

**WEST VIRGINIA LEGISLATURE** **FILED**

**2016 REGULAR SESSION**

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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**ENROLLED**

**Committee Substitute**

**for**

**House Bill 4612**

(BY DELEGATES E. NELSON, MR. SPEAKER,

(MR. ARMSTEAD), GEARHEART, HAMRICK,

HOUSEHOLDER, ANDERSON, SHOTT, STORCH,

ESPINOSA, HOWELL AND BOGGS)

[Passed March 11, 2016; in effect ninety days from passage.]

HB 4612

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**[Passed March 11, 2016; in effect ninety days from passage.]**

1 AN ACT to amend and reenact §7-11B-3, §7-11B-4, §7-11B-14, §7-11B-21 and §7-11B-22 of the  
2 Code of West Virginia, 1931, as amended; to amend said code by adding thereto two new  
3 sections, designated §7-11B-29 and §7-11B-30; to amend and reenact §7-22-5, §7-22-7,  
4 §7-22-8, §7-22-12 and §7-22-14 of said code; to amend said code by adding thereto two  
5 new sections, designated §7-22-23 and §7-22-24; to amend and reenact §8-38-5, §8-38-  
6 7, §8-38-8, §8-38-12 and §8-38-14 of said code; to amend said code by adding thereto  
7 two new sections, designated §8-38-23 and §8-38-24; and to amend and reenact §11-10-  
8 11a of said code, all relating generally to tax increment financing; authorizing tax  
9 increment financing for funding road projects in West Virginia; permitting certain  
10 agreements between the Division of Highways and counties or municipalities regarding  
11 development districts; permitting financing of certain projects by proceeds of tax increment  
12 financing obligations; permitting road construction projects be done jointly by counties and  
13 municipalities under certain circumstances; establishing procedures and requirements for  
14 applications and the management of projects and districts; providing that projects are  
15 public improvements and subject to certain requirements; permitting the Division of  
16 Highways to propose certain projects; establishing procedures for the West Virginia  
17 Development Office and the Tax Commissioner regarding applications and their review;  
18 permitting audits in certain circumstances; establishing a procedure for adding or  
19 removing property from an economic opportunity development district; requiring  
20 procedures relating to taxpayers; providing for confidentiality; providing that roads to be  
21 part of the state road system; requiring legislative rulemaking; permitting a fee to be  
22 assessed; making findings; and defining terms.

*Be it enacted by the Legislature of West Virginia:*

1 That §7-11B-3, §7-11B-4, §7-11b-14, §7-11B-21 and §7-11B-22 of the Code of West  
2 Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding  
3 thereto two new sections, designated §7-11B-29 and §7-11B-30; that §7-22-5, §7-22-7, §7-22-8,

4 §7-22-12 and §7-22-14 of said code be amended and reenacted; that said code be amended by  
5 adding thereto two new sections, designated §7-22-23 and §7-22-24; that §8-38-5, §8-38-7, §8-  
6 38-8, §8-38-12 and §8-38-14 of said code be amended and reenacted; that said code be amended  
7 by adding thereto two new sections, designated §8-38-23 and §8-38-24; and that §11-10-11a of  
8 said code be amended and reenacted, all to read as follows:

## **CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.**

### **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  
2 the meanings ascribed to them in this section unless a different meaning is clearly required either  
3 by the context in which the word or phrase is used or by specific definition in this article.

4 (b) *Words and phrases defined.* —

5 "Agency" includes a municipality, a county or municipal development agency established  
6 pursuant to authority granted in section one, article twelve of this chapter, a port authority, an  
7 airport authority or any other entity created by this state or an agency or instrumentality of this  
8 state that engages in economic development activity or the Division of Highways.

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

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

35           **"Commissioner of Highways"** means the Commissioner of the Division of Highways.

36           **"Conservation area"** means any improved area within the boundaries of a development  
37 or redevelopment district located within the territorial limits of a municipality or county in which  
38 fifty percent or more of the structures in the area have an age of thirty-five years or more. A  
39 conservation area is not yet a blighted area but is detrimental to the public health, safety, morals  
40 or welfare and may become a blighted area because of any one or more of the following factors:  
41 Dilapidation; obsolescence; deterioration; illegal use of individual structures; presence of  
42 structures below minimum code standards; abandonment; excessive vacancies; overcrowding of  
43 structures and community facilities; lack of ventilation, light or sanitary facilities; inadequate

44 utilities; excessive land coverage; deleterious land use or layout; depreciation of physical  
45 maintenance; and lack of community planning. A conservation area shall meet at least three of  
46 the factors provided in this subdivision.

47 "County commission" means the governing body of a county of this state and, for  
48 purposes of this article only, includes the governing body of a Class I or II municipality in this  
49 state.

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

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

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

66 (A) The acquisition of land and improvements, if any, within the development or  
67 redevelopment district and clearance of the land so acquired; or

68 (B) The development, redevelopment, revitalization or conservation of the project area  
69 whenever necessary to provide land for needed public facilities, public housing or industrial or

70 commercial development or revitalization, to eliminate unhealthful, unsanitary or unsafe  
71 conditions, to lessen density, mitigate or eliminate traffic congestion, reduce traffic hazards,  
72 eliminate obsolete or other uses detrimental to public welfare or otherwise remove or prevent the  
73 spread of blight or deterioration;

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

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

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

86 "Development or redevelopment district" means an area proposed by one or more  
87 agencies as a development or redevelopment district which may include one or more counties,  
88 one or more municipalities or any combination thereof, that has been approved by the county  
89 commission of each county in which the project area is located if the project is located outside the  
90 corporate limits of a municipality, or by the governing body of a municipality if the project area is  
91 located within a municipality, or by both the county commission and the governing body of the  
92 municipality when the development or redevelopment district is located both within and without a  
93 municipality.

94 "Division of Highways" means the state Department of Transportation, Division of  
95 Highways.

96           **"Economic development area" means any area or portion of an area within the boundaries**  
97 **of a development or redevelopment district located within the territorial limits of a municipality or**  
98 **county that is neither a blighted area nor a conservation area and for which the county commission**  
99 **finds that development or redevelopment will not be solely used for development of commercial**  
100 **businesses that will unfairly compete in the local economy and that development or**  
101 **redevelopment is in the public interest because it will:**

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

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

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

107           **"Governing body of a municipality" means the city council of a Class I or Class II**  
108 **municipality in this state.**

109           **"incremental value", for any development or redevelopment district, means the difference**  
110 **between the base assessed value and the current assessed value. The incremental value will be**  
111 **positive if the current value exceeds the base value and the incremental value will be negative if**  
112 **the current value is less than the base assessed value.**

113           **"includes" and "including", when used in a definition contained in this article, shall not**  
114 **exclude other things otherwise within the meaning of the term being defined.**

115           **"Intergovernmental agreement" means any written agreement that may be entered into by**  
116 **and between two or more county commissions, or between two or more municipalities, or between**  
117 **a county commission and a municipality, in the singular and the plural, or between two or more**  
118 **government entities and the Commissioner of Highways: *Provided*, That any intergovernmental**  
119 **agreement shall not be subject to provisions governing intergovernmental agreements set forth**  
120 **in other provisions of this code, including, but not limited to, article twenty-three, chapter eight of**  
121 **this code, but shall be subject to the provisions of this article.**

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

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

129           **"Order" means an order of the county commission adopted in conformity with the**  
130 **provisions of this article and as provided in this chapter.**

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

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

143           **"Person" means any natural person, and any corporation, association, partnership,**  
144 **limited partnership, limited liability company or other entity, regardless of its form, structure or**  
145 **nature, other than a government agency or instrumentality.**

198           **"Real property" means all lands, including improvements and fixtures on them and**  
199 **property of any nature appurtenant to them or used in connection with them and every estate,**  
200 **interest and right, legal or equitable, in them, including terms of years and liens by way of**  
201 **judgment, mortgage or otherwise, and indebtedness secured by the liens.**

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

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

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

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

223           **"This code" means the Code of West Virginia, 1931, as amended by the Legislature.**

224           **"Total ad valorem property tax regular levy rate"** means the aggregate levy rate of all  
225 levying bodies on all taxable property having a tax situs within a development or redevelopment  
226 district in a tax year but does not include excess levies, levies for general obligation bonded  
227 indebtedness or any other levies that are not regular levies.

