WEST VIRGINIA LEGISLATURE
EIGHTIETH LEGISLATURE
REGULAR SESSION, 2011

ENROLLED
COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 235

(BY SENATORS KESSLER (ACTING PRESIDENT)
AND HALL, BY REQUEST OF THE EXECUTIVE)

[Passed March 10, 2011; in effect ninety days from passage.]
ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 235

(BY SENATORS KESSLER (ACTING PRESIDENT) AND HALL,
BY REQUEST OF THE EXECUTIVE)

[Passed March 10, 2011; in effect ninety days from passage.]

AN ACT to amend and reenact §7-22-3, §7-22-4, §7-22-5, §7-22-7, §7-22-10, §7-22-12, §7-22-14, §7-22-15, §7-22-17 and §7-22-20 of the Code of West Virginia, 1931, as amended, all relating to revising the County Economic Opportunity Development District Act generally; defining the term "remediation"; including remediation of landfills, former coal or other mining sites, solid waste facilities or hazardous waste sites as permissible development expenditures for approved projects; changing standard by which the maximum amounts of reserves that may be established in the financing of a project are measured; reducing the amount of capital investment required for project approval; providing that the Development Office cannot approve a project involving remediation unless all development expenditures proposed within a certain time frame result in more than $25 million in capital investment in the district; changing "ordinance" to "order"; correcting language by changing "municipality" to "county"; providing that the Development Office may not approve a project involving remediation unless the county commission submits
clear and convincing information that the proposed remediation expenditures to be financed with bonds or notes do not constitute more than twenty-five percent of a project's total development expenditures; allowing for minor modifications of districts without public hearing or approval by the Development Office or the Legislature under certain circumstances; and providing technical and clerical cleanup.

Be it enacted by the Legislature of West Virginia:

That §7-22-3, §7-22-4, §7-22-5, §7-22-7, §7-22-10, §7-22-12, §7-22-14, §7-22-15, §7-22-17 and §7-22-20 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 22. COUNTY ECONOMIC OPPORTUNITY DEVELOPMENT DISTRICTS.

§7-22-3. Definitions.

For purposes of this article, the term:

(1) "County commission" means the governing body of a county of this state;

(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; and

(5) "Eligible property" means any taxable or exempt real property located in a district established pursuant to this article.
"Remediation" means measures undertaken to bring about the reconditioning or restoration of property located within the boundaries of an economic opportunity development district that has been affected by exploration, mining, 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.

§7-22-4. Authorization to create economic opportunity development districts.

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

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

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

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


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

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

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

(5) Acquiring, building, demolishing, razing, 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 county commission or district board is authorized to perform and which the county commission does not also perform to the same extent on a countywide basis;

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

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

(13) Remediation of publicly or privately owned landfills, former coal or other 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.

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

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

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

(2) The total cost of the project;
Enr. Com. Sub. for S. B. No. 235]

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

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

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

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

27 (7) A description of the financial contribution of the county
28 commission to the funding of development expenditures;

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

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

39 (10) A good faith estimate of the aggregate amount of
40 consumers sales and service tax that was actually remitted
7

[Enr. Com. Sub. for S. B. No. 235]

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

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

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

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

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

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

(1) The quality of the proposed project and how it addresses economic problems in the area in which the project will be located;
(2) The merits of the project determined by a cost-benefit analysis that incorporates all costs and benefits, both public and private;

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

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

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

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

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

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

(9) Whether the county commission has a strategy for economic development in the county 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 county commission and the project developer or project team to carry out the project: 

Provided, That no project may be approved by the development office unless the amount of all development expenditures proposed to be made in the first twenty-four months following the creation of the district results in capital investment of more than $25 million in the district and the county 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 county commission to levy an excise tax on sales of goods and services made within the economic opportunity 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 $25 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 county commission 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, whichever is the later.

(e) Certification of project. — If the executive director of the development office approves a county's economic opportunity district project application, he or she shall issue to the county commission 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 county commission 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 county's economic opportunity district project application to expand the geographic boundaries of a previously certified district, he or she shall issue to the county commission 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 county commission 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.

§7-22-10. Ordinance. Order 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 county commission may create the district by order entered of record as provided in article one of this chapter: Provided, That the
county commission may not amend, alter or change in any manner the boundaries of the economic opportunity development district authorized by the Legislature. In addition to all other requirements, the order shall contain the following:

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

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

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

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

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

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

(C) To enter into contracts with any person, agency, government entity, agency or instrumentality, firm, partnership, limited partnership, limited liability company or corporation, including both public and private corporations, and for-profit and not-for-profit organizations and generally to do any and all things necessary or convenient for the purpose of promoting, developing and advancing the purposes described in section two of this article;
(D) To amend or supplement any contracts or leases or to enter into new, additional or further contracts or leases upon the terms and conditions for consideration and for any term of duration, with or without option of renewal, as agreed upon by the district board and any person, agency, government entity, agency or instrumentality, firm, partnership, limited partnership, limited liability company or corporation;

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

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

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

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

(I) To purchase or otherwise acquire, own, hold, sell, lease and dispose of all or part of any personal property which it may own, either by contract or at public auction;
(J) Pursuant to a determination by the district board that there exists a continuing need for development expenditures and that moneys or funds of the district are necessary therefor, to borrow money and execute and deliver the district's negotiable notes and other evidences of indebtedness therefor, on the terms as the district shall determine, and give security therefor as is requisite, including, without limitation, a pledge of the district's rights in its subaccount of the economic opportunity development district fund;

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

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

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

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

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

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

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

(c) **Tax rate.** — The rate or rates of a special district excise
tax levied pursuant to this section shall be identical to the
rate or rates of the consumer sales and service tax imposed
pursuant to article fifteen, chapter eleven of this code on
sales made and services rendered within the boundaries of
the district authorized by this section.

