerations;

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

24 (5) A description of the financial contribution of the
25 municipality to the funding of development expenditures;

26 (6) Identification of any businesses that the municipality
27 expects to relocate their business locations from the
28 district to another place in the state in connection with the
29 establishment of the district or from another place in this
30 state to the district: *Provided*, That for purposes of this
31 article, any entities shall be designated "relocated enti-
32 ties";

33 (7) Identification of any businesses currently conducting
34 business in the proposed economic opportunity develop-
35 ment district that the municipality expects to continue
36 doing business there after the district is created;

37 (8) A good faith estimate of the aggregate amount of
38 consumers sales and service tax that was actually remitted
39 to the tax commissioner by all business locations identified
40 as provided in subdivisions (6) and (7) of this subsection
41 with respect to their sales made and services rendered
42 from their then current business locations that will be
43 relocated from, or to, or remain in the district for the
44 twelve full calendar months next preceding the date of the
45 application: *Provided*, That for purposes of this article, the
46 aggregate amount is designated as "the base tax revenue
47 amount"; a good faith estimate of the gross annual district

48 tax revenue amount; and the proposed application of any
49 surplus from all funding sources to further the objectives
50 of this article: *Provided, however,* That the amount of all
51 development expenditures proposed to be made in the first
52 twenty-four months following the creation of the district
53 shall be not less than fifty million dollars.

54 (b) *Additional criteria.* — The council may establish
55 other criteria for consideration when approving the
56 applications: *Provided,* That the council shall act to
57 approve or not approve any application within thirty days
58 following the receipt of the application.

59 (c) *Certification of project.* — If the committee approves
60 a municipality's economic opportunity district project
61 application, it shall issue to the municipality a written
62 certificate evidencing the approval.

63 (1) The certificate shall expressly state a base tax
64 revenue amount, the gross annual district tax revenue
65 amount and the estimated net annual district tax revenue
66 amount which, for purposes of this article, is the difference
67 between the gross annual district tax revenue amount and
68 the base tax revenue amount, all of which the council has
69 determined with respect to the district's application based
70 on any investigation it considers reasonable and necessary,
71 including, but not limited to, any relevant information the
72 council requests from the tax commissioner and the tax
73 commissioner provides to the council: *Provided,* That in
74 determining the net annual district tax revenue amount,
75 the council may not use a base tax revenue amount less
76 than that amount certified by the tax commissioner but, in
77 lieu of confirmation from the tax commissioner of the
78 gross annual district tax revenue amount, the council may
79 use the estimate of the gross annual district tax revenue
80 amount provided by the municipality pursuant to subsec-
81 tion (a) of this section.

82 (d) *Promulgation of rules.* — The council may promul-
83 gate rules to implement the economic opportunity devel-
84 opment district project application approval process and

85 to describe the criteria and procedures it has established
86 in connection therewith. These rules are not subject to the
87 provisions of chapter twenty-nine-a of this code but shall
88 be filed with the secretary of state.

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

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

8 (b) *District subaccount.* — A separate and segregated
9 subaccount within the account shall be established for
10 each economic opportunity development district that is
11 approved by the council and authorized by the Legislature
12 pursuant to subdivision (3) of this subsection. Funds paid
13 into the account for the credit of any subaccount may also
14 be derived from the following sources:

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

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

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

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

1 (a) *General.* — Municipalities have no inherent author-
2 ity to levy taxes and have only that authority expressly
3 granted to them by the Legislature. Because a special
4 district excise tax has the effect of diverting, for a speci-
5 fied period of years, tax dollars that otherwise would go

6 into the general revenue fund of this state, no economic
7 opportunity development district excise tax may be levied
8 by a municipality until after the Legislature expressly
9 authorizes the municipality to levy a special district excise
10 tax on sales of tangible personal property and services
11 made within district boundaries approved by the Legisla-
12 ture.

