

SB 42 (veto)

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

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ENROLLED

Senate Bill No. 42

(BY SENATORS McCABE, FOSTER,
UNGER, PALUMBO AND CHAFIN)

[Passed March 11, 2010; in effect ninety days from passage.]

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Senate Bill No. 42

(BY SENATORS MCCABE, FOSTER, UNGER, PALUMBO AND CHAFIN)

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AN ACT to amend and reenact §8-38-3, §8-38-4, §8-38-5, §8-38-7, §8-38-10, §8-38-12, §8-38-15, §8-38-16, §8-38-17 and §8-38-20 of the Code of West Virginia, 1931, as amended, all relating to revising the Municipal Economic Opportunity Development District Act generally; enlarging the types of municipal corporations that may use sales tax increment financing to finance certain economic development projects to any Class I, Class II and Class III city and any Class IV town or village; including remediation of former coal mining sites as a permissible development expenditure for a project; changing standard by which the maximum amounts of reserves that may be established in the financing of a project are measured; suggesting that the development office should consider whether the economic development that a project enables is large enough to require that it contain mixed use development consisting of a housing component with at least ten percent of housing units in the district allocated for affordable housing when determining whether there is a pressing need for the project; defining affordable housing; and allowing the

development office to reduce the minimum amount of local sales tax revenues that would be deposited into the state's general revenue fund in certain circumstances.

Be it enacted by the Legislature of West Virginia:

That §8-38-3, §8-38-4, §8-38-5, §8-38-7, §8-38-10, §8-38-12, §8-38-15, §8-38-16, §8-38-17 and §8-38-20 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) "Affordable housing" means housing that could be
3 purchased with a cash down payment of at least ten
4 percent and the proceeds of a mortgage loan, the monthly
5 principal and interest payments on which do not exceed
6 thirty percent of the gross monthly income of a household
7 earning one hundred percent of the current median family
8 income, as computed by the United States Department of
9 Housing and Urban Development, for the county in which
10 the district is located. For the purposes of this definition,
11 the monthly principal and interest payments referred to in
12 the preceding sentence are computed using a standard
13 amortization calculation incorporating the prevailing
14 annual rate of interest on mortgage loans offered by
15 financial institutions in the vicinity of the district, as
16 determined by the Development Office at the time of its
17 review of a municipality's application in accordance with
18 section seven of this article, and a thirty year amortization
19 period.

20 (2) "Development expenditures" means payments for
21 governmental functions, programs, activities, facility
22 construction, improvements and other goods and services

23 which a district board is authorized to perform or provide
24 under section five of this article;

25 (3) "District" means an economic opportunity develop-
26 ment district created pursuant to this article;

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

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

32 (6) "Municipality" is a word of art and means any Class
33 I, Class II or Class III city or any Class IV town or village
34 as classified in section three, article one of this chapter;

35 (7) "Remediation" means measures undertaken to bring
36 about the reconditioning or restoration of property located
37 within the boundaries of an economic opportunity devel-
38 opment district project that has been affected by explora-
39 tion, industrial operations or solid waste disposal and
40 which measures, when undertaken, will eliminate or
41 ameliorate the existing state of the property and enable
42 the property to be commercially developed.

**§8-38-4. Authorization to create economic opportunity devel-
opment districts.**

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

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

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

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

§8-38-5. Development expenditures.

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

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

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

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

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

28 (5) Acquiring, building, demolishing, razing, construct-
29 ing, repairing, reconstructing, refurbishing, renovating,
30 rehabilitating, expanding, altering, otherwise developing,
31 operating and maintaining real property generally,
32 parking facilities, commercial structures and other capital

33 improvements to real property, fixtures and tangible
34 personal property, whether or not physically situate
35 within the district's boundaries: *Provided*, That the
36 expenditure directly benefits the district;

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

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

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

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

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

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

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

59 (13) Remediation of publicly or privately owned land-
60 fills, former coal mining sites, solid waste facilities or
61 hazardous waste sites to facilitate commercial develop-
62 ment which would not otherwise be economically feasible;
63 and

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

**§8-38-7. Application to Development Office for community
and economic development for approval of an
economic opportunity development district pro-
ject.**