(d) **Collection by Tax Commissioner.** — The order of the
county commission imposing a special district excise tax
shall provide for the tax to be collected by the Tax Commiss-
oner 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 Tax Commissioner may require the electronic filing
of returns related to the special district excise tax imposed
pursuant to this section, and also may require the electronic
payment of the special district excise tax imposed pursuant
to this section. The 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
(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; and

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

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

(e) Deposit of net tax collected. —

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

(2) The State Treasurer shall withhold from the county commission’s subaccount in the Economic Opportunity Development District Fund and shall deposit in the General Revenue Fund of this state, on or before the twentieth day of each calendar month next following the effective date of a special district excise tax, a sum equal to one twelfth of the base tax revenue amount last certified by the development office pursuant to section seven of this article.

(f) Effective date of special district excise tax. — Any taxes imposed pursuant to the authority of this section are effective on the first day of the calendar month that begins sixty days after the date of adoption of an order entered of record imposing the tax or the first day of any later calendar month expressly designated in the order.
107  (g) Copies of order. — Upon entry of an order levying a
108 special district excise tax, a certified copy of the order shall
109 be mailed to the State Auditor, as ex officio the chief
110 inspector and supervisor of public offices, the State Treas-
111urer and the Tax Commissioner.

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

1  (a) General. — The order creating an economic opportu-
2 nity development district may not be amended to include
3 additional contiguous property until after the amendment is
4 approved by the executive director of the Development
5 Office in the same manner as an application to approve the
6 establishment of the district is acted upon under section
7 seven of this article and the amendment is authorized by the
8 Legislature.

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

13  (c) Public hearing required. —

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

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

24  (d) Application to West Virginia Development Office. —
25 Following the hearing, the county commission may, by
26 resolution, apply to the Development Office to approve
27 inclusion of the additional property in the district.
(e) Consideration by the Executive Director of the Development Office. — Before the executive director of the Development Office approves inclusion of the additional property in the district, the Development Office shall determine the amount of taxes levied by article fifteen, chapter eleven of this code that were collected by businesses located in the area the county commission proposes to add to the district in the same manner as the base amount of tax was determined when the district was first created. The State Treasurer shall also deposit one twelfth of this additional tax base amount into the General Revenue Fund each month, as provided in section twelve of this article.

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

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

(h) Minor Modifications. Notwithstanding any provision of this article to contrary, a county commission may amend the order creating an economic opportunity development
district to make, and may make, modifications to the boundaries of the economic opportunity development district without holding a public hearing or receiving approval of the executive director of the West Virginia Development Office or authorization by the Legislature if the modifications do not increase the total acreage of the economic opportunity development district or result in a change to the base tax revenue amount. The county commission is authorized to levy special district excise taxes on sales of tangible personal property and services made from business locations within the modified boundaries of the economic opportunity development district.

§7-22-15. 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 county commission 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 abolition.

(b) Notice of public hearing. — Notice of the public hearing required by subsection (a) of this section shall be provided by first-class mail to all owners of real property within the district and shall be published as a Class I-0 legal advertisement in compliance with article three, chapter fifty-nine of this code at least twenty days prior to the public hearing.
(c) **Transfer of district assets and funds.** — Upon the abolishment of any economic opportunity development district, any funds or other assets, contractual rights or obligations, claims against holders of indebtedness or other financial benefits, liabilities or obligations existing after full payment has been made on all existing contracts, bonds, notes or other obligations of the district are transferred to and assumed by the county commission. Any funds or other assets transferred shall be used for the benefit of the area included in the district being abolished.

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


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

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

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

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

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

(4) The county commission may also provide by resolution and in the trust indenture for the payment of the proceeds of the sale of the bonds or notes and the revenues from the
economic opportunity development district project to any
depository it determines, for the custody and investment
thereof and for the method of distribution thereof, with
safeguards and restrictions it determines to be necessary or
advisable for the protection thereof and upon the filing of a
certified copy of the resolution or of the indenture for record
in the office of the clerk of the county commission of the
county in which the economic opportunity development
project is located, the resolution has the same effect, as to
notice, as the recordation of a deed of trust or other record-
able 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 provi-
sions provided herein when an indenture is entered into
between the county commission and a trustee and any
mortgage or deed of trust may contain any agreements and
provisions customarily contained in instruments securing
bonds or notes, including, without limiting the generality of
the foregoing, provisions 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 devel-
opment district project, the improvement, repair, mainte-
nance and insurance of the economic opportunity district
project, the creation and maintenance of special funds from
the revenues received from the economic opportunity
development district project and the rights and remedies
available in event of default to the bondholders or note
holders, the county commission, or to the trustee under an
agreement, indenture, mortgage or deed of trust, all as the
county commission body considers advisable and shall not be
in conflict with the provisions of this article or any existing
law: Provided, That in making any agreements or provisions,
a county commission shall not have the power to incur
original indebtedness by indenture, order, resolution,
mortgage or deed of trust except with respect to the eco-
nomic 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 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 perfor-
mance 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, inden-
ture, 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 county or any charge upon its general credit or against its taxing powers.

§7-22-20. 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

Acting President of the Senate

Speaker of the House of Delegates

The within is approved this the 18th Day of March, 2011.

Governor
PRESENTED TO THE GOVERNOR

MAR 16 2011

Time 9:45 AM