**§7-11B-4. Powers generally.**

1           In addition to any other powers conferred by law, a county commission or governing body  
2 of a Class I or II municipality may exercise any powers necessary and convenient to carry out the  
3 purpose of this article, including the power to:

4           (1) Create development and redevelopment areas or districts and to define the boundaries  
5 of those areas or districts;

6           (2) Cause project plans to be prepared, to approve the project plans, and to implement  
7 the provisions and effectuate the purposes of the project plans;

8           (3) Establish tax increment financing funds for each development or redevelopment  
9 district;

10           (4) Issue tax increment financing obligations and pledge tax increments and other  
11 revenues for repayment of the obligations;

12           (5) Deposit moneys into the tax increment financing fund for any development or  
13 redevelopment district;

14           (6) Enter into any contracts or agreements, including, but not limited to, agreements with  
15 project developers, consultants, professionals, financing institutions, trustees and bondholders  
16 determined by the county commission to be necessary or convenient to implement the provisions  
17 and effectuate the purposes of project plans;

18           (7) Receive from the federal government or the state loans and grants for, or in aid of, a  
19 development or redevelopment project and to receive contributions from any other source to  
20 defray project costs;

21           (8) Exercise the right of eminent domain to condemn property for the purposes of  
22 implementing the project plan. The rules and procedures set forth in chapter fifty-four of this code  
23 shall govern all condemnation proceedings authorized in this article;

24           (9) Make relocation payments to those persons, businesses, or organizations that are  
25 displaced as a result of carrying out the development or redevelopment project;

26           (10) Clear and improve property acquired by the county commission pursuant to the  
27 project plan and construct public facilities on it or contract for the construction, development,  
28 redevelopment, rehabilitation, remodeling, alteration or repair of the property;

29           (11) Cause parks, playgrounds or water, sewer or drainage facilities or any other public  
30 improvements, including, but not limited to, fire stations, community centers and other public  
31 buildings, which the county commission is otherwise authorized to undertake to be laid out,  
32 constructed or furnished in connection with the development or redevelopment project. When the  
33 public improvement of the county commission is to be located, in whole or in part, within the  
34 corporate limits of a municipality, the county commission shall consult with the mayor and the  
35 governing body of the municipality regarding the public improvement and shall pay for the cost of  
36 the public improvement from the tax increment financing fund;

37           (12) Lay out and construct, alter, relocate, change the grade of, make specific repairs upon  
38 or discontinue public ways and construct sidewalks in, or adjacent to, the project area: *Provided,*  
39 That when the public way or sidewalk is located within a municipality, the governing body of the  
40 municipality shall consent to the same and if the public way is a state road, the consent of the  
41 commissioner of highways shall be necessary;

42           (13) Cause private ways, sidewalks, ways for vehicular travel, playgrounds or water, sewer  
43 or drainage facilities and similar improvements to be constructed within the project area for the  
44 particular use of the development or redevelopment district or those dwelling or working in it;

45           (14) Construct, or cause to be constructed, any capital improvements of a public nature;

46           **(15) Construct capital improvements to be leased or sold to private entities in connection**  
47 **with the goals of the development or redevelopment project;**

48           **(16) Cause capital improvements owned by one or more private entities to be constructed**  
49 **within the development or redevelopment district;**

50           **(17) Designate one or more official or employee of the county commission to make**  
51 **decisions and handle the affairs of development and redevelopment project areas or districts**  
52 **created by the county commission pursuant to this article;**

53           **(18) Adopt orders, ordinances or bylaws or repeal or modify such ordinances or bylaws or**  
54 **establish exceptions to existing ordinances and bylaws regulating the design, construction and**  
55 **use of buildings within the development or redevelopment district created by a county commission**  
56 **or governing body of a municipality under this article;**

57           **(19) Enter orders, adopt bylaws or repeal or modify such orders or bylaws or establish**  
58 **exceptions to existing orders and bylaws regulating the design, construction and use of buildings**  
59 **within the development or redevelopment district created by a county commission or governing**  
60 **body of a municipality under this article;**

61           **(20) Sell, mortgage, lease, transfer or dispose of any property or interest therein, by**  
62 **contract or auction, acquired by it pursuant to the project plan for development, redevelopment or**  
63 **rehabilitation in accordance with the project plan;**

64           **(21) Expend project revenues as provided in this article;**

65           **(22) Enter into one or more intergovernmental agreements or memorandums of**  
66 **understanding with the Commissioner of Highways or with other county commissions or**  
67 **municipalities regarding development or redevelopment districts;**

68           **(23) Designate one or more officials or employees of the county commission or**  
69 **municipality that created the development or redevelopment district to sign documents, to make**  
70 **decisions and handle the affairs of the development or redevelopment district. When two or more**  
71 **county commissions, or municipalities, or any combination thereof, established the development**

72 or redevelopment district, the government entities shall enter into one or more intergovernmental  
73 agreements regarding administration of the development or redevelopment district and the  
74 handling of its affairs; and

75 (24) Do all things necessary or convenient to carry out the powers granted in this article.

**§7-11B-14. Projects financed by tax increment financing considered to be public  
improvements subject to prevailing wage, local labor preference and  
competitive bid requirements.**

1 (a) Any project acquired, constructed, or financed, in whole or in part, by a county  
2 commission or municipality under this article shall be considered to be a "public improvement"  
3 within the meaning of the provisions of articles one-c, chapter twenty-one of this code.

4 (b) The county commission or municipality shall, except as provided in subsection (c) of  
5 this section, solicit or require solicitation of competitive bids and require compliance with article  
6 one-c, chapter twenty-one of this code for every project or infrastructure project funded pursuant  
7 to this article exceeding \$25,000 in total cost: *Provided*, That the provisions of article two-d,  
8 chapter seventeen of this code may apply where applicable to projects subject to an  
9 intergovernmental agreement with the Commissioner of Highways.

10 (c) Following the solicitation of the bids, the construction contract shall be awarded to the  
11 lowest qualified responsible bidder, who shall furnish a sufficient performance and payment bond:  
12 *Provided*, That the county commission, municipality or other person soliciting the bids may reject  
13 all bids and solicit new bids on the project.

14 (d) No officer or employee of this state or of any public agency, public authority, public  
15 corporation, or other public entity, and no person acting or purporting to act on behalf of such  
16 officer or employee or public entity shall require that any performance bond, payment bond, or  
17 bid bond required or permitted by this section be obtained from any particular surety company,  
18 agent, broker or producer.

19 (e) This section does not:

20 (1) Apply to work performed on construction projects not exceeding a total cost of \$50,000  
21 by regular full-time employees of the county commission or the municipality: *Provided*, That no  
22 more than \$50,000 shall be expended on an individual project in a single location in a twelve-  
23 month period;

24 (2) Prevent students enrolled in vocational educational schools from being used in  
25 construction or repair projects when such use is a part of the students' training program;

26 (3) Apply to emergency repairs to building components and systems: *Provided*, That the  
27 term "emergency repairs" means repairs that, if not made immediately, will seriously impair the  
28 use of the building components and systems or cause danger to those persons using the building  
29 components and systems; or

30 (4) Apply to any situation where the county commission or municipality comes to an  
31 agreement with volunteers, or a volunteer group, by which the governmental body will provide  
32 construction or repair materials, architectural, engineering, technical or any other professional  
33 services and the volunteers will provide the necessary labor without charge to, or liability upon,  
34 the governmental body: *Provided*, That the total cost of the construction or repair projects does  
35 not exceed \$50,000.

36 (f) The provisions of subsections (a) and (b) of this section apply to any specific project,  
37 whether privately or publicly owned or constructed on private or public lands, that are financed or  
38 to be financed, in whole or in part, with tax increment or proceeds of tax increment financing  
39 obligations: *Provided*, That, the provisions of subsections (a) and (b) of this section do not apply  
40 to any project or part of a project that is privately owned and financed without any tax increment  
41 or proceeds of tax increment financing obligations.

**§7-11B-21. Tax Increment financing obligations — authorizing order or ordinance.**

1 (a) issuance of tax increment financing obligations shall be authorized by order of the  
2 county commission, or ordinance of the municipality, that created the development or  
3 redevelopment district.

4 (b) The order, or ordinance, shall state the name of the development or redevelopment  
5 district, the amount of tax increment financing obligations authorized, the type of obligation  
6 authorized and the interest rate or rates to be borne by the bonds, notes or other tax increment  
7 financing obligations.