1 (a) *General.* – The Development Office shall receive and
2 act on applications filed with it by municipalities pursuant
3 to section six of this article. Each application must
4 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 description
16 of the reserves to be established for financing ongoing
17 development expenditures necessary to permanently
18 maintain the optimum economic viability of the district
19 following its inception: *Provided*, That the amounts of the
20 reserves may not exceed the amounts that would be
21 required by prevailing commercial capital market consid-
22 erations;

23 (6) A description of the sources and anticipated amounts
24 of all financing, including, but not limited to, proceeds

25 from the issuance of any bonds or other instruments,
26 revenues from the special district excise tax and enhanced
27 revenues from property taxes and fees;

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

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

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

41 (10) A good faith estimate of the aggregate amount of
42 consumers sales and service tax that was actually remitted
43 to the Tax Commissioner by all business locations identi-
44 fied as provided in subdivisions (8) and (9) of this subsec-
45 tion with respect to their sales made and services rendered
46 from their then current business locations that will be
47 relocated from, or to, or remain in the district for the
48 twelve full calendar months next preceding the date of the
49 application: *Provided*, That for purposes of this article, the
50 aggregate amount is designated as “the base tax revenue
51 amount”;

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

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

56 (13) The Tax Commissioner’s certification of: (i) The
57 amount of consumers sales and service taxes collected

58 from businesses located in the economic opportunity
59 district during the twelve calendar months preceding the
60 calendar quarter during which the application will be
61 submitted to the Development Office; (ii) the estimated
62 amount of economic opportunity district excise tax that
63 will be collected during the first twelve months after the
64 month in which the Tax Commissioner would first begin
65 to collect that tax; and (iii) the estimated amount of
66 economic opportunity district excise tax that will be
67 collected during the first thirty-six months after the
68 month in which the Tax Commissioner would first begin
69 to collect that tax; and

70 (14) Any additional information the Development Office
71 may require.

72 (b) *Review of applications.* – The Development Office
73 shall review all project proposals for conformance to
74 statutory and regulatory requirements, the reasonableness
75 of the project’s budget and timetable for completion and
76 the following criteria:

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

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

83 (3) Whether the project is supported by significant
84 private sector investment and substantial credible evi-
85 dence that, but for the existence of sales tax increment
86 financing, the project would not be feasible;

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

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

94 (6) Whether the project will, directly or indirectly,
95 improve the opportunities in the area where the project
96 will be located for the successful establishment or expan-
97 sion of other industrial or commercial businesses;

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

103 (8) Whether the project will fulfill a pressing need for the
104 area, or part of the area, in which the economic opportu-
105 nity district is located: *Provided*, That the Development
106 Office should consider whether the economic development
107 the project enables is large enough to require that it
108 contain mixed use development consisting of a housing
109 component with at least ten percent of housing units in the
110 district allocated for affordable housing;

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

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

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

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

121 (13) (A) The ability of the municipality and the project
122 developer or project team to carry out the project: *Pro-*

123 *vided*, That no project may be approved by the Develop-
124 ment Office unless the amount of all development expen-
125 ditures proposed to be made in the first twenty-four
126 months following the creation of the district results in
127 capital investment of more than \$50 million in the district
128 and the municipality submits clear and convincing infor-
129 mation, to the satisfaction of the Development Office, that
130 the investment will be made if the Development Office
131 approves the project and the Legislature authorizes the
132 municipality to levy an excise tax on sales of goods and
133 services made within the economic opportunity develop-
134 ment district as provided in this article.

135 (B) Notwithstanding any provision of paragraph (A) of
136 this subdivision to the contrary, no project involving
137 remediation may be approved by the Development Office
138 unless the amount of all development expenditures
139 proposed to be made in the first forty-eight months
140 following the creation of the district results in capital
141 investment of more than \$50 million in the district. In
142 addition to the remaining provisions of paragraph (A) of
143 this subdivision the Development Office may not approve
144 a project involving remediation authorized under section
145 five of this article unless the municipality submits clear
146 and convincing information, to the satisfaction of the
147 Development Office, that the proposed remediation
148 expenditures to be financed by the issuance of bonds or
149 notes pursuant to section sixteen of this article do not
150 constitute more than twenty-five percent of the total
151 development expenditures associated with the project.

152 (c) *Additional criteria.* – The Development Office may
153 establish other criteria for consideration when approving
154 the applications.

