

HB 2508

2013 APR 29 PM 6:00

SECRET

WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2013



ENROLLED

House Bill No. 2508

(By Delegate(s) Mr. Speaker, (Mr. Thompson) and Armstead)
[By Request of the Executive]



Passed April 12, 2013

In effect July 1, 2013.

2013 APR 29 PM 6:00

ENROLLED

H. B. 2508

(BY DELEGATE(S) MR. SPEAKER, (MR. THOMPSON)

AND ARMSTEAD)

[BY REQUEST OF THE EXECUTIVE]

[Passed April 12, 2013; in effect July 1, 2013.]

AN ACT to amend and reenact §7-22-7 of the Code of West Virginia, 1931, as amended; and to amend and reenact §8-38-7 of said code, all relating to the amount of capital investment required as a prerequisite to approval of an economic opportunity development district project; increasing the capital investment threshold amount from more than \$25 million to more than \$75 million for development expenditures proposed to be made in county economic opportunity development districts and in municipal economic opportunity development districts in the first twenty-four months following their creation; and increasing the capital investment threshold amount from more than \$25 million to more than \$75 million for development expenditures in a project involving remediation to be made in county economic opportunity development districts and in municipal economic opportunity development districts in the first forty-eight months following their creation.

Be it enacted by the Legislature of West Virginia:

That §7-22-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §8-38-7 of said code be amended and reenacted, all to read as follows:

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 22. COUNTY ECONOMIC OPPORTUNITY DEVELOPMENT DISTRICTS.

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

1 (a) *General.* — The Development Office shall receive and
2 act on applications filed with it by county commissions pursuant
3 to section six of this article. Each application must include:

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

6 (2) The total cost of the project;

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

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

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

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

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

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

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

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

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

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

51 (13) The Tax Commissioner's certification of: (i) The
52 amount of consumers sales and service taxes collected from
53 businesses located in the economic opportunity district during
54 the twelve calendar months preceding the calendar quarter
55 during which the application will be submitted to the Develop-
56 ment Office; (ii) the estimated amount of economic opportunity
57 district excise tax that will be collected during the first twelve
58 months after the month in which the Tax Commissioner would
59 first begin to collect that tax; and (iii) the estimated amount of
60 economic opportunity district excise tax that will be collected
61 during the first thirty-six months after the month in which the
62 Tax Commissioner would first begin to collect that tax; and

63 (14) Any additional information the Development Office
64 may require.

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

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

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

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

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

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

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

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

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

97 (9) Whether the county commission has a strategy for
98 economic development in the county and whether the project is
99 consistent with that strategy;

100 (10) Whether the project helps to diversify the local econ-
101 omy;

102 (11) Whether the project is consistent with the goals of this
103 article;

104 (12) Whether the project is economically and fiscally sound
105 using recognized business standards of finance and accounting;
106 and

107 (13) (A) The ability of the county commission and the
108 project developer or project team to carry out the project:
109 *Provided*, That no project may be approved by the Development
110 Office unless the amount of all development expenditures
111 proposed to be made in the first twenty-four months following
112 the creation of the district results in capital investment of more

113 than \$75 million in the district and the county submits clear and
114 convincing information, to the satisfaction of the Development
115 Office, that the investment will be made if the Development
116 Office approves the project and the Legislature authorizes the
117 county commission to levy an excise tax on sales of goods and
118 services made within the economic opportunity district as
119 provided in this article.

120 (B) Notwithstanding any provision of paragraph (A) of this
121 subdivision to the contrary, no project involving remediation
122 may be approved by the Development Office unless the amount
123 of all development expenditures proposed to be made in the first
124 forty-eight months following the creation of the district results
125 in capital investment of more than \$75 million in the district. In
126 addition to the remaining provisions of paragraph (A) of this
127 subdivision the Development Office may not approve a project
128 involving remediation authorized under section five of this
129 article unless the county commission submits clear and convinc-
130 ing information, to the satisfaction of the Development Office,
131 that the proposed remediation expenditures to be financed by the
132 issuance of bonds or notes pursuant to section sixteen of this
133 article do not constitute more than twenty-five percent of the
134 total development expenditures associated with the project.

135 (c) *Additional criteria.* — The Development Office may
136 establish other criteria for consideration when approving the
137 applications.

138 (d) *Action on the application.* — The Executive Director of
139 the Development Office shall act to approve or not approve any
140 application within thirty days following the receipt of the
141 application or the receipt of any additional information requested
142 by the Development Office, whichever is the later.

143 (e) *Certification of project.* — If the Executive Director of
144 the Development Office approves a county's economic opportu-
145 nity district project application, he or she shall issue to the
146 county commission a written certificate evidencing the approval.