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

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

1 (a) *General.* — If an economic opportunity development
2 district project has been approved by the council and the
3 levying of a special district excise tax for the district has
4 been authorized by the Legislature, all in accordance with
5 this article, the municipality may create the district by
6 order entered of record as provided for in article one of
7 this chapter: *Provided*, That the municipality may not
8 amend, alter or change in any manner the boundaries of
9 the economic opportunity development district authorized
10 by the Legislature. In addition to all other requirements,
11 the order shall contain the following:

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

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

17 (3) The base and rate of any special district excise tax
18 that may be imposed upon sales by businesses for the
19 privilege of operating within the district, which tax shall
20 be passed on to and paid by the consumer, and the manner
21 in which the taxes will be imposed, administered and

22 collected, all of which shall be in conformity with the
23 requirements of this article; and

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

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

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

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

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

50 (E) To, unless otherwise provided for in, and subject to
51 the provisions of any contracts or leases to operate, repair,
52 manage, and maintain buildings and structures and
53 provide adequate insurance of all types and in connection
54 with the primary use thereof and incidental thereto to
55 provide services, such as retail stores and restaurants, and
56 to effectuate incidental purposes, grant leases, permits,

57 concessions or other authorizations to any person or
58 persons upon the terms and conditions for consideration
59 and for the term of duration as agreed upon by the district
60 board and any person, agency, governmental department,
61 firm or corporation;

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

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

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

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

77 (J) Pursuant to a determination by the district board
78 that there exists a continuing need for redevelopment
79 expenditures and that moneys or funds of the district are
80 necessary therefor, to borrow money and execute and
81 deliver the district's negotiable notes and other evidences
82 of indebtedness therefor, on the terms as the district shall
83 determine, and give security therefor as is requisite,
84 including, without limitation, a pledge of the district's
85 rights in its subaccount of the downtown district redev-
86 opment fund;

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

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

101 (b) *Additional contents of order.* — The municipality's
 102 order shall also state the general intention of the munici-
 103 pality to develop and increase services and to make capital
 104 improvements within the district.

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

§8-38-11. District board; duties.

1 (a) *General.* — The council of a municipality that has
 2 been authorized by the Legislature to establish an eco-
 3 nomic opportunity development district, in accordance
 4 with this article, shall provide, by order entered of record,
 5 for the appointment of a district board to oversee the
 6 operations of the district: *Provided*, That the municipality
 7 may, by order, in lieu of appointing a separate district
 8 board, designate itself to act as the district board.

9 (b) *Composition of board.* — If a separate district board
 10 is to be appointed, it shall be made up of at least seven
 11 members, two of which shall be owners, or representatives
 12 of owners, of real property situated in the economic
 13 opportunity development district and the other five shall
 14 be residents of the municipality within which the district
 15 is located.

16 (c) *Annual report.* — The district board, in addition to
17 the duties prescribed by the order creating the district,
18 shall submit an annual report to the municipality and the
19 council containing:

20 (1) An itemized statement of its receipts and disburse-
21 ments for the preceding fiscal year;

22 (2) A description of its activities for the preceding fiscal
23 year;

24 (3) A recommended program of services to be performed
25 and capital improvements to be made within the district
26 for the coming fiscal year; and

27 (4) A proposed budget to accomplish its objectives.

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

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

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

1 (a) *General.* — The council of a municipality, autho-
2 rized by the Legislature to levy a special district excise tax
3 for the benefit of an economic opportunity development
4 district, may, by order entered of record, impose that tax
5 on the privilege of selling tangible personal property and
6 rendering select services in the district in accordance with
7 this section.

8 (b) *Tax base.* — The base of a special district excise tax
9 imposed pursuant to this section shall be identical to the

10 base of the consumers sales and service tax imposed
11 pursuant to article fifteen, chapter eleven of this code on
12 sales made and services rendered within the boundaries of
13 the district: *Provided*, That except for the exemption
14 provided in said section nine-f of said article, all exemp-
15 tions and exceptions from the consumers sales and service
16 tax also apply to the special district excise tax and sales of
17 gasoline and special fuel shall not be subject to special
18 district excise tax but remain subject to the tax levied by
19 said article.

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

29 (d) *Collection by tax commissioner.* — The order of the
30 municipality imposing a special district excise tax shall
31 provide for the tax to be collected by the tax commissioner
32 in the same manner as the tax levied by section three,
33 article fifteen, chapter eleven of this code is administered,
34 assessed, collected and enforced.

