ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 280

(Senators McCabe, Bailey, Foster and Plymale, original sponsors)

[Passed March 8, 2008; in effect ninety days from passage.]
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AN ACT to amend and reenact §8-38-3, §8-38-5, §8-38-7, §8-38-12 and §8-38-16 of the Code of West Virginia, 1931, as amended, all relating to the municipal economic opportunity development district act generally; adding certain remediation projects to those for which special district excise taxes may be authorized upon meeting certain requirements; clarifying the rates of the tax; authorizing the Tax Commissioner to require the
electronic filing of returns and electronic payment of the tax; providing for the sharing of tax information and confidentiality of such information; and requiring additional deposits of the tax into the general revenue fund in certain circumstances.

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

That §8-38-3, §8-38-5, §8-38-7, §8-38-12 and §8-38-16 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

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

**§8-38-3. Definitions.**

1 For purposes of this article, the term:

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

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

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

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

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

(6) "Remediation" means measures undertaken to
bring about the reconditioning or restoration of
property located within the boundaries of an economic
opportunity development district project that has been
affected by exploration, industrial operations or solid
waste disposal and which measures, when undertaken,
will eliminate or ameliorate the existing state of the
property and enable the property to be commercially
developed.


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;

(13) Remediation of publicly or privately owned landfills, solid waste facilities or hazardous waste sites to facilitate commercial development which would not otherwise be economically feasible; and

(14) 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.

§8-38-7. Application to development office for community and economic development for approval of an economic opportunity development district project.
1 (a) General. — The development office shall receive
2 and act on applications filed with it by municipalities
3 pursuant to section six of this article. Each application
4 must include:

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

7 (2) The total cost of the project;

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

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

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

23 (6) A description of the sources and anticipated
24 amounts of all financing, including, but not limited to,
25 proceeds from the issuance of any bonds or other
26 instruments, revenues from the special district excise
27 tax and enhanced revenues from property taxes and
28 fees;
(7) A description of the financial contribution of the municipality to the funding of development expenditures;

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

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

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

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

(12) The proposed application of any surplus from all funding sources to further the objectives of this article;
(13) The Tax Commissioner's certification of: (i) The amount of consumers sales and service taxes collected from businesses located in the economic opportunity district during the twelve calendar months preceding the calendar quarter during which the application will be submitted to the development office; (ii) the estimated amount of economic opportunity district excise tax that will be collected during the first twelve months after the month in which the Tax Commissioner would first begin to collect that tax; and (iii) the estimated amount of economic opportunity district excise tax that will be collected during the first thirty-six months after the month in which the Tax Commissioner would first begin to collect that tax; and

(14) Any additional information the development office may require.

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

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

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

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

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

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

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

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

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

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

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

(11) Whether the project is consistent with the goals
of this article;
(12) Whether the project is economically and fiscally sound using recognized business standards of finance and accounting; and

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

(B) Notwithstanding any provision of paragraph (A) of this subdivision to the contrary, no project involving remediation may be approved by the development office unless the amount of all development expenditures proposed to be made in the first forty-eight months following the creation of the district results in capital investment of more than fifty million dollars in the district. In addition to the remaining provisions of paragraph (A) of this subdivision the development office may not approve a project involving remediation authorized under section five of this article unless the municipality submits clear and convincing information, to the satisfaction of the development office, that the proposed remediation expenditures to be financed by the issuance of bonds or notes pursuant

149 to section sixteen of this article do not constitute more
150 than twenty-five percent of the total redevelopment
151 expenditures associated with the project.

152 (c) Additional criteria. — The development office may
153 establish other criteria for consideration when
154 approving the applications.

155 (d) Action on the application. — The Executive
156 Director of the Development Office shall act to approve
157 or not approve any application within thirty days
158 following the receipt of the application or the receipt of
159 any additional information requested by the
160 development office, whichever is the later.

161 (e) Certification of project. — If the Executive Director
162 of the Development Office approves a municipality’s
163 economic opportunity district project application, he or
164 she shall issue to the municipality a written certificate
165 evidencing the approval.

166 The certificate shall expressly state a base tax
167 revenue amount, the gross annual district tax revenue
168 amount and the estimated net annual district tax
169 revenue amount which, for purposes of this article, is
170 the difference between the gross annual district tax
171 revenue amount and the base tax revenue amount, all
172 of which the development office has determined with
173 respect to the district’s application based on any
174 investigation it considers reasonable and necessary,
175 including, but not limited to, any relevant information
176 the development office requests from the Tax
177 Commissioner and the Tax Commissioner provides to
178 the development office: Provided, That in determining
179 the net annual district tax revenue amount, the
development office 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 development office may use the estimate of the gross annual district tax revenue amount provided by the municipality pursuant to subsection (a) of this section.

(f) Certification of enlargement of geographic boundaries of previously certified district. — If the Executive Director of the Development Office approves a municipality’s economic opportunity district project application to expand the geographic boundaries of a previously certified district, he or she shall issue to the municipality a written certificate evidencing the approval.

