WEST VIRGINIA LEGISLATURE
Regular Session, 2003

ENROLLED
Committee Substitute for
SENATE BILL NO. 558

(By Senator Tomblin, Mr. President, and Sprouse,)

PASSED March 16, 2003

In Effect July 1, 2003 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 Economic Opportunity Development District Act”.

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

1 The Legislature finds that many significant business opportunities initiated within the counties of this state face financial and other economic obstacles. This adversely affects the economic and general well-being of the citizens of those counties. Establishment of economic opportunity development districts within counties of the
state, in accordance with the purpose and powers set forth in this article, will serve a public purpose and promote the health, safety, prosperity, security and general welfare of all citizens in the state. It will also promote the vitality of significant business opportunities within counties while serving as an effective means for developing or restoring and promoting retail and other business activity within the economic opportunity development districts created herein. This will be of special benefit to the tax base of the counties within which any economic development district is created under this article and will stimulate economic growth and job creation.

§7-22-3. Definitions.

For purposes of this article, the term:

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

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

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

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

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

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

(7) “Gross annual district tax revenue amount” means the total amount of consumers sales and service tax
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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.


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

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

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

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

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

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

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

(9) Providing for the usual and customary maintenance
and upkeep of all improvements and amenities in the
district as are commercially reasonable and necessary to
sustain its economic viability on a permanent basis;
(10) Providing any other services that the county commission or district board is authorized to perform and which the county commission does not also perform to the same extent on a countywide basis;

(11) Making grants to the owners or tenants of economic opportunity development district for the purposes described in this section;

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

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

§7-22-6. Notice; hearing.

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

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

(1) The purpose of the hearing;

(2) The name of the proposed district;

(3) The general purpose of the proposed district;

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

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

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

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

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

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

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

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

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

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

(5) A description of the financial contribution of the county commission to the funding of development expenditures;

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

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

(8) A good faith estimate of the aggregate amount of consumers sales and service tax that was actually remitted to the tax commissioner by all business locations identified as provided in subdivisions (6) and (7) of this subsection with respect to their sales made and services rendered from their then current business locations that will be relocated from, or to, or remain in the district for the twelve full calendar months next preceding the date of the application: Provided, That for purposes of this article, the aggregate amount is designated as "the base tax revenue amount"; a good faith estimate of the gross annual district tax revenue amount; and the proposed application of any surplus from all funding sources to further the objectives of this article: Provided, however, That the amount of all development expenditures proposed to be made in the first
twenty-four months following the creation of the district shall be not less than fifty million dollars.

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

(c) Certification of project. – If the committee approves a county’s economic opportunity district project application, it shall issue to the county commission a written certificate evidencing the approval.

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

(d) Promulgation of rules. – The council may promulgate rules to implement the economic opportunity development district project application approval process and to describe the criteria and procedures it has established in connection therewith. These rules are not subject to the
§7-22-8. Establishment of the economic opportunity development district fund.

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

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

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

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

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


(a) General. — County commissions have no inherent authority to levy taxes and have only that authority expressly granted to them by the Legislature. Because a special district excise tax has the effect of diverting, for a specified period of years, tax dollars that otherwise would go into the general revenue fund of this state, no economic opportunity development district excise tax may be levied
by a county commission until after the Legislature expressly authorizes the county commission to levy a special district excise tax on sales of tangible personal property and services made within district boundaries approved by the Legislature.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§7-22-11. District board; duties.

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

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

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

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

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

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

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

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

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

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

d) Collection by tax commissioner. — The order of the county commission imposing a special district excise tax shall provide for the tax to be collected by the tax commissioner in the same manner as the tax levied by section three, article fifteen, chapter eleven of this code is administered, assessed, collected and enforced.

e) Deposit of net tax collected. —

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

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

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

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


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

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

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

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

(c) Public hearing required. —

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

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

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

(e) Consideration by council. — Before the council approves inclusion of the additional property in the district, the council shall determine the amount of taxes levied by article fifteen, chapter eleven of this code that were collected by businesses located in the area the county commission proposes to add to the district in the same manner as the base amount of tax was determined when the district was first created. The state treasurer shall also deposit one twelfth of this additional tax base amount into the general revenue fund each month, as provided in section twelve of this article.
(f) **Legislative action required.** — After the council approves amending the boundaries of the district, the Legislature must amend section nine of this article to allow levy of the special district excise tax on business located in geographic area to be included in the district. After the Legislature amends said section, the county commission may then amend its order: *Provided, That the order may not be effective any earlier than the first day of the calendar month that begins thirty days after the effective date of the act of the Legislature authorizing the levy on the special district excise tax on businesses located in the geographic area to be added to the boundaries of the district for which the tax is levied or a later date as set forth in the order of the county commission.*

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

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

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

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

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

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

§7-22-16. Bonds issued to finance economic opportunity development district projects.