35 (e) *Deposit of net tax collected.* —

36 (1) The order of the municipality imposing a special
37 district excise tax shall provide that the tax commissioner
38 deposit the net amount of tax collected in the special
39 economic opportunity development district fund to the
40 credit of the municipality's subaccount therein for the
41 economic opportunity development district and that the
42 money in the subaccount may only be used to pay for
43 development expenditures as provided in this article
44 except as provided in subsection (f) of this section.

45 (2) The state treasurer shall withhold from the municipi-
46 pality's subaccount in the economic opportunity develop-
47 ment district fund and shall deposit in the general revenue
48 fund of this state, on or before the twentieth day of each
49 calendar month next following the effective date of a
50 special district excise tax, a sum equal to one twelfth of
51 the base tax revenue amount last certified by the council
52 pursuant to section seven of this article.

53 (f) *Effective date of special district excise tax.* — Any
54 taxes imposed pursuant to the authority of this section
55 shall be effective on the first day of the calendar month
56 that begins on or after the date of adoption of an order
57 entered of record imposing the tax or at any later date
58 expressly designated in the ordinance that begins on the
59 first day of a calendar month.

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

§8-38-13. Requisition of district subaccount funds.

1 Sixty days after collection of a special district excise tax
2 begins, the state auditor shall, upon receipt of a monthly
3 requisition from the district board, issue his or her warrant
4 on the state treasurer for the funds requested from the
5 district's subaccount, which funds are applied for the
6 purposes described in section five of this article and the
7 state treasurer shall pay the warrant out of funds in the
8 subaccount.

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

1 (a) *General.* — The order creating an economic opportu-
2 nity development district may not be amended to include
3 additional contiguous property until after the amendment
4 is approved by the council in the same manner as an
5 application to approve the establishment of the district is

6 acted upon under section seven of this article and the
7 amendment is authorized by the Legislature.

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

12 (c) *Public hearing required.* —

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

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

23 (d) *Application to council.* — Following the hearing, the
24 municipality may, by resolution, apply to the council to
25 approve inclusion of the additional property in the district.

26 (e) *Consideration by council.* — Before the council
27 approves inclusion of the additional property in the
28 district, the council shall determine the amount of taxes
29 levied by article fifteen, chapter eleven of this code that
30 were collected by businesses located in the area the
31 municipality proposes to add to the district in the same
32 manner as the base amount of tax was determined when
33 the district was first created. The state treasurer shall also
34 deposit one twelfth of this additional tax base amount into
35 the general revenue fund each month, as provided in
36 section twelve of this article.

37 (f) *Legislative action required.* — After the council
38 approves amending the boundaries of the district, the
39 Legislature must amend section nine of this article to

40 allow levy of the special district excise tax on business
41 located in geographic area to be included in the district.
42 After the Legislature amends said section, the municipal-
43 ity may then amend its order: *Provided*, That the order
44 may not be effective any earlier than the first day of the
45 calendar month that begins thirty days after the effective
46 date of the act of the Legislature authorizing the levy on
47 the special district excise tax on businesses located in the
48 geographic area to be added to the boundaries of the
49 district for which the tax is levied or a later date as set
50 forth in the order of the municipality.

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

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

1 (a) *General.* — Except upon the express written consent
2 of the council and of all the holders or obligees of any
3 indebtedness or other instruments the proceeds of which
4 were applied to any development or redevelopment
5 expenditures or any indebtedness the payment of which is
6 secured by revenues payable into the fund provided under
7 section eight of this article or by any public property, a
8 district may only be abolished by the municipality when
9 there is no outstanding indebtedness, the proceeds of
10 which were applied to any development or redevelopment
11 expenditures or the payment of which is secured by
12 revenues payable into the fund provided under section
13 eight of this article, or by any public property, and follow-
14 ing a public hearing upon the proposed abolishment.

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

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

32 (d) *Reinstatement of district.* — Following abolishment
 33 of a district pursuant to this section, its reinstatement
 34 requires compliance with all requirements and procedures
 35 set forth in this article for the initial development, ap-
 36 proval, establishment and creation of an economic oppor-
 37 tunity development district.

**§8-38-16. Bonds issued to finance economic opportunity devel-
 opment district projects.**

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

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

10 (c) *Term of obligations.* — No municipality may issue
11 notes, bonds or other instruments for funding district
12 projects or improvements that exceed a repayment sched-
13 ule of thirty years.