155 (d) *Action on the application.* – The Executive Director
156 of the Development Office shall act to approve or not
157 approve any application within thirty days following the

158 receipt of the application or the receipt of any additional
159 information requested by the Development Office, which-
160 ever 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 revenue
167 amount, the gross annual district tax revenue amount and
168 the estimated net annual district tax revenue amount
169 which, for purposes of this article, is the difference
170 between the gross annual district tax revenue amount and
171 the base tax revenue amount, all of which the Develop-
172 ment Office has determined with respect to the district’s
173 application based on any investigation it considers
174 reasonable and necessary, including, but not limited to,
175 any relevant information the Development Office requests
176 from the Tax Commissioner and the Tax Commissioner
177 provides to the Development Office: *Provided*, That in
178 determining the net annual district tax revenue amount,
179 the Development Office may not use a base tax revenue
180 amount less than that amount certified by the Tax Com-
181 missioner but, in lieu of confirmation from the Tax
182 Commissioner of the gross annual district tax revenue
183 amount, the Development Office may use the estimate of
184 the gross annual district tax revenue amount provided by
185 the municipality pursuant to subsection (a) of this section.

186 (f) *Certification of enlargement of geographic boundaries*
187 *of previously certified district.* – If the Executive Director
188 of the Development Office approves a municipality’s
189 economic opportunity district project application to
190 expand the geographic boundaries of a previously certified
191 district, he or she shall issue to the municipality a written
192 certificate evidencing the approval.

193 The certificate shall expressly state a base tax revenue
194 amount, the gross annual district tax revenue amount and
195 the estimated net annual district tax revenue amount
196 which, for purposes of this article, is the difference
197 between the gross annual district tax revenue amount and
198 the base tax revenue amount, all of which the Develop-
199 ment Office has determined with respect to the district's
200 application based on any investigation it considers
201 reasonable and necessary, including, but not limited to,
202 any relevant information the Development Office requests
203 from the Tax Commissioner and the Tax Commissioner
204 provides to the Development Office: *Provided*, That in
205 determining the net annual district tax revenue amount,
206 the Development Office may not use a base tax revenue
207 amount less than that amount certified by the Tax Com-
208 missioner, but, in lieu of confirmation from the Tax
209 Commissioner of the gross annual district tax revenue
210 amount, the Development Office may use the estimate of
211 the gross annual district tax revenue amount provided by
212 the municipality pursuant to subsection (a) of this section.

213 (g) *Promulgation of rules.* – The Executive Director of
214 the Development Office may promulgate rules to imple-
215 ment the economic opportunity development district
216 project application approval process and to describe the
217 criteria and procedures it has established in connection
218 therewith. These rules are not subject to the provisions of
219 chapter twenty-nine-a of this code but shall be filed with
220 the Secretary of State.

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

1 (a) *General.* – If an economic opportunity development
2 district project has been approved by the Executive
3 Director of the Development Office and the levying of a
4 special district excise tax for the district has been autho-
5 rized by the Legislature, all in accordance with this

6 article, the municipality may create the district by ordi-
7 nance entered of record as provided in article one of this
8 chapter: *Provided*, That the municipality may not amend,
9 alter or change in any manner the boundaries of the
10 economic opportunity development district authorized by
11 the Legislature. In addition to all other requirements, the
12 ordinance shall contain the following:

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

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

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

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

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

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

35 (C) To enter into contracts with any person, agency,
36 government entity, agency or instrumentality, firm,
37 partnership, limited partnership, limited liability company
38 or corporation, including both public and private corpora-

39 tions, and for-profit and not-for-profit organizations and
40 generally to do any and all things necessary or convenient
41 for the purpose of promoting, developing and advancing
42 the purposes described in section two of this article;

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

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

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

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

69 (H) To acquire real property by gift, purchase or con-
70 struction or in any other lawful manner and hold title
71 thereto in its own name and to sell, lease or otherwise
72 dispose of all or part of any real property which it may

73 own, either by contract or at public auction, upon the
74 approval by the district board;

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

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

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

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

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

106 (c) *Mailing of certified copies of ordinance.* – Upon
107 enactment of an ordinance establishing an economic
108 opportunity development district excise tax, a certified
109 copy of the ordinance shall be mailed to the State Auditor,
110 as ex officio the chief inspector and supervisor of public
111 offices, the State Treasurer and the Tax Commissioner.