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

(b) Limited obligations. — All bonds and notes issued by a county commission under the authority of this article are limited obligations of the county.
(c) **Term of obligations.** — No county commission may issue notes, bonds or other instruments for funding district projects or improvements that exceed a repayment schedule of thirty years.

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

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

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

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

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

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

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

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

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


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

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

(c) Trust indenture. —

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

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

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

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

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

(d) Mortgage or deed of trust. —

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

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

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

(e) Enforcement of obligations.

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

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

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


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.


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

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


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

§7-22-22. Exemption from taxation.

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

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 38. MUNICIPAL ECONOMIC OPPORTUNITY DEVELOPMENT DISTRICTS.

§8-38-1. Short title.

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

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

The Legislature finds that many significant business opportunities initiated within municipalities of this state
face financial and other economic obstacles. This adversely affects the economic and general well-being of the citizens of those municipalities. Establishment of economic opportunity development districts within municipalities of the state, in accordance with the purpose and powers set forth in this article, will serve a public purpose and promote the health, safety, prosperity, security and general welfare of all citizens in the state. It will also promote the vitality of significant business opportunities within those municipalities while serving as an effective means for developing or restoring and promoting retail and other business activity within the economic opportunity development districts created herein. This will be of special benefit to the tax base of the municipalities within which any economic development district is created under this article and will stimulate economic growth and job creation.


For purposes of this article, the term:

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

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

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

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

(5) “District board” means a district board created pursuant to section ten of this article;
“Eligible property” means any taxable or exempt real property located in a district established pursuant to this article;

“Gross annual district tax revenue amount” means the total amount of consumers sales and service tax actually remitted to the tax commissioner by retailers maintaining places of business within the district with respect to sales made and services rendered by retailers from a location within the district for the twelve full calendar months immediately preceding the filing of an application pursuant to section seven of this article; and

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

§8-38-4. Authorization to create economic opportunity development districts.

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

(1) Create one or more economic opportunity development districts within its limits;

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

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


Any municipality that has established an economic opportunity development district under this article may make, or authorize to be made by a district board and other public or private parties, development expenditures as will promote the economic vitality of the district and the general welfare of the municipality, including, but not limited to, expenditures for the following purposes:
(1) Beautification of the district by means such as landscaping and construction and erection of fountains, shelters, benches, sculptures, signs, lighting, decorations and similar amenities;

(2) Provision of special or additional public services such as sanitation, security for persons and property and the construction and maintenance of public facilities, including, but not limited to, sidewalks, parking lots, parking garages and other public areas;

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

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

(5) Acquiring, building, demolishing, razing, constructing, repairing, reconstructing, refurbishing, renovating, rehabilitating, expanding, altering, otherwise developing, operating and maintaining real property generally, parking facilities, commercial structures and other capital improvements to real property, fixtures and tangible personal property, whether or not physically situate within the district's boundaries: Provided, That the expenditure directly benefits the district;

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

(7) Developing, promoting and supporting community events and activities open to the general public that benefit the district;
(8) Providing the administrative costs for a district management program;

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

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

(11) Making grants to the owners or tenants of economic opportunity development district for the purposes described in this section;

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

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

§8-38-6. Notice; hearing.

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

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

(1) The purpose of the hearing;

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

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

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

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

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

(1) A true copy of the notice described in section six of this article;
(2) A general description of the capital improvements, additional or extended services and other proposed development expenditures to be made in the district;
(3) A description of the proposed method of financing the development expenditures, together with a description of
the reserves to be established for financing ongoing
development or redevelopment expenditures necessary to
permanently maintain the optimum economic viability of
the district following its inception: Provided, That the
amounts of the reserves shall not exceed the amounts that
would be required by ordinary commercial capital market
considerations;

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

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

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

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

(8) A good faith estimate of the aggregate amount of
consumers sales and service tax that was actually remitted
to the tax commissioner by all business locations identified
as provided in subdivisions (6) and (7) of this subsection
with respect to their sales made and services rendered
from their then current business locations that will be
relocated from, or to, or remain in the district for the
twelve full calendar months next preceding the date of the
application: Provided, That for purposes of this article, the
aggregate amount is designated as “the base tax revenue
amount”; a good faith estimate of the gross annual district
tax revenue amount; and the proposed application of any
surplus from all funding sources to further the objectives
of this article: Provided, however, That the amount of all
development expenditures proposed to be made in the first
twenty-four months following the creation of the district
shall be not less than fifty million dollars.

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

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

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

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

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

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

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

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

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

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


(a) General. — Municipalities have no inherent authority to levy taxes and have only that authority expressly granted to them by the Legislature. Because a special district excise tax has the effect of diverting, for a specified period of years, tax dollars that otherwise would go
into the general revenue fund of this state, no economic
opportunity development district excise tax may be levied
by a municipality until after the Legislature expressly
authorizes the municipality to levy a special district excise
tax on sales of tangible personal property and services
made within district boundaries approved by the Legisla-
ture.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§8-38-11. District board; duties.