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

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

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

43 (g) *Debt not a charge general credit or taxing powers of*
44 *municipality.* — Neither the bonds or notes, nor interest
45 thereon, is a charge against the general credit or taxing

46 powers of the municipality and that fact shall be plainly
47 stated on the face of each bond or note.

48 (h) *Issuance of bonds or notes.* —

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

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

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

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

76 (i) *Additional bonds or notes.* — If the proceeds of the
77 bonds or notes, by error of calculation or otherwise, are
78 less than the cost of the economic opportunity develop-
79 ment district project, or if additional real or personal
80 property is to be added to the district project or if it is

81 determined that financing is needed for additional devel-
82 opment or redevelopment expenditures, additional bonds
83 or notes may, in like manner, be issued to provide the
84 amount of the deficiency or to defray the cost of acquiring
85 or financing any additional real or personal property or
86 development or redevelopment expenditures and, unless
87 otherwise provided for in the trust agreement, mortgage or
88 deed of trust, are considered to be of the same issue and
89 shall be entitled to payment from the same fund, without
90 preference or priority, and shall be of equal priority as to
91 any security.

§8-38-17. Security for bonds.

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

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

18 (c) *Trust indenture.* —

19 (1) In the discretion and at the option of the municipal-
20 ity, the bonds and notes may also be secured by a trust
21 indenture by and between the municipality and a corpo-
22 rate trustee, which may be a trust company or bank having
23 trust powers, within or without the state of West Virginia.

24 (2) The resolution authorizing the bonds or notes and
25 fixing the details thereof may provide that the trust
26 indenture may contain provisions for the protection and
27 enforcing the rights and remedies of the bondholders as
28 are reasonable and proper, not in violation of law, includ-
29 ing covenants setting forth the duties of the municipality
30 in relation to the construction, acquisition or financing of
31 an economic opportunity development district project, or
32 part thereof or an addition thereto, and the improvement,
33 repair, maintenance and insurance thereof and for the
34 custody, safeguarding and application of all moneys and
35 may provide that the economic opportunity development
36 district project shall be constructed and paid for under the
37 supervision and approval of the consulting engineers or
38 architects employed and designated by the municipality
39 or, if directed by the municipality in the resolution, by the
40 district board, and satisfactory to the purchasers of the
41 bonds or notes, their successors, assigns or nominees who
42 may require the security given by any contractor or any
43 depository of the proceeds of the bonds or notes or the
44 revenues received from the district project be satisfactory
45 to the purchasers, their successors, assigns or nominees.

46 (3) The indenture may set forth the rights and remedies
47 of the bondholders, the municipality or trustee and the
48 indenture may provide for accelerating the maturity of the
49 revenue bonds, at the option of the bondholders or the
50 municipality issuing the bonds, upon default in the
51 payment of the amounts due under the bonds.

52 (4) The municipality may also provide by resolution and
53 in the trust indenture for the payment of the proceeds of
54 the sale of the bonds or notes and the revenues from the
55 economic opportunity development district project to any
56 depository it determines, for the custody and investment
57 thereof and for the method of distribution thereof, with
58 safeguards and restrictions it determines to be necessary
59 or advisable for the protection thereof and upon the filing
60 of a certified copy of the resolution or of the indenture for

61 record with the clerk of the municipality in which the
62 economic opportunity development project is located, the
63 resolution has the same effect, as to notice, as the
64 recordation of a deed of trust or other recordable instru-
65 ment.

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

72 (d) *Mortgage or deed of trust.* —

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

82 (2) The proceedings under which bonds or notes are
83 authorized to be issued, when secured by a mortgage or
84 deed of trust, may contain the same terms, conditions and
85 provisions provided for herein when an indenture is
86 entered into between the municipality and a trustee and
87 any mortgage or deed of trust may contain any agreements
88 and provisions customarily contained in instruments
89 securing bonds or notes, including, without limiting the
90 generality of the foregoing, provisions respecting the
91 fixing and collection of revenues from the economic
92 opportunity development district project covered by the
93 proceedings or mortgage, the terms to be incorporated in
94 any lease, sale or financing agreement with respect to the
95 economic opportunity development district project, the
96 improvement, repair, maintenance and insurance of the

