WEST VIRGINIA LEGISLATURE
SEVENTY-NINTH LEGISLATURE
REGULAR SESSION, 2010

ENROLLED

Senate Bill No. 42
(By Senators McCabe, Foster, Unger, Palumbo and Chafin)

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


1 For purposes of this article, the term:

2 (1) "Affordable housing" means housing that could be purchased with a cash down payment of at least ten percent and the proceeds of a mortgage loan, the monthly principal and interest payments on which do not exceed thirty percent of the gross monthly income of a household earning one hundred percent of the current median family income, as computed by the United States Department of Housing and Urban Development, for the county in which the district is located. For the purposes of this definition, the monthly principal and interest payments referred to in the preceding sentence are computed using a standard amortization calculation incorporating the prevailing annual rate of interest on mortgage loans offered by financial institutions in the vicinity of the district, as determined by the Development Office at the time of its review of a municipality's application in accordance with section seven of this article, and a thirty year amortization period.

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

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

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

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

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

(7) "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.

§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 expenditures within the districts.

1 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:

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

12 (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;

17 (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;

24 (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;

28 (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, former coal mining sites, 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.

(a) General. – The Development Office shall receive and act on applications filed with it by municipalities pursuant to section six of this article. Each application must include:

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

(2) The total cost of the project;

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

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

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

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

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

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

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

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

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

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

(13) The Tax Commissioner's certification of: (i) The amount of consumers sales and service taxes collected
from businesses located in the economic opportunity
district during the twelve calendar months preceding the
calendar quarter during which the application will be
submitted to the 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 evi-
dence 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: Provided, That the Development Office should consider whether the economic development the 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;

(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: Pro-
vided, 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 $50 million in the district and the municipality submits clear and convincing information, to the satisfaction of the Development Office, that the 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 $50 million 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 to section sixteen of this article do not constitute more than twenty-five percent of the total development expenditures associated with the project.

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

(d) Action on the application. – The Executive Director of the Development Office shall act to approve or not approve any application within thirty days following the
receipt of the application or the receipt of any additional
information requested by the Development Office, which-
ever is the later.

(e) Certification of project. – If the Executive Director
of the Development Office approves a municipality's
economic opportunity district project application, 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 Develop-
ment 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 Com-
missioner 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 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.

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

(a) *General.* - If an economic opportunity development district project has been approved by the Executive Director of the Development Office 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 ordinance entered of record as provided in article one of this chapter: Provided, That the municipality may not amend, alter or change in any manner the boundaries of the economic opportunity development district authorized by the Legislature. In addition to all other requirements, the ordinance shall contain the following:

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

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

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

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

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

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

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

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

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

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

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

(H) To acquire real property by gift, purchase or construction or in any other lawful manner and hold title thereto in its own name and to sell, lease or otherwise dispose of all or part of any real property which it may
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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 development expendi-
tures and that moneys or funds of the district are neces-
sary therefor, to borrow money and execute and deliver
the district’s negotiable notes and other evidences of
indebtedness therefor, on the terms as the district shall
determine, and give security therefor as is requisite,
including, without limitation, a pledge of the district’s
rights in its subaccount of the Economic Opportunity
Development District Fund;

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

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

(b) Additional contents of ordinance. – The municipal-
ity’s ordinance shall also state the general intention of the
municipality to develop and increase services and to make
capital improvements within the district.
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.
(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 adopted or proposed 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 those 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 Commis-
sioner 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
municipality 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 Com-
missioner and the trustee may enter into a written agree-
ment in order to accomplish exchange of the 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 provi-
sions of section five-d, article ten, chapter eleven of this
code as if the person or entity that is in possession of the
tax information is an officer, employee, agent or represen-
tative 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 Commis-
sioner 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 certi-
fied 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 infrastruc-
ture and such other expenditures of state funds identified
by the Development Office: Provided, That the Develop-
ment Office has the discretion to reduce the minimum
percentage of the excess special district excise taxes
deposited by the Tax Commissioner in the General Reve-
nue Fund as outlined above from twenty percent to ten
percent in conjunction with its approval of an application
in accordance with section seven of this article based on
its determination that:
(1) The economic development the project enables contains expenditures in excess of $100 million;

(2) The economic opportunity development district project does not require the state to expend any additional state funds for items within the district 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

(3) The economic development the project enables contains mixed use development with a housing component with at least ten percent of housing units in the district allocated as affordable housing.

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

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

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

(a) General. – Except upon the express written consent of the Executive Director of the Development Office and of all the holders or obligees of any indebtedness or other instruments the proceeds of which were applied to any development 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 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: 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 is 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 ordinance 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) $100,000; 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 ever constitute an indebtedness of the municipality issuing the notes or bonds within the meaning of any Constitutional provision or statutory limitation and do not 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 clerk or 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. If 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 are 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 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 expenditures and, unless otherwise provided in the trust agreement, mortgage or deed of trust, are considered to be of the same issue and are entitled to payment from the same fund, without preference or priority, and are of equal priority as to any security.


(a) General. – Unless the municipality otherwise determines in the ordinance 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 munici-
ality issuing the bonds or notes to the extent provided in
the ordinance 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 municipal-
ity, the bonds and notes may also be secured by a trust
indenture by and between the municipality and a corpo-
rate trustee, which may be a trust company or bank having
trust powers, within or without the State of West Virginia.

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

(1) The proceedings authorizing any bonds and any indenture, mortgage or deed of trust securing the bonds may provide that, in the event of default in payment of the principal of or the interest on the bonds, or notes, or in the performance of any agreement contained in the 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 agreement, indenture, mortgage or deed of trust may impose any pecuniary liability upon a municipality or any charge upon its general credit or against its taxing powers.

§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 expenditures 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.
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

Governor
PRESENTED TO THE GOVERNOR

MAR 19 2010

Time 4:00