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

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

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

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

27 (d) *Collection by Tax Commissioner.* – The ordinance of
28 the municipality imposing a special district excise tax
29 shall provide for the tax to be collected by the Tax Com-
30 missioner in the same manner as the tax levied by section
31 three, article fifteen, chapter eleven of this code is admin-
32 istered, assessed, collected and enforced.

33 (1) The State Tax Commissioner may require the elec-
34 tronic filing of returns related to the special district excise
35 tax imposed pursuant to this section and may require the
36 electronic payment of the special district excise tax
37 imposed pursuant to this section. The State Tax Commis-
38 sioner may prescribe by rules adopted or proposed pursu-
39 ant to article three, chapter twenty-nine-a of this code,
40 administrative notices, and forms and instructions, the
41 procedures and criteria to be followed to electronically file
42 those returns and to electronically pay the special district
43 excise tax imposed pursuant to this section.

44 (2) Any rules filed by the State Tax Commissioner
45 relating to the special district excise tax imposed pursuant
46 to this section shall set forth the following:

47 (A) Acceptable indicia of timely payment;

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

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

52 (D) What, if any, exceptions are allowable and alterna-
53 tive methods of payment that may be used for any excep-
54 tions;

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

57 (F) Any other provisions necessary to ensure the timely
58 electronic filing of returns related to the special district

59 excise tax and the making of payments electronically of
60 the special district excise tax imposed pursuant to this
61 section.

62 (3) (A) Notwithstanding the provisions of section five-d,
63 article ten, chapter eleven of this code: (i) So long as bonds
64 are outstanding pursuant to this article, the Tax Commis-
65 sioner shall provide on a monthly basis to the trustee for
66 bonds issued pursuant to this article information on
67 returns submitted pursuant to this article; and (ii) the
68 trustee may share the information so obtained with the
69 municipality that established the economic opportunity
70 development district that issued the bonds pursuant to this
71 article and with the bondholders and with bond counsel
72 for bonds issued pursuant to this article. The Tax Com-
73 missioner and the trustee may enter into a written agree-
74 ment in order to accomplish exchange of the information.

75 (B) Any confidential information provided pursuant to
76 this subdivision shall be used solely for the protection and
77 enforcement of the rights and remedies of the bondholders
78 of bonds issued pursuant to this article. Any person or
79 entity that is in possession of information disclosed by the
80 Tax Commissioner or shared by the trustee pursuant to
81 subdivision (a) of this subsection is subject to the provi-
82 sions of section five-d, article ten, chapter eleven of this
83 code as if the person or entity that is in possession of the
84 tax information is an officer, employee, agent or represen-
85 tative of this state or of a local or municipal governmental
86 entity or other governmental subdivision.

87 (e) *Deposit of net tax collected.* –

88 (1) The ordinance of the municipality imposing a special
89 district excise tax shall provide that the Tax Commis-
90 sioner deposit the net amount of tax collected in the
91 special Economic Opportunity Development District Fund
92 to the credit of the municipality's subaccount therein for
93 the economic opportunity development district and that

94 the money in the subaccount may only be used to pay for
95 development expenditures as provided in this article
96 except as provided in subsection (f) of this section.

97 (2) (A) The State Treasurer shall withhold from the
98 municipality's subaccount in the Economic Opportunity
99 Development District Fund and shall deposit in the
100 General Revenue Fund of this state, on or before the
101 twentieth day of each calendar month next following the
102 effective date of a special district excise tax, a sum equal
103 to one twelfth of the base tax revenue amount last certi-
104 fied by the Development Office pursuant to section seven
105 of this article.

106 (B) In addition to the amounts described in paragraph
107 (A) of this subdivision, the Tax Commissioner shall deposit
108 in the General Revenue Fund of this state on the dates
109 specified in paragraph (A) not less than twenty percent nor
110 more than fifty percent of the excess of the special district
111 excise taxes collected during the preceding month above
112 one twelfth of the base tax revenue, said percentage to be
113 fixed by the Development Office in conjunction with its
114 approval of an application in accordance with section
115 seven of this article based on the amount of state funds, if
116 any, to be expended in conjunction with the respective
117 economic opportunity development district project for
118 items including, but not limited to, the acquisition,
119 construction, reconstruction, improvement, enlargement
120 or extension of roadways, rights-of-way, sidewalks, traffic
121 signals, water or sewer lines and other public infrastruc-
122 ture and such other expenditures of state funds identified
123 by the Development Office: *Provided*, That the Develop-
124 ment Office has the discretion to reduce the minimum
125 percentage of the excess special district excise taxes
126 deposited by the Tax Commissioner in the General Reve-
127 nue Fund as outlined above from twenty percent to ten
128 percent in conjunction with its approval of an application
129 in accordance with section seven of this article based on
130 its determination that:

131 (1) The economic development the project enables
132 contains expenditures in excess of \$100 million;

133 (2) The economic opportunity development district
134 project does not require the state to expend any additional
135 state funds for items within the district including, but not
136 limited to, the acquisition, construction, reconstruction,
137 improvement, enlargement or extension of roadways,
138 rights-of-way, sidewalks, traffic signals, water or sewer
139 lines and other public infrastructure; and

140 (3) The economic development the project enables
141 contains mixed use development with a housing compo-
142 nent with at least ten percent of housing units in the
143 district allocated as affordable housing.

144 (f) *Effective date of special district excise tax.* – Any
145 taxes imposed pursuant to the authority of this section are
146 effective on the first day of the calendar month that begins
147 at least sixty days after the date of enactment of the
148 ordinance imposing the tax or at any later date expressly
149 designated in the ordinance that begins on the first day of
150 a calendar month.

151 (g) *Copies of ordinance.* – Upon enactment of an ordi-
152 nance levying a special district excise tax, a certified copy
153 of the ordinance shall be mailed to the State Auditor, as ex
154 officio the chief inspector and supervisor of public offices,
155 the state Treasurer and the Tax Commissioner.

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

1 (a) *General.* – Except upon the express written consent
2 of the Executive Director of the Development Office and
3 of all the holders or obligees of any indebtedness or other
4 instruments the proceeds of which were applied to any
5 development expenditures or any indebtedness, the
6 payment of which is secured by revenues payable into the
7 fund provided under section eight of this article or by any

8 public property, a district may only be abolished by the
9 municipality when there is no outstanding indebtedness
10 the proceeds of which were applied to any development
11 expenditures or the payment of which is secured by
12 revenues payable into the fund provided under section
13 eight of this article, or by any public property, and follow-
14 ing a public hearing upon the proposed abolishment.

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

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

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

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

1 (a) *General.* – The municipality that established the
2 economic opportunity development district may issue

3 bonds or notes for the purpose of financing development
4 expenditures, as described in section five of this article,
5 with respect to one or more projects within the economic
6 opportunity development district.

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

10 (c) *Term of obligations.* – No municipality may issue
11 notes, bonds or other instruments for funding district
12 projects or improvements that exceed a repayment sched-
13 ule of thirty years: *Provided*, That the maximum repay-
14 ment schedule of bonds issued to finance remediation
15 authorized under section five of this article may not
16 exceed twenty years.

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

27 (e) *Surplus funds.* – To the extent that the average daily
28 amount on deposit in the subaccount established for a
29 district pursuant to section eight of this article exceeds,
30 for more than six consecutive calendar months, the sum of:
31 (1) \$100,000; plus (2) the amount required to be kept on
32 deposit pursuant to the documents authorizing, securing
33 or otherwise relating to the bonds or notes issued under
34 this section, then the excess shall be used by the district
35 either to redeem the bonds or notes previously issued or
36 remitted to the General Fund of this state.

37 (f) *Debt not general obligation of municipality.* –
38 Neither the notes or bonds and any interest coupons issued
39 under the authority of this article ever constitute an
40 indebtedness of the municipality issuing the notes or
41 bonds within the meaning of any Constitutional provision
42 or statutory limitation and do not constitute or give rise to
43 a pecuniary liability of the municipality issuing the notes
44 or bonds.

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

50 (h) *Issuance of bonds or notes.* –

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

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

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

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

77 (i) *Additional bonds or notes.* – If the proceeds of the
78 bonds or notes, by error of calculation or otherwise, are
79 less than the cost of the economic opportunity develop-
80 ment district project, or if additional real or personal
81 property is to be added to the district project or if it is
82 determined that financing is needed for additional devel-
83 opment expenditures, additional bonds or notes may, in
84 like manner, be issued to provide the amount of the
85 deficiency or to defray the cost of acquiring or financing
86 any additional real or personal property or development
87 expenditures and, unless otherwise provided in the trust
88 agreement, mortgage or deed of trust, are considered to be
89 of the same issue and are entitled to payment from the
90 same fund, without preference or priority, and are of equal
91 priority as to any security.