8 (c) The order or ordinance may prescribe the terms, form and content of the tax increment  
9 financing obligations and other particulars or information the county commission, or governing  
10 body of the municipality, issuing the obligations deems useful or it may include by reference the  
11 terms and conditions set forth in a trust indenture or other document securing the development  
12 or redevelopment project tax increment financing obligations.

**§7-11B-22. Tax increment financing obligations — terms, conditions.**

1 (a) Tax increment financing obligations may not be issued in an amount exceeding the  
2 estimated aggregate project costs, including all costs of issuance of the tax increment financing  
3 obligations.

4 (b) Tax increment financing obligations shall not be included in the computation of the  
5 Constitutional debt limitation of the county commission or municipality issuing the tax increment  
6 financing obligations.

7 (c) Tax increment financing obligations shall mature over a period not exceeding thirty  
8 years from the date of entry of the county commission's order, or the effective date of the  
9 municipal ordinance, creating the development or redevelopment district and approving the  
10 development or redevelopment plan, or a period terminating with the date of termination of the  
11 development or redevelopment district, whichever period terminates earlier.

12 (d) Tax increment financing obligations may contain a provision authorizing their  
13 redemption, in whole or in part, at stipulated prices, at the option of the county commission or  
14 municipality issuing the obligations, and, if so, the obligations shall provide the method of selecting  
15 the tax increment financing obligations to be redeemed.

16 (e) The principal and interest on tax increment financing obligations may be payable at  
17 any place set forth in the resolution, trust indenture or other document governing the obligations.

18 (f) Bonds or notes shall be issued in registered form.

19 (g) Bonds or notes may be issued in any denomination.

20 (h) Each tax increment financing obligation issued under this article is declared to be a  
21 negotiable instrument.

22 (i) The tax increment financing obligations may be sold at public or private sale.

23 (j) insofar as they are consistent with subsections (a), (b) and (c) of this section, the  
24 procedures for issuance, form, contents, execution, negotiation and registration of county and  
25 municipal industrial or commercial revenue bonds set forth in article two-c, chapter thirteen of this  
26 code are incorporated by reference herein.

27 (k) The bonds may be refunded or refinanced and refunding bonds may be issued in any  
28 principal amount: *Provided*, That the last maturity of the refunding bonds shall not be later than  
29 the last maturity of the bonds being refunded

**§7-11B-29. Joint development or redevelopment districts.**

1 (a) The Legislature hereby finds and declares that the citizens of the state would benefit  
2 from coordinated road construction efforts by county commissions, municipalities and the division  
3 of highways.

4 (b) Notwithstanding any other section of this code to the contrary, any two or more county  
5 commissions, any two or more municipalities, or any combination thereof, may: (1) Create a  
6 combined development or redevelopment district; (2) propose joint project plans; (3) propose joint  
7 amendments to an existing project plan for combined development or redevelopment district; and  
8 (4) enter into one or more intergovernmental agreements between themselves and/or the  
9 Commissioner of Highways to share: (A) Project expenses; and (B) certain property tax  
10 collections, on a pro rata or other basis, to facilitate construction of projects within the combined

11 development or redevelopment district and to jointly take such other actions as are authorized in  
12 this article.

13 (c) When a project begins in one county and ends in another county of this state, the  
14 county commission of each county included in a multicounty project may, by resolution, adopt a  
15 written intergovernmental agreement with each county and/or the Commissioner of Highways  
16 regarding the proposed multicounty project. When the project begins or passes through the  
17 corporate limits of a municipality, the governing body of that municipality may by resolution adopt  
18 a written intergovernmental agreement with the county or counties in which the project is located.

19 (d) No county commission or municipality may withdraw from an intergovernmental  
20 agreement as long as tax increment financing obligations remain outstanding for which the  
21 proceeds were used by any party to the intergovernmental agreement to finance construction of  
22 the project for which the written intergovernmental agreement was executed.

23 (e) No withdrawing county commission or municipality shall be entitled to the return of any  
24 money or property advanced to the project.

25 (f) Notwithstanding any provision of this code to the contrary, any county commission or  
26 municipality that creates a development or redevelopment district may enter into one or more  
27 intergovernmental agreements with one or more other counties or municipalities that also create  
28 a development or redevelopment district to finance, in whole or in part, one or more projects, to  
29 pool tax increment and other revenues to finance, in whole or in part, contiguous projects on a  
30 cash basis or to pay debt service on tax increment financing obligations.

31 (g) The obligations of the parties under any intergovernmental agreement executed  
32 pursuant to this article are not debt within the meaning of sections six or eight, article X of the  
33 Constitution of West Virginia.

34 (h) Any intergovernmental agreement must be approved by resolution adopted by a  
35 majority vote of the county commission of each county participating in the agreement, by a

36 majority vote of the governing body of each municipality participating in the agreement and by the  
37 Commissioner of Highways.

38 (i) The Commissioner of Highways is authorized to enter into intergovernmental  
39 agreements with county commissions and municipalities of this state, or with the federal  
40 government or any agency thereof, respecting the financing, planning, and construction of state  
41 roads and bridges, including related infrastructure if any, constructed, in whole or in part, pursuant  
42 to this article.

**§7-11B-30. Application by Division of Highways.**

1 (a) The Commissioner of Highways may propose creation by a county commission or  
2 municipality of development or redevelopment areas or districts and project plans, or propose  
3 amendments to an existing project plans. This plan may include related infrastructure that is  
4 necessary or convenient to economic development adjacent to the proposed project.

5 (b) Project plans proposed by the Commissioner of Highways are limited to those related  
6 to the construction, reconstruction, improvement or modernization of state roads, as defined in  
7 article four, chapter seventeen of this code, that are part of the state road system, as defined in  
8 that article or that will become part of the state road system upon completion of the construction.  
9 All construction, reconstruction, improvement or modernization and maintenance of state roads  
10 shall be done by or under the supervision of the Commissioner of Highways.

11 (c) All road projects that are accepted as part of the state road system, and all real property  
12 interests and appurtenances, is under the exclusive jurisdiction and control of the Commissioner  
13 of Highways, who may exercise the same rights and authority as he or she has over other  
14 transportation facilities in the state road system.

15 (d) Except as provided in an intergovernmental agreement executed by one or more  
16 county commissions, municipalities and/or the Commissioner of Highways and as provided in this  
17 article, a county commission or municipality may not be required to pay for the cost of  
18 constructing, reconstructing, improving, maintaining a road that is part of the state road system

19 as defined in article four, chapter seventeen of this code or to pay any other expense fairly related  
20 to that road.

21 (e) The powers conferred by this article on the Commissioner of Highways or the Division  
22 of Highways are in addition and supplemental to the powers conferred upon the Commissioner of  
23 Highways, the Division of Highways, and the Department of Transportation by the Legislature  
24 elsewhere in this code.

## **ARTICLE 22. COUNTY ECONOMIC OPPORTUNITY DEVELOPMENT DISTRICTS.**

### **§7-22-5. Development expenditures.**

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

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

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

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

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

19           **(5) Acquiring, building, demolishing, razing, constructing, repairing, reconstructing,**  
20 **refurbishing, renovating, rehabilitating, expanding, altering, otherwise developing, operating and**  
21 **maintaining real property generally, parking facilities, commercial structures and other capital**  
22 **improvements to real property, fixtures and tangible personal property, whether or not physically**  
23 **situate within the district's boundaries, including, but not limited to, state road improvements**  
24 **pursuant to an intergovernmental agreement with the Commissioner of Highways: *Provided*, That**  
25 **the expenditure directly benefits the district;**

26           **(6) Developing plans for the architectural design of the district and portions thereof and**  
27 **developing plans and programs for the future development of the district;**

28           **(7) Developing, promoting and supporting community events and activities open to the**  
29 **general public that benefit the district;**

30           **(8) Providing the administrative costs for a district management program;**

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

34           **(10) Providing any other services that the county commission or district board is authorized**  
35 **to perform and which the county commission does not also perform to the same extent on a**  
36 **countywide basis;**

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

39           **(12) Making grants to the Division of Highways for road projects benefitting an economic**  
40 **opportunity development district;**

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

43           (14) Remediation of publicly or privately owned landfills, former coal or other mining sites,  
44 solid waste facilities or hazardous waste sites to facilitate commercial development which would  
45 not otherwise be economically feasible; and

46           (15) To do any and all things necessary, desirable or appropriate to carry out and  
47 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.**

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

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

4           (2) The total cost of the project;

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

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

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

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

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

18           (8) Identification of any businesses that the county commission expects to relocate their  
19 business locations from the district to another place in the state in connection with the

20 establishment of the district or from another place in this state to the district: *Provided*, That for  
21 purposes of this article, any entities shall be designated "relocated entities";

22 (9) identification of any businesses currently conducting business in the proposed  
23 economic opportunity development district that the county commission expects to continue doing  
24 business there after the district is created;

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

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

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

35 (13) Any additional information the Development Office may require.