147 The certificate shall expressly state a base tax revenue
148 amount, the gross annual district tax revenue amount and the
149 estimated net annual district tax revenue amount which, for
150 purposes of this article, is the difference between the gross
151 annual district tax revenue amount and the base tax revenue
152 amount, all of which the Development Office has determined
153 with respect to the district's application based on any investiga-
154 tion it considers reasonable and necessary, including, but not
155 limited to, any relevant information the Development Office
156 requests from the Tax Commissioner and the Tax Commissioner
157 provides to the Development Office: *Provided*, That in determin-
158 ing the net annual district tax revenue amount, the Development
159 Office may not use a base tax revenue amount less than that
160 amount certified by the Tax Commissioner but, in lieu of
161 confirmation from the Tax Commissioner of the gross annual
162 district tax revenue amount, the Development Office may use the
163 estimate of the gross annual district tax revenue amount provided
164 by the county commission pursuant to subsection (a) of this
165 section.

166 (f) *Certification of enlargement of geographic boundaries of*
167 *previously certified district.* — If the Executive Director of the
168 Development Office approves a county's economic opportunity
169 district project application to expand the geographic boundaries
170 of a previously certified district, he or she shall issue to the
171 county commission a written certificate evidencing the approval.

172 The certificate shall expressly state a base tax revenue
173 amount, the gross annual district tax revenue amount and the
174 estimated net annual district tax revenue amount which, for
175 purposes of this article, is the difference between the gross
176 annual district tax revenue amount and the base tax revenue
177 amount, all of which the Development Office has determined
178 with respect to the district's application based on any investiga-
179 tion it considers reasonable and necessary, including, but not
180 limited to, any relevant information the Development Office
181 requests from the Tax Commissioner and the Tax Commissioner

182 provides to the Development Office: *Provided*, That in determin-
183 ing the net annual district tax revenue amount, the Development
184 Office may not use a base tax revenue amount less than that
185 amount certified by the Tax Commissioner but, in lieu of
186 confirmation from the Tax Commissioner of the gross annual
187 district tax revenue amount, the Development Office may use the
188 estimate of the gross annual district tax revenue amount provided
189 by the county commission pursuant to subsection (a) of this
190 section.

191 (g) *Promulgation of rules.* — The Executive Director of the
192 Development Office may promulgate rules to implement the
193 economic opportunity development district project application
194 approval process and to describe the criteria and procedures it
195 has established in connection therewith. These rules are not
196 subject to the provisions of chapter twenty-nine-a of this code
197 but shall be filed with the Secretary of State.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 38. MUNICIPAL ECONOMIC OPPORTUNITY DEVELOPMENT DISTRICTS.

§8-38-7. Application to Development Office for approval of an economic opportunity development district project.

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

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

6 (2) The total cost of the project;

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

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

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

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

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

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

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

37 (10) A good faith estimate of the aggregate amount of
38 consumers sales and service tax that was actually remitted to the
39 Tax Commissioner by all business locations identified as
40 provided in subdivisions (8) and (9) of this subsection with

41 respect to their sales made and services rendered from their then
42 current business locations that will be relocated from, or to, or
43 remain in the district for the twelve full calendar months next
44 preceding the date of the application: *Provided*, That for
45 purposes of this article, the aggregate amount is designated as
46 “the base tax revenue amount”;

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

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

51 (13) The Tax Commissioner’s certification of: (i) The
52 amount of consumers sales and service taxes collected from
53 businesses located in the economic opportunity district during
54 the twelve calendar months preceding the calendar quarter
55 during which the application will be submitted to the Develop-
56 ment Office; (ii) the estimated amount of economic opportunity
57 district excise tax that will be collected during the first twelve
58 months after the month in which the Tax Commissioner would
59 first begin to collect that tax; and (iii) the estimated amount of
60 economic opportunity district excise tax that will be collected
61 during the first thirty-six months after the month in which the
62 Tax Commissioner would first begin to collect that tax; and

63 (14) Any additional information the Development Office
64 may require.

65 (b) *Review of applications.* — The Development Office shall
66 review all project proposals for conformance to statutory and
67 regulatory requirements, the reasonableness of the project’s
68 budget and timetable for completion and the following criteria:

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

- 72 (2) The merits of the project determined by a cost-benefit
73 analysis that incorporates all costs and benefits, both public and
74 private;
- 75 (3) Whether the project is supported by significant private
76 sector investment and substantial credible evidence that, but for
77 the existence of sales tax increment financing, the project would
78 not be feasible;
- 79 (4) Whether the economic opportunity development district
80 excise tax dollars will leverage or be the catalyst for the effective
81 use of private, other local government, state or federal funding
82 that is available;
- 83 (5) Whether there is substantial and credible evidence that
84 the project is likely to be started and completed in a timely
85 fashion;
- 86 (6) Whether the project will, directly or indirectly, improve
87 the opportunities in the area where the project will be located for
88 the successful establishment or expansion of other industrial or
89 commercial businesses;
- 90 (7) Whether the project will, directly or indirectly, assist in
91 the creation of additional long-term employment opportunities
92 in the area and the quality of jobs created in all phases of the
93 project, to include, but not be limited to, wages and benefits;
- 94 (8) Whether the project will fulfill a pressing need for the
95 area, or part of the area, in which the economic opportunity
96 district is located: *Provided*, That the Development Office
97 should consider whether the economic development project is
98 large enough to require that it contain a mixed use development
99 provision consisting of a housing component with at least ten
100 percent of housing units in the district allocated for affordable
101 housing;