The certificate shall expressly state a base tax revenue amount, the gross annual district tax revenue amount and the estimated net annual district tax revenue amount which, for purposes of this article, is the difference between the gross annual district tax revenue amount and the base tax revenue amount, all of which the development office 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 development office requests from the Tax Commissioner and the Tax Commissioner provides to the development office: Provided, That in determining the net annual district tax revenue amount, the development office 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.
Commissioner of the gross annual district tax revenue amount, the development office may use the estimate of the gross annual district tax revenue amount provided by the municipality pursuant to subsection (a) of this section.

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

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

(a) General. — The council of a municipality, authorized by the Legislature to levy a special district excise tax for the benefit of an economic opportunity development district, may, by ordinance, impose that tax on the 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. Sales of gasoline and special fuel are not subject to special district excise tax, but remain subject to the tax levied by article fifteen, chapter eleven of this code. Except for the exemption provided in section nine-f of article fifteen, chapter
eleven of this code, all exemptions and exceptions from the consumers sales and service tax shall also apply to the special district excise tax.

(c) Tax rate. — The rate or rates of a special district excise tax levied pursuant to this section shall be stated in an ordinance enacted by the municipality and identical to the rate or rates of the consumers sales and service tax imposed pursuant to article fifteen, chapter eleven of this code on sales rendered within the boundaries of the district authorized by this section.

(d) Collection by Tax Commissioner. — The ordinance of the municipality imposing a special district excise tax shall provide for the tax to be collected by the Tax 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.

(1) The State Tax Commissioner may require the electronic filing of returns related to the special district excise tax imposed pursuant to this section and may require the electronic payment of the special district excise tax imposed pursuant to this section. The State Tax Commissioner may prescribe by rules promulgated pursuant to article three, chapter twenty-nine-a of this code, administrative notices, and forms and instructions, the procedures and criteria to be followed to electronically file such returns and to electronically pay the special district excise tax imposed pursuant to this section.

(2) Any rules filed by the State Tax Commissioner relating to the special district excise tax imposed pursuant to this section shall set forth the following:
(A) Acceptable indicia of timely payment;

(B) Which type of electronic filing method or methods a particular type of taxpayer may or may not use;

(C) What type of electronic payment method or methods a particular type of taxpayer may or may not use;

(D) What, if any, exceptions are allowable and alternative methods of payment that may be used for any exceptions;

(E) Procedures for making voluntary or mandatory electronic payments or both;

(F) Any other provisions necessary to ensure the timely electronic filing of returns related to the special district excise tax and the making of payments electronically of the special district excise tax imposed pursuant to this section.

(3) (A) Notwithstanding the provisions of section five-d, article ten, chapter eleven of this code: (i) So long as bonds are outstanding pursuant to this article, the Tax Commissioner shall provide on a monthly basis to the trustee for bonds issued pursuant to this article information on returns submitted pursuant to this article; and (ii) the trustee may share the information so obtained with the county commission that established the economic opportunity development district that issued the bonds pursuant to this article and with the bondholders and with bond counsel for bonds issued pursuant to this article. The Tax Commissioner and the trustee may enter into a written agreement in order to
accomplish such exchange of information.

(B) Any confidential information provided pursuant to this subdivision shall be used solely for the protection and enforcement of the rights and remedies of the bondholders of bonds issued pursuant to this article. Any person or entity that is in possession of information disclosed by the Tax Commissioner or shared by the trustee pursuant to subdivision (a) of this subsection is subject to the provisions of section five-d, article ten, chapter eleven of this code as if such person or entity that is in possession of such tax information is an officer, employee, agent or representative of this state or of a local or municipal governmental entity or other governmental subdivision.

(e) Deposit of net tax collected. —

(1) The ordinance of the municipality imposing a special district excise tax shall provide that the Tax Commissioner deposit the net amount of tax collected in the special Economic Opportunity Development District Fund to the credit of the municipality's subaccount therein for the economic opportunity development district and that the money in the subaccount may only be used to pay for development expenditures as provided in this article except as provided in subsection (f) of this section.

(2)(A) 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 development office pursuant to section
seven of this article.

(B) In addition to the amounts described in paragraph
(A) of this subdivision, the Tax Commissioner shall
deposit in the General Revenue Fund of this state on
the dates specified in paragraph (A) not less than
twenty percent nor more than fifty percent of the excess
of the special district excise taxes collected during the
preceding month above one twelfth of the base tax
revenue, said percentage to be fixed by the development
office in conjunction with its approval of an application
in accordance with section seven of this article based on
the amount of state funds, if any, to be expended in
conjunction with the respective economic opportunity
development district project for items including, but
not limited to, the acquisition, construction,
reconstruction, improvement, enlargement or extension
of roadways, rights-of-way, sidewalks, traffic signals,
water or sewer lines and other public infrastructure and
such other expenditures of state funds identified by the
development office.

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

(g) Copies of ordinance. — Upon enactment of an
ordinance levying a special district excise tax, a
certified copy of the ordinance shall be mailed to the
§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: Provided, That the maximum repayment schedule of bonds issued to finance remediation authorized under section five of this article may not exceed twenty 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 ordinance of the
municipality whereunder the bonds or notes are
authorized to be issued.

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

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

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

(i) Additional bonds or notes. — If the proceeds of the
bonds or notes, by error of calculation or otherwise, are
less than the cost of the economic opportunity
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 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.
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 ninety days 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 Day of , 2008.

Governor
PRESENTED TO THE GOVERNOR

MAR 25 2008

Time 3:40 pm