ENROLLED

Senate Bill No. 375

(BY SENATORS CANN AND SNYDER)

[PASSED MARCH 8, 2014; IN EFFECT NINETY DAYS FROM PASSAGE.]
AN ACT to amend and reenact §7-11B-3 of the Code of West Virginia, 1931, as amended, relating to tax increment financing; and adding items to those which are excluded from base assessed value and current assessed value of real and personal property.

Be it enacted by the Legislature of West Virginia:

That §7-11B-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 11B. WEST VIRGINIA TAX INCREMENT FINANCING ACT.

§7-11B-3. Definitions.

1 (a) General. – When used in this article, words and phrases defined in this section have the meanings ascribed to them in this section unless a different meaning is clearly required either by the context in which the word or phrase is used or by specific definition in this article.

6 (b) Words and phrases defined. –
(1) "Agency" includes a municipality, a county or municipal development agency established pursuant to authority granted in section one, article twelve of this chapter, a port authority, an airport authority or any other entity created by this state or an agency or instrumentality of this state that engages in economic development activity.

(2) "Base assessed value" means the taxable assessed value of all real and tangible personal property, excluding personal motor vehicles, having a tax situs within a development or redevelopment district as shown upon the landbooks and personal property books of the assessor on July 1 of the calendar year preceding the effective date of the order or ordinance creating and establishing the development or redevelopment district: Provided, That for any development or redevelopment district approved after the effective date of the amendments to this section enacted during the regular session of the Legislature in 2014, personal trailers, personal boats, personal campers, personal motor homes, personal ATVs and personal motorcycles having a tax situs within a development or redevelopment district are excluded from the base assessed value.

(3) "Blighted area" means an area within the boundaries of a development or redevelopment district located within the territorial limits of a municipality or county in which the structures, buildings or improvements, by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for access, ventilation, light, air, sanitation, open spaces, high density of population and overcrowding or the existence of conditions which endanger life or property, are detrimental to the public health, safety, morals or welfare. "Blighted area" includes any area which, by reason of the presence of a substantial number of substandard, slum, deteriorated or deteriorating structures, predominance of defective or inadequate street layout, faulty lot layout in
relation to size, adequacy, accessibility or usefulness, unsanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, defective or unusual conditions of title or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, substantially impairs or arrests the sound growth of a municipality, retards the provision of housing accommodations or constitutes an economic or social liability and is a menace to the public health, safety, morals or welfare in its present condition and use, or any area which is predominantly open and which because of lack of accessibility, obsolete platting, diversity of ownership, deterioration of structures or of site improvements, or otherwise, substantially impairs or arrests the sound growth of the community.

(4) “Conservation area” means any improved area within the boundaries of a development or redevelopment district located within the territorial limits of a municipality or county in which fifty percent or more of the structures in the area have an age of thirty-five years or more. A conservation area is not yet a blighted area but is detrimental to the public health, safety, morals or welfare and may become a blighted area because of any one or more of the following factors: dilapidation; obsolescence; deterioration; illegal use of individual structures; presence of structures below minimum code standards; abandonment; excessive vacancies; overcrowding of structures and community facilities; lack of ventilation, light or sanitary facilities; inadequate utilities; excessive land coverage; deleterious land use or layout; depreciation of physical maintenance; and lack of community planning. A conservation area shall meet at least three of the factors provided in this subdivision.

(5) “County commission” means the governing body of a county of this state and, for purposes of this article only,
includes the governing body of a Class I or II municipality in this state.

(6) "Current assessed value" means the annual taxable assessed value of all real and tangible personal property, excluding personal motor vehicles, having a tax situs within a development or redevelopment district as shown upon the landbook and personal property records of the assessor: Provided, That for any development or redevelopment district approved after the effective date of the amendments to this section enacted during the regular session of the Legislature in 2014, personal trailers, personal boats, personal campers, personal motor homes, personal ATVs and personal motorcycles having a tax situs within a development or redevelopment district are excluded from the current assessed value.

(7) "Development office" means the West Virginia Development Office created in section one, article two, chapter five-b of this code.