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

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

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

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

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

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

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

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

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

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

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

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

63           (12) Whether the project is economically and fiscally sound using recognized business  
64 standards of finance and accounting; and

65           (13) (A) The ability of the county commission and the project developer or project team to  
66 carry out the project: *Provided*, That no project may be approved by the Development Office  
67 unless the amount of all development expenditures proposed to be made in the first twenty-four  
68 months following the creation of the district results in capital investment of more than \$75 million  
69 in the district and the county submits clear and convincing information, to the satisfaction of the  
70 Development Office, that the investment will be made if the Development Office approves the  
71 project and the Legislature authorizes the county commission to levy an excise tax on sales of

72 goods and services made within the economic opportunity district as provided in this article:  
73 *Provided, however,* That such minimum capital investment does not apply to projects proposed  
74 by the Commissioner of Highways in accordance with section twenty-three, article twenty-two,  
75 chapter seven of this code.

76 (B) Notwithstanding any provision of paragraph (A) of this subdivision to the contrary, no  
77 project involving remediation may be approved by the Development Office unless the amount of  
78 all development expenditures proposed to be made in the first forty-eight months following the  
79 creation of the district results in capital investment of more than \$75 million in the district. In  
80 addition to the remaining provisions of paragraph (A) of this subdivision the Development Office  
81 may not approve a project involving remediation authorized under section five of this article unless  
82 the county commission submits clear and convincing information, to the satisfaction of the  
83 Development Office, that the proposed remediation expenditures to be financed by the issuance  
84 of bonds or notes pursuant to section sixteen of this article do not constitute more than twenty-  
85 five percent of the total development expenditures associated with the project.

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

88 (d) *Action on the application.* — Upon receipt of an application, the Development Office  
89 shall promptly request a certification from the Tax Commissioner of the base tax revenue amount  
90 and the Tax Commissioner shall provide the certification to the Development Office within thirty  
91 days. The Executive Director of the Development Office shall act to approve or not approve any  
92 application within thirty days following the receipt of the application and the certification from the  
93 Tax Commissioner required by this subsection or the receipt of any additional information  
94 requested by the Development Office, whichever is the later.

95 (e) *Certification of project.* — If the Executive Director of the Development Office approves  
96 a county's economic opportunity district project application, he or she shall issue to the county  
97 commission a written certificate evidencing the approval.

98           The certificate shall expressly state a base tax revenue amount, the gross annual district  
99 tax revenue amount and the estimated net annual district tax revenue amount which, for purposes  
100 of this article, is the difference between the gross annual district tax revenue amount and the base  
101 tax revenue amount, all of which the Development Office has determined with respect to the  
102 district's application based on any investigation it considers reasonable and necessary, including,  
103 but not limited to, any relevant information the Development Office requests from the Tax  
104 Commissioner and the Tax Commissioner provides to the Development Office: *Provided*, That in  
105 determining the net annual district tax revenue amount, the Development Office may not use a  
106 base tax revenue amount less than that amount certified by the Tax Commissioner but, in lieu of  
107 confirmation from the Tax Commissioner of the gross annual district tax revenue amount, the  
108 Development Office may use the estimate of the gross annual district tax revenue amount  
109 provided by the county commission pursuant to subsection (a) of this section.

10           (f) *Certification of enlargement or reduction of geographic boundaries of previously*  
111 *certified district.* — if the Executive Director of the Development Office approves a county's  
112 economic opportunity district project application to expand or reduce the geographic boundaries  
113 of a previously certified district, he or she shall issue to the county commission a written certificate  
114 evidencing the approval.

115           The certificate shall expressly state a base tax revenue amount, the gross annual district  
116 tax revenue amount and the estimated net annual district tax revenue amount which, for purposes  
117 of this article, is the difference between the gross annual district tax revenue amount and the base  
118 tax revenue amount, all of which the Development Office has determined with respect to the  
119 district's application based on any investigation it considers reasonable and necessary, including,  
120 but not limited to, any relevant information the Development Office requests from the Tax  
121 Commissioner and the Tax Commissioner provides to the Development Office: *Provided*, That in  
122 determining the net annual district tax revenue amount, the Development Office may not use a  
123 base tax revenue amount less than that amount certified by the Tax Commissioner but, in lieu of

124 confirmation from the Tax Commissioner of the gross annual district tax revenue amount, the  
125 Development Office may use the estimate of the gross annual district tax revenue amount  
126 provided by the county commission pursuant to subsection (a) of this section.

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

**§7-22-8. Establishment of the economic opportunity development district fund.**

1 (a) *General.* — There is hereby created a special revenue account in the State Treasury  
2 designated the "Economic Opportunity Development District Fund" which is an interest-bearing  
3 account and shall be invested in the manner described in section nine-c, article six, chapter twelve  
4 of this code with the interest income a proper credit to the Fund.

5 (b) *District subaccount.* — A separate and segregated subaccount within the account shall  
6 be established for each economic opportunity development district and each joint economic  
7 opportunity development district that is approved by the Executive Director of the Development  
8 Office. In addition to the economic opportunity district excise tax levied and collected as provided  
9 in this article, funds paid into the account for the credit of any subaccount may also be derived  
10 from the following sources:

11 (1) All interest or return on the investment accruing to the subaccount;

12 (2) Any gifts, grants, bequests, transfers, appropriations or donations which are received  
13 from any governmental entity or unit or any person, firm, foundation or corporation; and

14 (3) Any appropriations by the Legislature which are made for this purpose.

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

1 (a) *General.* — The county commission of a county, authorized by the Legislature to levy  
2 a special district excise tax for the benefit of an economic opportunity development district, may,

3 by order entered of record, impose that tax on the privilege of selling tangible personal property  
4 and rendering select services in the district in accordance with this section.

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

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

16 (d) *Collection by Tax Commissioner.* — The order of the county commission imposing a  
17 special district excise tax shall provide for the tax to be collected by the Tax Commissioner in the  
18 same manner as the tax levied by section three, article fifteen, chapter eleven of this code is  
19 administered, assessed, collected and enforced.

20 (1) The Tax Commissioner may require the electronic filing of returns related to the special  
21 district excise tax imposed pursuant to this section, and also may require the electronic payment  
22 of the special district excise tax imposed pursuant to this section. The Tax Commissioner may  
23 prescribe by rules adopted or proposed pursuant to article three, chapter twenty-nine-a of this  
24 code, administrative notices, and forms and instructions, the procedures and criteria to be  
25 followed to electronically file those returns and to electronically pay the special district excise tax  
26 imposed pursuant to this section.

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

29 (A) Acceptable Indicia of timely payment;

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

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

34 (D) What, if any, exceptions are allowable, and alternative methods of payment that may  
35 be used for any exceptions;

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

37 (F) Procedures for ensuring that taxpayers new to an economic opportunity development  
38 district are included within the Tax Commissioner's database;

39 (G) Procedures for ensuring that taxpayers with multiple locations properly allocate their  
40 special district excise taxes to the appropriate economic opportunity development district and  
41 reflect the allocation of their returns; and

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

45 (3)(A) Notwithstanding the provisions of section five-d, article ten, chapter eleven of this  
46 code: (i) So long as bonds are outstanding pursuant to this article, the Tax Commissioner shall  
47 provide on a monthly basis to the trustee for bonds issued pursuant to this article information on  
48 returns submitted pursuant to this article; and (ii) the trustee may share the information so  
49 obtained with the county commission that established the economic opportunity development  
50 district that issued the bonds pursuant to this article and with the bondholders and with bond  
51 counsel for bonds issued pursuant to this article. The Tax Commissioner and the trustee may  
52 enter into a written agreement in order to accomplish exchange of the information.