(a) General. — The council of a municipality that has been authorized by the Legislature to establish an economic opportunity development district, in accordance with this article, shall provide, by order entered of record, for the appointment of a district board to oversee the operations of the district: Provided, That the municipality may, by order, in lieu of appointing a separate district board, designate itself to act as the district board.

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

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

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

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

(4) A proposed budget to accomplish its objectives.

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

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

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

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

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

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

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

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

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

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

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


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

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

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

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

(c) **Public hearing required.** —

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

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

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

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

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

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

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

(a) General. — Except upon the express written consent of the council and of all the holders or obligees of any indebtedness or other instruments the proceeds of which were applied to any development or redevelopment expenditures or any indebtedness the payment of which is secured by revenues payable into the fund provided under section eight of this article or by any public property, a district may only be abolished by the municipality when there is no outstanding indebtedness, the proceeds of which were applied to any development or redevelopment expenditures or the payment of which is secured by revenues payable into the fund provided under section eight of this article, or by any public property, and following a public hearing upon the proposed abolishment.
(b) Notice of public hearing. — Notice of the public hearing required by subsection (a) of this section shall be provided by first-class mail to all owners of real property within the district and shall be published as a Class I-0 legal advertisement in compliance with article three, chapter fifty-nine of this code at least twenty days prior to the public hearing.

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

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

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

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

(b) Limited obligations. — All bonds and notes issued by a municipality under the authority of this article are limited obligations of the municipality.
(c) **Term of obligations.** — No municipality may issue notes, bonds or other instruments for funding district projects or improvements that exceed a repayment schedule of thirty years.

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

(e) **Surplus funds.** — To the extent that the average daily amount on deposit in the subaccount established for a district pursuant to section eight of this article exceeds, for more than six consecutive calendar months, the sum of:

1. One hundred thousand dollars; plus
2. The amount required to be kept on deposit pursuant to the documents authorizing, securing or otherwise relating to the bonds or notes issued under this section, then the excess shall be used by the district either to redeem the bonds or notes previously issued or remitted to the general fund of this state.

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

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

(h) **Issuance of bonds or notes.** —

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

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

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

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

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


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

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

(c) Trust indenture. —

(1) In the discretion and at the option of the municipality, the bonds and notes may also be secured by a trust indenture by and between the municipality and a corporate trustee, which may be a trust company or bank having trust powers, within or without the state of West Virginia.
(2) The resolution authorizing the bonds or notes and fixing the details thereof may provide that the trust indenture may contain provisions for the protection and enforcing the rights and remedies of the bondholders as are reasonable and proper, not in violation of law, including covenants setting forth the duties of the municipality in relation to the construction, acquisition or financing of an economic opportunity development district project, or part thereof or an addition thereto, and the improvement, repair, maintenance and insurance thereof and for the custody, safeguarding and application of all moneys and may provide that the economic opportunity development district project shall be constructed and paid for under the supervision and approval of the consulting engineers or architects employed and designated by the municipality or, if directed by the municipality in the resolution, by the district board, and satisfactory to the purchasers of the bonds or notes, their successors, assigns or nominees who may require the security given by any contractor or any depository of the proceeds of the bonds or notes or the revenues received from the district project be satisfactory to the purchasers, their successors, assigns or nominees.

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

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

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

(d) Mortgage or deed of trust. —

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

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

(e) Enforcement of obligations. —

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

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

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


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


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

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

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

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

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

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

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

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

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

(4) All expenses incurred in connection with the authorization, sale and issuance of the bonds to finance the acquisition and the interest on the bonds for a reasonable
time prior to construction during construction and for not
exceeding twelve months after completion of construction;

and

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


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

§8-38-22. Exemption from taxation.

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

CHAPTER 11. TAXATION.

ARTICLE 10. TAX PROCEDURE AND ADMINISTRATION.

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

(a) Any municipality or county commission which,
pursuant to section twelve, article twenty-two, chapter
seven of this code, section eleven, article thirteen-b,
chapter eight of this code or section twelve, article thirty-
eight, chapter eight of this code imposes a special district
excise tax shall, by express provision in the order imposing
that tax, authorize the state tax commissioner to adminis-
ter, assess, collect and enforce that tax on behalf of and as
its agent.

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

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

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

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

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

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

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

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

(e) Notwithstanding any other provision of this code to the contrary, the tax commissioner shall deduct and retain for the benefit of his or her office for expenditure pursuant to appropriation of the Legislature from each payment into the state treasury, as provided in subsection (c) of this section, one percent thereof as a commission to compensate his or her office for the discharge of the duties described in this section.
ARTICLE 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 contrary, any sale or service upon which a special district excise tax is paid, pursuant to the provisions of section twelve, article twenty-two, chapter seven of this code, section eleven, article thirteen-b, chapter eight of this code, or section twelve, article thirty-eight, chapter eight of this code is exempt from the tax imposed by this article:

Provided, That the special district excise tax does not apply to sales of gasoline and special fuel.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

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