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

105 (10) Whether the project helps to diversify the local econ-
106 omy;

107 (11) Whether the project is consistent with the goals of this
108 article;

109 (12) Whether the project is economically and fiscally sound
110 using recognized business standards of finance and accounting;
111 and

112 (13) (A) The ability of the municipality and the project
113 developer or project team to carry out the project: *Provided*, That
114 no project may be approved by the Development Office unless
115 the amount of all development expenditures proposed to be made
116 in the first twenty-four months following the creation of the
117 district results in capital investment of more than ~~\$25~~ \$75
118 million in the district and the municipality submits clear and
119 convincing information, to the satisfaction of the Development
120 Office, that the investment will be made if the Development
121 Office approves the project and the Legislature authorizes the
122 municipality to levy an excise tax on sales of goods and services
123 made within the economic opportunity development district as
124 provided in this article.

125 (B) Notwithstanding any provision of paragraph (A) of this
126 subdivision to the contrary, no project involving remediation
127 may be approved by the Development Office unless the amount
128 of all development expenditures proposed to be made in the first
129 forty-eight months following the creation of the district results
130 in capital investment of more than \$75 million in the district. In
131 addition to the remaining provisions of paragraph (A) of this
132 subdivision the Development Office may not approve a project
133 involving remediation authorized under section five of this

134 article unless the municipality submits clear and convincing
135 information, to the satisfaction of the Development Office, that
136 the proposed remediation expenditures to be financed by the
137 issuance of bonds or notes pursuant to section sixteen of this
138 article do not constitute more than twenty-five percent of the
139 total development expenditures associated with the project.

140 (c) *Additional criteria.* — The Development Office may
141 establish other criteria for consideration when approving the
142 applications.

143 (d) *Action on the application.* — The Executive Director of
144 the Development Office shall act to approve or not approve any
145 application within thirty days following the receipt of the
146 application or the receipt of any additional information requested
147 by the Development Office, whichever is the later.

148 (e) *Certification of project.* — If the Executive Director of
149 the Development Office approves a municipality's economic
150 opportunity district project application, he or she shall issue to
151 the municipality a written certificate evidencing the approval.

152 The certificate shall expressly state a base tax revenue
153 amount, the gross annual district tax revenue amount and the
154 estimated net annual district tax revenue amount which, for
155 purposes of this article, is the difference between the gross
156 annual district tax revenue amount and the base tax revenue
157 amount, all of which the Development Office has determined
158 with respect to the district's application based on any investiga-
159 tion it considers reasonable and necessary, including, but not
160 limited to, any relevant information the Development Office
161 requests from the Tax Commissioner and the Tax Commissioner
162 provides to the Development Office: *Provided*, That in determin-
163 ing the net annual district tax revenue amount, the Development
164 Office may not use a base tax revenue amount less than that
165 amount certified by the Tax Commissioner but, in lieu of
166 confirmation from the Tax Commissioner of the gross annual

167 district tax revenue amount, the Development Office may use the
168 estimate of the gross annual district tax revenue amount provided
169 by the municipality pursuant to subsection (a) of this section.

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

176 The certificate shall expressly state a base tax revenue
177 amount, the gross annual district tax revenue amount and the
178 estimated net annual district tax revenue amount which, for
179 purposes of this article, is the difference between the gross
180 annual district tax revenue amount and the base tax revenue
181 amount, all of which the Development Office has determined
182 with respect to the district's application based on any investiga-
183 tion it considers reasonable and necessary, including, but not
184 limited to, any relevant information the Development Office
185 requests from the Tax Commissioner and the Tax Commissioner
186 provides to the Development Office: *Provided*, That in determin-
187 ing the net annual district tax revenue amount, the Development
188 Office may not use a base tax revenue amount less than that
189 amount certified by the Tax Commissioner, but, in lieu of
190 confirmation from the Tax Commissioner of the gross annual
191 district tax revenue amount, the Development Office may use the
192 estimate of the gross annual district tax revenue amount provided
193 by the municipality pursuant to subsection (a) of this section.

194 (g) *Promulgation of rules.* — The Executive Director of the
195 Development Office may promulgate rules to implement the
196 economic opportunity development district project application
197 approval process and to describe the criteria and procedures it
198 has established in connection therewith. These rules are not
199 subject to the provisions of chapter twenty-nine-a of this code
200 but shall be filed with the Secretary of State.

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

Danny Wells

Chairman, House Committee

Robert Ferguson

Member ~~Chairman~~, Senate Committee

Originating in the House.

In effect July 1, 2013.

Gregory M. S. S.

Clerk of the House of Delegates

Joseph M. Minard

Clerk of the Senate

Robert

Speaker of the House of Delegates

Jeffery

President of the Senate

2013 APR 29 PM 6:01

The within is approved this the 29th day of April, 2013.

Carl Ray Tomblin
Governor

PRESENTED TO THE GOVERNOR

APR 25 2013

Time 11:40 am