53 (B) Any confidential information provided pursuant to this subdivision shall be used solely  
54 for the protection and enforcement of the rights and remedies of the bondholders of bonds issued

55 pursuant to this article. Any person or entity that is in possession of information disclosed by the  
56 Tax Commissioner or shared by the trustee pursuant to subdivision (a) of this subsection is  
57 subject to the provisions of section five-d, article ten, chapter eleven of this code as if the person  
58 or entity that is in possession of the tax information is an officer, employee, agent or representative  
59 of this state or of a local or municipal governmental entity or other governmental subdivision.

60 (C) Notwithstanding any provision of this code to the contrary, so long as bonds are  
61 outstanding pursuant to this article, the Tax Commissioner shall allow a designated representative  
62 of the county commission that established the economic opportunity development district for  
63 which the bonds were issued to audit the returns filed by the taxpayers in the economic  
64 opportunity development district no less often than once each quarter of the fiscal year. The Tax  
65 Commissioner may require the audit to be conducted at the Tax Commissioner's office, may  
66 prohibit copying of any returns, and may require the representatives to enter into a written  
67 confidentiality agreement. The Tax Commissioner shall promptly investigate any questions raised  
68 by an audit, shall promptly take all actions required to correct any errors, and shall report to the  
69 applicable county commission the results of its investigation and actions.

70 (e) *Deposit of net tax collected.* —

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

77 (2) The State Treasurer shall withhold from the county commission's subaccount in the  
78 Economic Opportunity Development District Fund and shall deposit in the General Revenue Fund  
79 of this state, on or before the twentieth day of each calendar month next following the effective

80 date of a special district excise tax, a sum equal to one twelfth of the base tax revenue amount  
81 last certified by the Development Office pursuant to section seven of this article.

82 (f) *Effective date of special district excise tax.* — Any taxes imposed pursuant to the  
83 authority of this section are effective on the first day of the calendar month that begins sixty days  
84 after the date of adoption of an order entered of record imposing the tax or the first day of any  
85 later calendar month expressly designated in the order.

86 (g) *Copies of order.* — Upon entry of an order levying a special district excise tax, a  
87 certified copy of the order shall be mailed to the State Auditor, as ex officio the chief inspector  
88 and supervisor of public offices, the State Treasurer and the Tax Commissioner.

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

1 (a) *General.* — The order creating an economic opportunity development district may not  
2 be amended to include additional contiguous property until after the amendment is approved by  
3 the executive director of the Development Office in the same manner as an application to approve  
4 the establishment of the district is acted upon under section seven of this article and the  
5 amendment is authorized by the Legislature. The order creating an economic opportunity  
6 development district may not be amended to remove property until after the amendment is  
7 approved by the executive director of the Development Office in the same manner as an  
8 application to approve the establishment of the district is acted upon under section seven of this  
9 article: *Provided*, That any amendment for the purpose of removing property from an economic  
10 opportunity development district may not require authorization from the Legislature and shall  
11 ensure that any such district after such an amendment remains contiguous. The order which is  
12 entered for the purpose of removing parcels from an existing economic opportunity development  
13 district may not be effective any earlier than the first day of the calendar month which begins at  
14 least thirty days following the entry of the order or such later date as may be specified by the  
15 county commission in the order.

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

18           **(c) *Public hearing required.*** —

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

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

25           **(d) *Application to West Virginia Development Office.*** — Following the hearing, the county  
26 commission may, by resolution, approve the filing of an application with the Development Office  
27 for the inclusion of the additional property in the district or for the removal of the applicable parcels  
28 from the district.

29           **(e) *Consideration by the Executive Director of the Development Office.*** — Before the  
30 executive director of the Development Office approves inclusion of the additional property in the  
31 district, the Development Office shall determine the amount of taxes levied by article fifteen,  
32 chapter eleven of this code that were collected by businesses located in the area the county  
33 commission proposes to add to the district in the same manner as the base amount of tax was  
34 determined when the district was first created. The State Treasurer shall also deposit one twelfth  
35 of this additional tax base amount into the General Revenue Fund each month, as provided in  
36 section twelve of this article.

37           **(f) *Legislative action required to include additional property.*** — After the Executive Director  
38 of the Development Office approves amending the boundaries of the district to include additional  
39 property, the Legislature must amend section nine of this article to allow levy of the special district  
40 excise tax on business located in geographic area to be included in the district. After the  
41 Legislature amends said section, the county commission may then amend its order: *Provided,*

42 That the order may not be effective any earlier than the first day of the calendar month that begins  
43 sixty days after the effective date of the act of the Legislature authorizing the levy on the special  
44 district excise tax on businesses located in the geographic area to be added to the boundaries of  
45 the district for which the tax is levied or a later date as set forth in the order of the county  
46 commission.

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

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

**§7-22-23. Joint economic opportunity development districts.**

1 (a) The Legislature hereby finds and declares that the citizens of the state would benefit  
2 from coordinated road construction efforts by county commissions and municipalities.

3 (b) Notwithstanding any other section of this code to the contrary, any two or more county  
4 commissions, any two or more municipalities, or any combination thereof, may: (1) Create a  
5 combined economic opportunity development district; (2) propose joint applications for the

6 districts; (3) enter into one or more intergovernmental agreements between themselves and/or  
7 the Commissioner of Highways to share: (A) Project expenses; and (B) certain excise tax  
8 collections, on a pro rata or other basis, to facilitate construction of projects within the combined  
9 economic opportunity development district and to jointly take such other actions as are authorized  
10 in the County Economic Opportunity Development District Act.

11 (c) When a project begins in one county and ends in another county of this state, the  
12 county commission of each county included in a multicounty project may, by resolution, adopt a  
13 written intergovernmental agreement with each county and/or the Commissioner of Highways  
14 regarding the proposed multicounty project. When the project begins or passes through the  
15 corporate limits of a municipality, the governing body of that municipality may by resolution adopt  
16 a written intergovernmental agreement with the county or counties in which the project is located.

17 (d) No county commission or municipality may withdraw from an intergovernmental  
18 agreement if bonds or notes, remain outstanding the proceeds of which were used to finance  
19 construction of the project for which the written intergovernmental agreement was executed.

20 (e) No withdrawing county commission or municipality is entitled to the return of any money  
21 or property advanced to the project.

22 (f) Notwithstanding any provision of this code to the contrary, any county commission or  
23 municipality that creates an economic opportunity development district may enter into one or more  
24 intergovernmental agreements with one or more other counties or municipalities that also create  
25 an economic opportunity development district to finance, in whole or in part, one or more projects,  
26 to pool tax increment and other revenues to finance, in whole or in part, contiguous projects on a  
27 cash basis or to pay debt service on bonds or notes.

28 (g) The obligations of the parties under any intergovernmental agreement executed  
29 pursuant to this article is not debt within the meaning of sections six or eight, article X of the  
30 Constitution of West Virginia.

31 (h) Any Intergovernmental agreement must be approved by resolution adopted by a  
32 majority vote of the county commission of each county participating in the agreement, by a  
33 majority vote of the governing body of each municipality participating in the agreement and by the  
34 Commissioner of Highways.

35 (i) The Commissioner of Highways is authorized to enter into Intergovernmental  
36 agreements with county commissions and municipalities of this state, or with the federal  
37 government or any agency thereof, respecting the financing, planning, and construction of state  
38 roads and bridges, including related infrastructure if any, constructed, in whole or in part, pursuant  
39 to this article.

**§7-22-24. Application by Division of Highways.**

1 (a) The Commissioner of Highways may propose the creation by a county commission of  
2 an economic opportunity development district and project plans, or propose amendments to  
3 existing project plans. This plan may include related infrastructure that is necessary or convenient  
4 to economic development adjacent to the proposed project.

5 (b) Projects proposed by the Commissioner of Highways are limited to those related to the  
6 construction, reconstruction, improvement or modernization of state roads, as defined in article  
7 four, chapter seventeen of this code, that are part of the state road system, as defined in that  
8 article, or that will become part of the state road system upon completion of the construction. All  
9 construction, reconstruction, improvement or modernization and maintenance of state roads shall  
10 be done by or under the supervision of the Commissioner of Highways.

11 (c) All road projects that are accepted as part of the state road system, and all real property  
12 interests and appurtenances, shall be under the exclusive jurisdiction and control of the  
13 Commissioner of Highways, who may exercise the same rights and authority as he or she has  
14 over other transportation facilities in the state road system.