97 downtown redevelopment district project, the creation and
98 maintenance of special funds from the revenues received
99 from the economic opportunity development district
100 project and the rights and remedies available in event of
101 default to the bondholders or note holders, the municipal-
102 ity, or to the trustee under an agreement, indenture,
103 mortgage or deed of trust, all as the municipality considers
104 advisable and shall not be in conflict with the provisions
105 of this article or any existing law: *Provided*, That in
106 making any agreements or provisions, a municipality shall
107 not have the power to incur original indebtedness by
108 indenture, ordinance, resolution, mortgage or deed of trust
109 except with respect to the economic opportunity develop-
110 ment district project and the application of the revenues
111 therefrom and shall not have the power to incur a pecuni-
112 ary liability or a charge upon its general credit or against
113 its taxing powers unless approved by the voters in accor-
114 dance with article one, chapter thirteen of this code or as
115 otherwise permitted by the constitution of this state.

116 (e) *Enforcement of obligations.* —

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

129 (2) Any agreement, indenture, mortgage or deed of trust
130 may provide also that, in the event of default in payment
131 or the violation of any agreement contained in the mort-
132 gage or deed of trust, the agreement, indenture, mortgage
133 or deed of trust may be foreclosed either by sale at public

134 outcry or by proceedings in equity and may provide that
135 the holder or holders of any of the bonds secured thereby
136 may become the purchaser at any foreclosure sale, if the
137 highest bidder therefor.

138 (f) *No pecuniary liability.* — No breach of any agree-
139 ment, indenture, mortgage or deed of trust shall impose
140 any pecuniary liability upon a municipality or any charge
141 upon its general credit or against its taxing powers.

§8-38-18. Redemption of bonds.

1 The revenue bonds issued pursuant to this article may
2 contain a provision therein to the effect that they, or any
3 of them, may be called for redemption at any time prior to
4 maturity by the municipality and at the redemption prices
5 or premiums, which terms shall be stated in the bond.

§8-38-19. Refunding bonds.

1 (a) Any bonds issued under this article and at any time
2 outstanding may at any time, and from time to time, be
3 refunded by a municipality by the issuance of its refunding
4 bonds in amount as the municipality considers necessary
5 to refund the principal of the bonds to be refunded,
6 together with any unpaid interest thereon; to make any
7 improvements or alterations in the downtown redevelop-
8 ment district project; and any premiums and commissions
9 necessary to be paid in connection therewith.

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

20 tion, prior to the date on which they are by their terms
21 subject to redemption.

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

§8-38-20. Use of proceeds from sale of bonds.

1 (a) *General.* — The proceeds from the sale of any bonds
2 issued under authority of this article shall be applied only
3 for the purpose for which the bonds were issued: *Provided,*
4 That any accrued interest received in any sale shall be
5 applied to the payment of the interest on the bonds sold:
6 *Provided, however,* That if for any reason any portion of
7 the proceeds may not be needed for the purpose for which
8 the bonds were issued, then the unneeded portion of the
9 proceeds may be applied to the purchase of bonds for
10 cancellation or payment of the principal of or the interest
11 on the bonds, or held in reserve for the payment thereof.

12 (b) *Payment of costs.* — The costs that may be paid with
13 the proceeds of the bonds include all development and
14 redevelopment costs described in section five of this article
15 and may also include, but not be limited to, the following:

16 (1) The cost of acquiring any real estate determined
17 necessary;

18 (2) The actual cost of the construction of any part of an
19 economic opportunity development district project which
20 may be constructed, including architects', engineers',
21 financial or other consultants' and legal fees;

22 (3) The purchase price or rental of any part of an
23 economic opportunity development district project that
24 may be acquired by purchase or lease;

25 (4) All expenses incurred in connection with the authori-
26 zation, sale and issuance of the bonds to finance the
27 acquisition and the interest on the bonds for a reasonable

28 time prior to construction during construction and for not
29 exceeding twelve months after completion of construction;
30 and

31 (5) Any other costs and expenses reasonably necessary
32 in the establishment and acquisition of an economic
33 opportunity development district project and the financing
34 thereof.

§8-38-21. Bonds made legal investments.