(8) "Development project" or "redevelopment project" means a project undertaken in a development or redevelopment district for eliminating or preventing the development or spread of slums or deteriorated, deteriorating or blighted areas, for discouraging the loss of commerce, industry or employment, for increasing employment or for any combination thereof in accordance with a tax increment financing plan. A development or redevelopment project may include one or more of the following:

(A) The acquisition of land and improvements, if any, within the development or redevelopment district and clearance of the land so acquired; or
(B) The development, redevelopment, revitalization or conservation of the project area whenever necessary to provide land for needed public facilities, public housing or industrial or commercial development or revitalization, to eliminate unhealthful, unsanitary or unsafe conditions, to lessen density, mitigate or eliminate traffic congestion, reduce traffic hazards, eliminate obsolete or other uses detrimental to public welfare or otherwise remove or prevent the spread of blight or deterioration;

(C) The financial or other assistance in the relocation of persons and organizations displaced as a result of carrying out the development or redevelopment project and other improvements necessary for carrying out the project plan, together with those site improvements that are necessary for the preparation of any sites and making any land or improvements acquired in the project area available, by sale or lease, for public housing or for development, redevelopment or rehabilitation by private enterprise for commercial or industrial uses in accordance with the plan;

(D) The construction of capital improvements within a development or redevelopment district designed to increase or enhance the development of commerce, industry or housing within the development project area; or

(E) Any other projects the county commission or the agency deems appropriate to carry out the purposes of this article.

(9) “Development or redevelopment district” means an area proposed by one or more agencies as a development or redevelopment district which may include one or more counties, one or more municipalities or any combination thereof, that has been approved by the county commission of each county in which the project area is located if the project
is located outside the corporate limits of a municipality, or by
the governing body of a municipality if the project area is
located within a municipality, or by both the county
commission and the governing body of the municipality when
the development or redevelopment district is located both
within and without a municipality.

(10) "Economic development area" means any area or
portion of an area within the boundaries of a development or
redevelopment district located within the territorial limits of
a municipality or county that does not meet the requirements
of subdivisions (3) and (4) of this subsection and for which
the county commission finds that development or
redevelopment will not be solely used for development of
commercial businesses that will unfairly compete in the local
economy and that development or redevelopment is in the
public interest because it will:

(A) Discourage commerce, industry or manufacturing
from moving their operations to another state;

(B) Result in increased employment in the municipality
or county, whichever is applicable; or

(C) Result in preservation or enhancement of the tax base
of the county or municipality.

(11) "Governing body of a municipality" means the city
council of a Class I or Class II municipality in this state.

(12) "Incremental value", for any development or
redevelopment district, means the difference between the
base assessed value and the current assessed value. The
incremental value will be positive if the current value exceeds
the base value and the incremental value will be negative if
the current value is less than the base assessed value.
(13) "Includes" and "including", when used in a definition contained in this article, shall not exclude other things otherwise within the meaning of the term being defined.

(14) "Local levying body" means the county board of education and the county commission and includes the governing body of a municipality when the development or redevelopment district is located, in whole or in part, within the boundaries of the municipality.

(15) "Obligations" or "tax increment financing obligations" means bonds, loans, debentures, notes, special certificates or other evidences of indebtedness issued by a county commission or municipality pursuant to this article to carry out a development or redevelopment project or to refund outstanding obligations under this article.

(16) "Order" means an order of the county commission adopted in conformity with the provisions of this article and as provided in this chapter.

(17) "Ordinance" means a law adopted by the governing body of a municipality in conformity with the provisions of this article and as provided in chapter eight of this code.

(18) "Payment in lieu of taxes" means those estimated revenues from real property and tangible personal property having a tax situs in the area selected for a development or redevelopment project which revenues, according to the development or redevelopment project or plan, are to be used for a private use, which levying bodies would have received had a county or municipality not adopted one or more tax increment financing plans and which would result from levies made after the date of adoption of a tax increment financing plan during the time the current assessed value of all taxable
real and tangible personal property in the area selected for the
development or redevelopment project exceeds the total base
assessed value of all taxable real and tangible personal
property in the development or redevelopment district until
the designation is terminated as provided in this article.

(19) “Person” means any natural person, and any
corporation, association, partnership, limited partnership,
limited liability company or other entity, regardless of its
form, structure or nature, other than a government agency or
instrumentality.

(20) “Private project” means any project that is subject to
ad valorem property taxation in this state or to a payment in
lieu of tax agreement that is undertaken by a project
developer in accordance with a tax increment financing plan
in a development or redevelopment district.

(21) “Project” means any capital improvement, facility or
both, as specifically set forth and defined in the project plan,
requiring an investment of capital including, but not limited
to, extensions, additions or improvements to existing
facilities, including water or wastewater facilities, and the
remediation of contaminated property as provided for in
article twenty-two, chapter twenty-two of this code, but does
not include performance of any governmental service by a
county or municipal government.