15 (d) Except as provided in an Intergovernmental agreement executed by one or more  
16 county commissions, municipalities and/or the Commissioner of Highways and as provided in this

17 article, a county commission or municipality may not be required to pay for the cost of  
18 constructing, reconstructing, improving, maintaining a road that is part of the state road system  
19 as defined in article four, chapter seventeen of this code or to pay any other expense fairly related  
20 to that road.

21 (e) The powers conferred by this article on the Commissioner of Highways or the Division  
22 of Highways are in addition and supplemental to the powers conferred upon the Commissioner of  
23 Highways, the Division of Highways, and the Department of Transportation by the Legislature  
24 elsewhere in this code.

## **CHAPTER 8. MUNICIPAL CORPORATIONS.**

### **ARTICLE 38. MUNICIPAL ECONOMIC OPPORTUNITY DEVELOPMENT DISTRICTS.**

#### **§8-38-5. Development expenditures.**

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

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

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

12 (3) Making payments for principal, interest, issuance costs, any of the costs described in  
13 section twenty of this article and appropriate reserves for bonds and other instruments and

14 arrangements issued or entered into by the municipality for financing the expenditures of the  
15 district described in this section and to otherwise implement the purposes of this article;

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

19 (5) Acquiring, building, demolishing, razing, constructing, repairing, reconstructing,  
20 refurbishing, renovating, rehabilitating, expanding, altering, otherwise developing, operating and  
21 maintaining real property generally, parking facilities, commercial structures and other capital  
22 improvements to real property, fixtures and tangible personal property, whether or not physically  
23 situate within the district's boundaries including, but not limited to, state road improvements  
24 pursuant to an intergovernmental agreement with the Commissioner of Highways: *Provided*, That  
25 the expenditure directly benefits the district;

26 (6) Developing plans for the architectural design of the district and portions thereof and  
27 developing plans and programs for the future development of the district;

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

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

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

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

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

39           (12) Making grants to the Division of Highways for road projects benefitting an economic  
40 opportunity development district;

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

43           (14) Remediation of publicly or privately owned landfills, former coal or other mining sites,  
44 solid waste facilities or hazardous waste sites to facilitate commercial development which would  
45 not otherwise be economically feasible; and

46           (15) To do any and all things necessary, desirable or appropriate to carry out and  
47 accomplish the purposes of this article notwithstanding any provision of this code to the contrary.

**§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 act on applications filed with it  
2 by municipalities pursuant to section six of this article. Each application must include:

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

4           (2) The total cost of the project;

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

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

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

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

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

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

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

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

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

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

35           (13) Any additional information the Development Office may require.

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

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

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

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

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

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

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

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

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

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

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

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

63           (12) Whether the project is economically and fiscally sound using recognized business  
64 standards of finance and accounting; and

65           (13)(A) The ability of the municipality and the project developer or project team to carry  
66 out the project: *Provided*, That no project may be approved by the Development Office unless the

67 amount of all development expenditures proposed to be made in the first twenty-four months  
68 following the creation of the district results in capital investment of more than \$75 million in the  
69 district and the municipality submits clear and convincing information, to the satisfaction of the  
70 Development Office, that the investment will be made if the Development Office approves the  
71 project and the Legislature authorizes the municipality to levy an excise tax on sales of goods and  
72 services made within the economic opportunity development district as provided in this article:  
73 *Provided, however,* That such minimum capital investment does not apply to projects proposed  
74 by the Commissioner of Highways in accordance with section twenty-three, article twenty-two,  
75 chapter seven of this code.

76 (B) Notwithstanding any provision of paragraph (A) of this subdivision to the contrary, no  
77 project involving remediation may be approved by the Development Office unless the amount of  
78 all development expenditures proposed to be made in the first forty-eight months following the  
79 creation of the district results in capital investment of more than \$75 million in the district. In  
80 addition to the remaining provisions of paragraph (A) of this subdivision the Development Office  
81 may not approve a project involving remediation authorized under section five of this article unless  
82 the municipality submits clear and convincing information, to the satisfaction of the Development  
83 Office, that the proposed remediation expenditures to be financed by the issuance of bonds or  
84 notes pursuant to section sixteen of this article do not constitute more than twenty-five percent of  
85 the total development expenditures associated with the project.

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

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

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

95           The certificate shall expressly state a base tax revenue amount, the gross annual district  
96 tax revenue amount and the estimated net annual district tax revenue amount which, for purposes  
97 of this article, is the difference between the gross annual district tax revenue amount and the base  
98 tax revenue amount, all of which the Development Office has determined with respect to the  
99 district's application based on any investigation it considers reasonable and necessary, including,  
100 but not limited to, any relevant information the Development Office requests from the Tax  
101 Commissioner and the Tax Commissioner provides to the Development Office: *Provided*, That in  
102 determining the net annual district tax revenue amount, the Development Office may not use a  
103 base tax revenue amount less than that amount certified by the Tax Commissioner but, in lieu of  
104 confirmation from the Tax Commissioner of the gross annual district tax revenue amount, the  
105 Development Office may use the estimate of the gross annual district tax revenue amount  
106 provided by the municipality pursuant to subsection (a) of this section.

107           **(f) Certification of enlargement or reduction of geographic boundaries of previously**  
108 **certified district.** — If the Executive Director of the Development Office approves a municipality's  
109 economic opportunity district project application to expand or reduce the geographic boundaries  
110 of a previously certified district, he or she shall issue to the municipality a written certificate  
111 evidencing the approval.

112           The certificate shall expressly state a base tax revenue amount, the gross annual district  
113 tax revenue amount and the estimated net annual district tax revenue amount which, for purposes  
114 of this article, is the difference between the gross annual district tax revenue amount and the base  
115 tax revenue amount, all of which the Development Office has determined with respect to the  
116 district's application based on any investigation it considers reasonable and necessary, including,  
117 but not limited to, any relevant information the Development Office requests from the Tax

118 Commissioner and the Tax Commissioner provides to the Development Office: *Provided*, That in  
119 determining the net annual district tax revenue amount, the Development Office may not use a  
120 base tax revenue amount less than that amount certified by the Tax Commissioner, but, in lieu of  
121 confirmation from the Tax Commissioner of the gross annual district tax revenue amount, the  
122 Development Office may use the estimate of the gross annual district tax revenue amount  
123 provided by the municipality pursuant to subsection (a) of this section.

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

**§8-38-8. Establishment of the Economic Opportunity Development District Fund.**

1 (a) *General.* — There is hereby created a special revenue account in the State Treasury  
2 designated the "Economic Opportunity Development District Fund" which is an interest-bearing  
3 account and shall be invested in the manner described in section nine-c, article six, chapter twelve  
4 of this code with the interest income a proper credit to the Fund.

5 (b) *District subaccount.* — A separate and segregated subaccount within the account shall  
6 be established for each economic opportunity development district and each joint economic  
7 opportunity development district that is approved by the Executive Director of the Development  
8 Office. In addition to the economic opportunity district excise tax levied and collected as provided  
9 in this article, funds paid into the account for the credit of any subaccount may also be derived  
10 from the following sources:

- 11 (1) All interest or return on the investment accruing to the subaccount;
- 12 (2) Any gifts, grants, bequests, transfers, appropriations or donations which are received  
13 from any governmental entity or unit or any person, firm, foundation or corporation; and
- 14 (3) Any appropriations by the Legislature which are made for this purpose

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

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

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

13           **(c) Tax rate.** — The rate or rates of a special district excise tax levied pursuant to this  
14 section shall be stated in an ordinance enacted by the municipality and identical to the rate or  
15 rates of the consumers sales and service tax imposed pursuant to article fifteen, chapter eleven  
16 of this code on sales rendered within the boundaries of the district authorized by this section.

17           **(d) Collection by Tax Commissioner.** — The ordinance of the municipality imposing a  
18 special district excise tax shall provide for the tax to be collected by the Tax Commissioner in the  
19 same manner as the tax levied by section three, article fifteen, chapter eleven of this code is  
20 administered, assessed, collected and enforced.