§8-38-17. Security for bonds.

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

11 (b) *Security for debt service.* – The principal of and
12 interest on any bonds or notes issued under the authority

13 of this article shall be secured by a pledge of the special
14 district excise tax revenues derived from the economic
15 opportunity development district project by the municipi-
16 pality issuing the bonds or notes to the extent provided in
17 the ordinance adopted by the municipality authorizing the
18 issuance of the bonds or notes.

19 (c) *Trust indenture.* –

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

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

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

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

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

73 (d) *Mortgage or deed of trust.* –

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

81 received from the economic opportunity development
82 district project.

83 (2) The proceedings under which bonds or notes are
84 authorized to be issued, when secured by a mortgage or
85 deed of trust, may contain the same terms, conditions and
86 provisions provided herein when an indenture is entered
87 into between the municipality and a trustee and any
88 mortgage or deed of trust may contain any agreements and
89 provisions customarily contained in instruments securing
90 bonds or notes, including, without limiting the generality
91 of the foregoing, provisions respecting the fixing and
92 collection of revenues from the economic opportunity
93 development district project covered by the proceedings or
94 mortgage, the terms to be incorporated in any lease, sale
95 or financing agreement with respect to the economic
96 opportunity development district project, the improve-
97 ment, repair, maintenance and insurance of the economic
98 opportunity development district project, the creation and
99 maintenance of special funds from the revenues received
100 from the economic opportunity development district
101 project and the rights and remedies available in event of
102 default to the bondholders or note holders, the municipal-
103 ity, or to the trustee under an agreement, indenture,
104 mortgage or deed of trust, all as the municipality considers
105 advisable and shall not be in conflict with the provisions
106 of this article or any existing law: *Provided*, That in
107 making any agreements or provisions, a municipality shall
108 not have the power to incur original indebtedness by
109 indenture, ordinance, resolution, mortgage or deed of trust
110 except with respect to the economic opportunity develop-
111 ment district project and the application of the revenues
112 therefrom and shall not have the power to incur a pecuni-
113 ary liability or a charge upon its general credit or against
114 its taxing powers unless approved by the voters in accor-
115 dance with article one, chapter thirteen of this code or as
116 otherwise permitted by the Constitution of this state.

117 (e) *Enforcement of obligations.* –

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

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

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

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

1 (a) *General.* – The proceeds from the sale of any bonds
2 issued under authority of this article shall be applied only
3 for the purpose for which the bonds were issued: *Provided,*
4 That any accrued interest received in any sale shall be
5 applied to the payment of the interest on the bonds sold:
6 *Provided, however,* That if for any reason any portion of
7 the proceeds may not be needed for the purpose for which

8 the bonds were issued, then the unneeded portion of the
9 proceeds may be applied to the purchase of bonds for
10 cancellation or payment of the principal of or the interest
11 on the bonds, or held in reserve for the payment thereof.

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


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

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

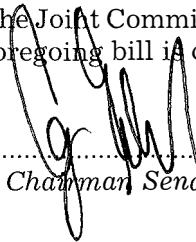
22 (3) The purchase price or rental of any part of an eco-
23 nomic opportunity development district project that may
24 be acquired by purchase or lease;

25 (4) All expenses incurred in connection with the authori-
26 zation, sale and issuance of the bonds to finance the
27 acquisition and the interest on the bonds for a reasonable
28 time prior to construction during construction and for not
29 exceeding twelve months after completion of construction;
30 and

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



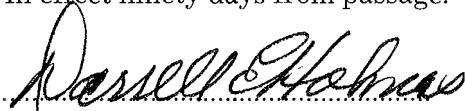
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

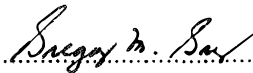

.....
Chairman, Senate Committee



.....
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 disapproved this the 25th
Day of May, 2010.


.....
Governor

PRESENTED TO THE
GOVERNOR

MAR 19 2010

Time 4:00 