1 Bonds issued under the provisions of this article are
2 legal investments for banks, building and loan associations
3 and insurance companies organized under the laws of this
4 state and for a business development corporation orga-
5 nized pursuant to chapter thirty-one, article fourteen of
6 this code.

§8-38-22. Exemption from taxation.

1 The revenue bonds and notes issued pursuant to this
2 article and the income therefrom are exempt from taxation
3 except inheritance, estate and transfer taxes; and the real
4 and personal property which a municipality or district
5 board acquires pursuant to the provisions of this article
6 are exempt from taxation by the state, or any county,
7 municipality or other levying body, as public property so
8 long as the property is owned by the municipality or
9 district board.

CHAPTER 11. TAXATION.

ARTICLE 10. TAX PROCEDURE AND ADMINISTRATION.

**§11-10-11a. Administration of special district excise tax; com-
mission authorized.**

1 (a) Any municipality or county commission which,
2 pursuant to section twelve, article twenty-two, chapter
3 seven of this code, section eleven, article thirteen-b,
4 chapter eight of this code or section twelve, article thirty-
5 eight, chapter eight of this code imposes a special district

6 excise tax shall, by express provision in the order imposing
7 that tax, authorize the state tax commissioner to adminis-
8 ter, assess, collect and enforce that tax on behalf of and as
9 its agent.

10 (1) The county commission shall make such authoriza-
11 tion by the adoption of a provision in its order levying a
12 special district excise tax stating its purpose and referring
13 to this section and providing that the order shall be
14 effective on the first day of a month at least sixty days
15 after its adoption.

16 (2) A certified copy of the order shall be forwarded to the
17 state auditor, the state treasurer and the tax commissioner
18 so that it will be received within five days after its adop-
19 tion.

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

25 (c) All special district excise tax moneys collected by the
26 tax commissioner under this section shall be paid into the
27 state treasury to the credit of each county commission's
28 subaccount in the economic opportunity development
29 district fund created pursuant to section nine, article
30 twenty-two, chapter seven of this code for the particular
31 economic opportunity development district. The special
32 district excise tax moneys shall be credited to the
33 subaccount of each particular county commission levying
34 a special district excise tax being administered under this
35 section. The credit shall be made to the subaccount of the
36 county commission for the economic opportunity develop-
37 ment district in which the taxable sales were made and
38 services rendered as shown by the records of the tax
39 commissioner and certified by him or her monthly to the
40 state treasurer, namely, the location of each place of
41 business of every vendor collecting and paying the tax to

42 the tax commissioner without regard to the place of
43 possible use by the purchaser.

44 (d) As soon as practicable after the special district excise
45 tax moneys have been paid into the state treasury in any
46 month for the preceding reporting period, the district
47 board may issue a requisition to the auditor requesting
48 issuance of a state warrant for the proper amount in favor
49 of each county commission entitled to the monthly remit-
50 tance of its special district excise tax moneys.

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

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

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

69 (e) Notwithstanding any other provision of this code to
70 the contrary, the tax commissioner shall deduct and retain
71 for the benefit of his or her office for expenditure pursuant
72 to appropriation of the Legislature from each payment
73 into the state treasury, as provided in subsection (c) of this
74 section, one percent thereof as a commission to compen-
75 sate his or her office for the discharge of the duties de-
76 scribed in this section.

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-9f. Exemption for sales and services subject to special district excise tax.

1 Notwithstanding any provision of this article to the
2 contrary, any sale or service upon which a special district
3 excise tax is paid, pursuant to the provisions of section
4 twelve, article twenty-two, chapter seven of this code,
5 section eleven, article thirteen-b, chapter eight of this
6 code, or section twelve, article thirty-eight, chapter eight
7 of this code is exempt from the tax imposed by this article:
8 *Provided*, That the special district excise tax does not
9 apply to sales of gasoline and special fuel.

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

Larry J. Love
.....
Chairman Senate Committee

Shawn Spence
.....
Chairman House Committee

Originated in the Senate.

In effect from passage.

Harrell Williams
.....
Clerk of the Senate

Gregory M. Gray
.....
Clerk of the House of Delegates

Earl Ray Tomblin
.....
President of the Senate

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

The within is approved this the 2nd
Day of April, 2003.

Bob Wise
.....
Governor

PRESENTED TO THE
GOVERNOR

Date 3/27/03

Time 10:10am