21           **(1)** The State Tax Commissioner may require the electronic filing of returns related to the  
22 special district excise tax imposed pursuant to this section and may require the electronic payment  
23 of the special district excise tax imposed pursuant to this section. The State Tax Commissioner  
24 may prescribe by rules adopted or proposed pursuant to article three, chapter twenty-nine-a of  
25 this code, administrative notices, and forms and instructions, the procedures and criteria to be

26 followed to electronically file those returns and to electronically pay the special district excise tax  
27 imposed pursuant to this section.

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

30 (A) Acceptable indicia of timely payment;

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

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

35 (D) What, if any, exceptions are allowable and alternative methods of payment that may  
36 be used for any exceptions;

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

38 (F) Procedures for ensuring that taxpayers new to an economic opportunity development  
39 district are included within the Tax Commissioner's database;

40 (G) Procedures for ensuring that taxpayers with multiple locations properly allocate their  
41 special district excise taxes to the appropriate economic opportunity development district and  
42 reflect the allocation of their returns; and

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

46 (3)(A) Notwithstanding the provisions of section five-d, article ten, chapter eleven of this  
47 code: (i) So long as bonds are outstanding pursuant to this article, the Tax Commissioner shall  
48 provide on a monthly basis to the trustee for bonds issued pursuant to this article information on  
49 returns submitted pursuant to this article; and (ii) the trustee may share the information so  
50 obtained with the municipality that established the economic opportunity development district that  
51 issued the bonds pursuant to this article and with the bondholders and with bond counsel for

52 bonds issued pursuant to this article. The Tax Commissioner and the trustee may enter into a  
53 written agreement in order to accomplish exchange of the information.

54 (B) Any confidential information provided pursuant to this subdivision shall be used solely  
55 for the protection and enforcement of the rights and remedies of the bondholders of bonds issued  
56 pursuant to this article. Any person or entity that is in possession of information disclosed by the  
57 Tax Commissioner or shared by the trustee pursuant to subdivision (a) of this subsection is  
58 subject to the provisions of section five-d, article ten, chapter eleven of this code as if the person  
59 or entity that is in possession of the tax information is an officer, employee, agent or representative  
60 of this state or of a local or municipal governmental entity or other governmental subdivision.

61 (C) Notwithstanding any provision of this code to the contrary, so long as bonds are  
62 outstanding pursuant to this article, the Tax Commissioner shall allow a designated representative  
63 of the municipality that established the economic opportunity development district for which the  
64 bonds were issued to audit the returns filed by the taxpayers in the economic opportunity  
65 development district no less often than once each quarter of the fiscal year. The Tax  
66 Commissioner may require the audit to be conducted at the Tax Commissioner's office, may  
67 prohibit copying of any returns, and may require the representatives to enter into a written  
68 confidentiality agreement. The Tax Commissioner shall promptly investigate any questions raised  
69 by an audit, shall promptly take all actions required to correct any errors, and shall report to the  
70 applicable municipality the results of its investigation and actions.

71 (e) *Deposit of net tax collected.* —

72 (1) The ordinance of the municipality imposing a special district excise tax shall provide  
73 that the Tax Commissioner deposit the net amount of tax collected in the special Economic  
74 Opportunity Development District Fund to the credit of the municipality's subaccount therein for  
75 the economic opportunity development district and that the money in the subaccount may only be  
76 used to pay for development expenditures as provided in this article except as provided in  
77 subsection (f) of this section.

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

83           (B) in addition to the amounts described in paragraph (A) of this subdivision, the Tax  
84 Commissioner shall deposit in the General Revenue Fund of this state on the dates specified in  
85 paragraph (A) not less than twenty percent nor more than fifty percent of the excess of the special  
86 district excise taxes collected during the preceding month above one twelfth of the base tax  
87 revenue, said percentage to be fixed by the Development Office in conjunction with its approval  
88 of an application in accordance with section seven of this article based on the amount of state  
89 funds, if any, to be expended in conjunction with the respective economic opportunity  
90 development district project for items including, but not limited to, the acquisition, construction,  
91 reconstruction, improvement, enlargement or extension of roadways, rights-of-way, sidewalks,  
92 traffic signals, water or sewer lines and other public infrastructure and such other expenditures of  
93 state funds identified by the Development Office: *Provided*, That the Development Office has the  
94 discretion to reduce the minimum percentage of the excess special district excise taxes deposited  
95 by the Tax Commissioner in the General Revenue Fund as outlined above from twenty percent  
96 to ten percent in conjunction with its approval of an application in accordance with section seven  
97 of this article based on its determination that:

98           (i) The economic development project provides for expenditures in excess of \$100 million;

99           (ii) The economic opportunity development district project does not require the state to  
100 expend any additional state funds for items within the district including, but not limited to, the  
101 acquisition, construction, reconstruction, improvement, enlargement or extension of roadways,  
102 rights-of-way, sidewalks, traffic signals, water or sewer lines and other public infrastructure; and

103           (iii) The economic development project contains a provision for a mixed use development  
104 with a housing component with at least ten percent of housing units in the district allocated as  
105 affordable housing.

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

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

**§8-38-14. Modification of included area; notice; hearing.**

1           (a) *General.* — The ordinance creating an economic opportunity development district may  
2 not be amended to include additional contiguous property until after the amendment is approved  
3 by the Executive Director of the Development Office in the same manner as an application to  
4 approve the establishment of the district is acted upon under section seven of this article. The  
5 order creating an economic opportunity development district may not be amended to remove  
6 property until after the amendment is approved by the executive director of the Development  
7 Office in the same manner as an application to approve the establishment of the district is acted  
8 upon under section seven of this article: *Provided*, That any such amendment for the purpose of  
9 removing property from an economic opportunity development district shall not require  
10 authorization from the Legislature and shall ensure that any such district after such an amendment  
11 remains contiguous. The order which is entered for the purpose of removing parcels from an  
12 existing economic opportunity development district may not be effective any earlier than the first  
13 day of the calendar month which begins at least thirty days following the entry of the order or such  
14 later date as may be specified by the county commission in the order.

15           **(b) *Limitations.*** — Additional property may not be included in the district unless it is situated  
16 within the boundaries of the municipality and is contiguous to the then current boundaries of the  
17 district.

18           **(c) *Public hearing required.*** —

19           **(1)** The council of any municipality desiring to amend its ordinance shall designate a time  
20 and place for a public hearing upon the proposal to include additional property. The notice shall  
21 meet the requirements set forth in section six of this article.

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

25           **(d) *Application to West Virginia Development Office.*** — Following the hearing, the  
26 municipality may, by resolution, approve the filing of an application with the Development Office  
27 for the inclusion of the additional property in the district or for the removal of the applicable parcels  
28 from the district.

29           **(e) *Consideration by the Executive Director of the Development Office.*** — Before the  
30 Executive Director of the Development Office approves inclusion of the additional property in the  
31 district, the Development Office shall determine the amount of taxes levied by article fifteen,  
32 chapter eleven of this code that were collected by businesses located in the area the municipality  
33 proposes to add to the district in the same manner as the base amount of tax was determined  
34 when the district was first created. The State Treasurer shall also deposit one twelfth of this  
35 additional tax base amount into the General Revenue Fund each month, as provided in section  
36 twelve of this article.

37           **(f) *Legislative action required to include additional property.*** — After the Executive Director  
38 of the Development Office approves amending the boundaries of the district to include additional  
39 property, the Legislature must amend section nine of this article to allow levy of the special district  
40 excise tax on business located in geographic area to be included in the district. After the

41 Legislature amends said section, the municipality may then amend its ordinance: *Provided*, That  
42 the ordinance may not be effective any earlier than the first day of the calendar month that begins  
43 sixty days after the effective date of the amended ordinance imposing the levy of the special  
44 district excise tax on businesses located in the geographic area to be added to the boundaries of  
45 the district for which the tax is levied or the first day of a later calendar month as set forth in the  
46 ordinance of the municipality.

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

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

**§8-38-23. Joint economic opportunity development districts.**

1 (a) The Legislature hereby finds and declares that the citizens of the state would benefit  
2 from coordinated road construction efforts by county commissions and municipalities.

3 (b) Notwithstanding any other section of this code to the contrary, any two or more county  
4 commissions, any two or more municipalities, or any combination thereof, may: (1) Create a  
5 combined economic opportunity development district; (2) propose joint applications for the

6 districts; and (3) enter into one or more intergovernmental agreements between themselves  
7 and/or the Commissioner of Highways to share: (A) Project expenses; and (B) certain excise tax  
8 collections, on a pro rata or other basis, to facilitate construction of projects within the combined  
9 economic opportunity development district and to jointly take such other actions as are authorized  
10 in the County Economic Opportunity Development District Act.