(22) “Project area” means an area within the boundaries
of a development or redevelopment district in which a
development or redevelopment project is undertaken as
specifically set forth and defined in the project plan.

(23) “Project costs” means expenditures made in
preparation of the development or redevelopment project plan
and made, or estimated to be made, or monetary obligations
incurred, or estimated to be incurred, by the county commission which are listed in the project plan as capital improvements within a development or redevelopment district, plus any costs incidental thereto. "Project costs" include, but are not limited to:

(A) Capital costs, including, but not limited to, the actual costs of the construction of public works or improvements, capital improvements and facilities, new buildings, structures and fixtures, the demolition, alteration, remodeling, repair or reconstruction of existing buildings, structures and fixtures, environmental remediation, parking and landscaping, the acquisition of equipment and site clearing, grading and preparation;

(B) Financing costs, including, but not limited to, an interest paid to holders of evidences of indebtedness issued to pay for project costs, all costs of issuance and any redemption premiums, credit enhancement or other related costs;

(C) Real property assembly costs, meaning any deficit incurred resulting from the sale or lease as lessor by the county commission of real or personal property having a tax situs within a development or redevelopment district for consideration that is less than its cost to the county commission;

(D) Professional service costs including, but not limited to, those costs incurred for architectural planning, engineering and legal advice and services;

(E) Imputed administrative costs including, but not limited to, reasonable charges for time spent by county employees or municipal employees in connection with the implementation of a project plan;
(F) Relocation costs including, but not limited to, those relocation payments made following condemnation and job training and retraining;

(G) Organizational costs including, but not limited to, the costs of conducting environmental impact and other studies and the costs of informing the public with respect to the creation of a development or redevelopment district and the implementation of project plans;

(H) Payments made, in the discretion of the county commission or the governing body of a municipality, which are found to be necessary or convenient to creation of development or redevelopment districts or the implementation of project plans; and

(I) That portion of costs related to the construction of environmental protection devices, storm or sanitary sewer lines, water lines, amenities or streets or the rebuilding or expansion of streets, or the construction, alteration, rebuilding or expansion of which is necessitated by the project plan for a development or redevelopment district, whether or not the construction, alteration, rebuilding or expansion is within the area or on land contiguous thereto.

(24) “Project developer” means any person who engages in the development of projects in the state.

(25) “Project plan” means the plan for a development or redevelopment project that is adopted by a county commission or governing body of a municipality in conformity with the requirements of this article and this chapter or chapter eight of this code.

(26) “Real property” means all lands, including improvements and fixtures on them and property of any
nature appurtenant to them or used in connection with them
and every estate, interest and right, legal or equitable, in
them, including terms of years and liens by way of judgment,
mortgage or otherwise, and indebtedness secured by the liens.

(27) "Redevelopment area" means an area designated by
a county commission or the governing body of a municipality
in respect to which the commission or governing body has
made a finding that there exist conditions which cause the
area to be classified as a blighted area, a conservation area, an
economic development area or a combination thereof, which
area includes only those parcels of real property directly and
substantially benefitted by the proposed redevelopment
project located within the development or redevelopment
district or land contiguous thereto.

(28) "Redevelopment plan" means the comprehensive
program under this article of a county or municipality for
redevelopment intended by the payment of redevelopment
costs to reduce or eliminate those conditions, the existence of
which qualified the redevelopment area as a blighted area, a
conservation area, economic development area or a
combination thereof, and to thereby enhance the tax bases of
the levying bodies which extend into the redevelopment area.
Each redevelopment plan shall conform to the requirements
of this article.

(29) "Tax increment" means the amount of regular levy
property taxes attributable to the amount by which the current
assessed value of real and tangible personal property having
a tax situs in a development or redevelopment district
exceeds the base assessed value of the property.

(30) "Tax increment financing fund" means a separate
fund for a development or redevelopment district established
by the county commission or governing body of the
municipality into which all tax increment revenues and other pledged revenues are deposited and from which projected project costs, debt service and other expenditures authorized by this article are paid.

(31) "This code" means the Code of West Virginia, 1931, as amended by the Legislature.

(32) "Total ad valorem property tax regular levy rate" means the aggregate levy rate of all levying bodies on all taxable property having a tax situs within a development or redevelopment district in a tax year but does not include excess levies, levies for general obligation bonded indebtedness or any other levies that are not regular levies.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Member - 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 of the House of Delegates

The within ... approved ... this 27th Day of March, 2014.

Governor