11 (c) When a project begins in one county and ends in another county of this state, the  
12 county commission of each county included in a multicounty project may, by resolution, adopt a  
13 written intergovernmental agreement with each county and/or the Commissioner of Highways  
14 regarding the proposed multicounty project. When the project begins or passes through the  
15 corporate limits of a municipality, the governing body of that municipality may by resolution adopt  
16 a written intergovernmental agreement with the county or counties in which the project is located.

17 (d) No county commission or municipality may withdraw from an intergovernmental  
18 agreement as long as bonds or notes, remain outstanding the proceeds of which were used to  
19 finance construction of the project for which the written intergovernmental agreement was  
20 executed.

21 (e) No withdrawing county commission or municipality is entitled to the return of any money  
22 or property advanced to the project.

23 (f) Notwithstanding any provision of this code to the contrary, any county commission or  
24 municipality that creates an economic opportunity development district may enter into one or more  
25 intergovernmental agreements with one or more other counties or municipalities that also create  
26 an economic opportunity development district to finance, in whole or in part, one or more projects,  
27 to pool tax increment and other revenues to finance, in whole or in part, contiguous projects on a  
28 cash basis or to pay debt service on bonds or notes.

29 (g) The obligations of the parties under any intergovernmental agreement executed  
30 pursuant to this article is not debt within the meaning of sections six or eight, article X of the  
31 Constitution of West Virginia.

32           (h) Any intergovernmental agreement must be approved by resolution adopted by a  
33 majority vote of the county commission of each county participating in the agreement, by a  
34 majority vote of the governing body of each municipality participating in the agreement and by the  
35 Commissioner of Highways.

36           (i) The Commissioner of Highways is authorized to enter into intergovernmental  
37 agreements with county commissions and municipalities of this state, or with the federal  
38 government or any agency thereof, respecting the financing, planning, and construction of state  
39 roads and bridges, including related infrastructure if any, constructed, in whole or in part, pursuant  
40 to this article.

**§8-38-24. Application by Division of Highways.**

1           (a) The Commissioner of Highways may propose the creation by a county commission of  
2 an economic opportunity development district and project plans, or propose amendments to  
3 existing project plans.

4           (b) Projects proposed by the Commissioner of Highways are limited to those related to the  
5 construction, reconstruction, improvement or modernization of state roads, as defined in article  
6 four, chapter seventeen of this code, that are part of the state road system, as defined in that  
7 article or that will become part of the state road system upon completion of the construction. All  
8 construction, reconstruction, improvement or modernization and maintenance of state roads shall  
9 be done by or under the supervision of the Commissioner of Highways.

10           (c) All road projects that are accepted as part of the state road system, and all real property  
11 interests and appurtenances, shall be under the exclusive jurisdiction and control of the  
12 Commissioner of Highways, who may exercise the same rights and authority as he or she has  
13 over other transportation facilities in the state road system.

14           (d) Except as provided in an intergovernmental agreement executed by one or more  
15 county commissions, municipalities and/or the Commissioner of Highways and as provided in this  
16 article, a county commission or municipality may not be required to pay for the cost of

17 constructing, reconstructing, improving, maintaining a road that is part of the state road system  
18 as defined in article four, chapter seventeen of this code or to pay any other expense fairly related  
19 to that road.

20 (e) The powers conferred by this article on the Commissioner of Highways or the Division  
21 of Highways are in addition and supplemental to the powers conferred upon the Commissioner of  
22 Highways, the Division of Highways, and the Department of Transportation by the Legislature  
23 elsewhere in this code.

## **CHAPTER 11. TAXATION.**

### **ARTICLE 10. WEST VIRGINIA TAX PROCEDURE AND ADMINISTRATION ACT.**

#### **§11-10-11a. Administration of special district excise tax; commission authorized.**

1 (a) Any municipality or county commission which, pursuant to section twelve, article  
2 twenty-two, chapter seven of this code, or section twelve, article thirty-eight, chapter eight of this  
3 code imposes a special district excise tax shall, by express provision in the order or ordinance  
4 imposing that tax, authorize the State Tax Commissioner to administer, assess, collect and  
5 enforce that tax on behalf of and as its agent.

6 (1) The county commission or municipality shall make such authorization by the adoption  
7 of a provision in its order or ordinance levying a special district excise tax stating its purpose and  
8 referring to this section and providing that the order or ordinance shall be effective on the first day  
9 of a month at least sixty days after its adoption.

10 (2) A certified copy of the order or ordinance shall be forwarded to the State Auditor, the  
11 State Treasurer and the Tax Commissioner so that it will be received within five days after its  
12 adoption or enactment.

13 (b) Any special district excise tax administered under this section shall be administered  
14 and collected by the Tax Commissioner in the same manner and subject to the same interest,  
15 additions to tax and penalties as provided for the tax imposed in article fifteen of this chapter.

16           (c) All special district excise tax moneys collected by the Tax Commissioner under this  
17 section shall be paid into the State Treasury to the credit of each county commission's subaccount  
18 in the economic opportunity development district fund created pursuant to section nine, article  
19 twenty-two, chapter seven of this code, or to the credit of each municipality's subaccount in the  
20 economic opportunity development district fund created pursuant to section nine, article thirty-  
21 eight, chapter eight of this code, for the particular economic opportunity development district. The  
22 special district excise tax moneys shall be credited to the subaccount of each particular county  
23 commission or municipality levying a special district excise tax being administered under this  
24 section. The credit shall be made to the subaccount of the county commission or municipality for  
25 the economic opportunity development district in which the taxable sales were made and taxable  
26 services rendered as shown by the records of the Tax Commissioner and certified by him or her  
27 monthly to the State Treasurer, namely, the location of each place of business of every vendor  
28 collecting and paying the tax to the Tax Commissioner without regard to the place of possible use  
29 by the purchaser.

30           (d) As soon as practicable after the special district excise tax moneys have been paid into  
31 the State Treasury in any month for the preceding reporting period, the district board or the county  
32 commission or municipality imposing the tax may issue a requisition to the State Auditor  
33 requesting issuance of a state warrant for the proper amount in favor of each county commission  
34 or municipality entitled to the monthly remittance of its special district excise tax moneys.

35           (1) Upon receipt of the requisition, the Auditor shall issue his or her warrant on the State  
36 Treasurer for the funds requested and the State Treasurer shall pay the warrant out of the  
37 subaccount.

38           (2) If errors are made in any payment, or adjustments are otherwise necessary, whether  
39 attributable to refunds to taxpayers or to some other fact, the errors shall be corrected and  
40 adjustments made in the payments for the next six months as follows: One sixth of the total  
41 adjustment shall be included in the payments for the next six months. In addition, the payment

42 shall include a refund of amounts erroneously not paid to the county commission or the  
43 municipality and not previously remitted during the three years preceding the discovery of the  
44 error.

45 (3) A correction and adjustment in payments described in this subsection due to the  
46 misallocation of funds by the vendor shall be made within three years of the date of the payment  
47 error.

48 (e) Notwithstanding any other provision of this code to the contrary, the Tax Commissioner  
49 shall deduct and retain for the benefit of his or her office for expenditure pursuant to appropriation  
50 of the Legislature from each payment into the State Treasury, as provided in subsection (c) of this  
51 section, one percent thereof as a commission to compensate his or her office for the discharge of  
52 the duties described in this section.

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

  
.....  
Chairman, House Committee

  
.....  
Chairman, Senate Committee

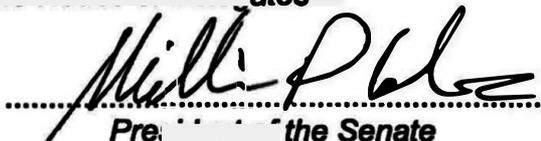
Originating in the House.

In effect ninety days from passage.

  
.....  
Clerk of the House of Delegates

  
.....  
Clerk of the Senate

  
.....  
Speaker of the Delegates

  
.....  
President of the Senate

The within is approved this the 24<sup>th</sup> day of March, 2016.

  
.....  
Governor

**PRESENTED TO THE GOVERNOR**

MAR 22 2018

Time 3:26 pm