



1 municipalities are not required to seek approval when amending  
 2 project plans if the project is not enlarged or the total  
 3 amount of indebtedness increased; providing that development  
 4 or redevelopment districts shall not be terminated so long as  
 5 tax increment financing obligations remain outstanding;  
 6 clarifying the time when bonds may be refunded or refinanced  
 7 and when refunding bonds may be issued in principal amounts;  
 8 and providing technical corrections.

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

10 That §7-11B-3, §7-11B-4, §7-11B-7, §7-11B-8, §7-11B-9, §7-11B-  
 11 10, §7-11B-17 and §7-11B-22 of the Code of West Virginia, 1931, as  
 12 amended, be amended and reenacted all to read as follows:

13 **ARTICLE 11B. WEST VIRGINIA TAX INCREMENT FINANCING ACT.**

14 **§7-11B-3. Definitions.**

15 (a) *General.* -- When used in this article, words and phrases  
 16 defined in this section shall have the meanings ascribed to them in  
 17 this section unless a different meaning is clearly required either  
 18 by the context in which the word or phrase is used or by specific  
 19 definition in this article.

20 (b) *Words and phrases defined.* --

21 (1) "Agency" includes a municipality, a county or municipal  
 22 development agency established pursuant to authority granted in  
 23 section one, article twelve of this chapter, a port authority, an  
 24 airport authority or ~~any~~ other entity created by this state or an

1 agency or instrumentality of this state that engages in economic  
2 development activity.

3 (2) "Base assessed value" means the taxable assessed value of  
4 all real and tangible personal property, excluding personal motor  
5 vehicles, having a tax situs within a development or redevelopment  
6 district as shown upon the landbooks and personal property books of  
7 the assessor on July 1 of the calendar year preceding the  
8 effective date of the order or ordinance creating and establishing  
9 the development or redevelopment district.

10 (3) "Blighted area" means an area within the boundaries of a  
11 redevelopment district located within the territorial limits of a  
12 municipality or county in which the structures, buildings or  
13 improvements, by reason of dilapidation, deterioration, age or  
14 obsolescence, inadequate provision for access, ventilation, light,  
15 air, sanitation, open spaces, high density of population and  
16 overcrowding or the existence of conditions which endanger life or  
17 property, are detrimental to the public health, safety, morals or  
18 welfare. "Blighted area" includes any area which, by reason of the  
19 presence of a substantial number of substandard, slum, deteriorated  
20 or deteriorating structures, predominance of defective or  
21 inadequate street layout, faulty lot layout in relation to size,  
22 adequacy, accessibility or usefulness, unsanitary or unsafe  
23 conditions, deterioration of site or other improvements, diversity  
24 of ownership, defective or unusual conditions of title or the

1 existence of conditions which endanger life or property by fire and  
2 other causes, or any combination of such factors, substantially  
3 impairs or arrests the sound growth of a municipality, retards the  
4 provision of housing accommodations or constitutes an economic or  
5 social liability and is a menace to the public health, safety,  
6 morals or welfare in its present condition and use, or any area  
7 which is predominantly open and which because of lack of  
8 accessibility, obsolete platting, diversity of ownership,  
9 deterioration of structures or of site improvements, or otherwise,  
10 substantially impairs or arrests the sound growth of the community.

11 (4) "Conservation area" means any improved area within the  
12 boundaries of a development or redevelopment district located  
13 within the territorial limits of a municipality or county in which  
14 fifty percent or more of the structures in the area have an age of  
15 thirty-five years or more. A conservation area is not yet a  
16 blighted area but is detrimental to the public health, safety,  
17 morals or welfare and may become a blighted area because of any one  
18 or more of the following factors: Dilapidation, obsolescence,  
19 deterioration, illegal use of individual structures, presence of  
20 structures below minimum code standards, abandonment, excessive  
21 vacancies, overcrowding of structures and community facilities,  
22 lack of ventilation, light or sanitary facilities, inadequate  
23 utilities, excessive land coverage, deleterious land use or layout,  
24 depreciation of physical maintenance and lack of community

1 planning. A conservation area shall meet at least three of the  
2 factors provided in this subdivision.

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

6 (6) "Current assessed value" means the annual taxable assessed  
7 value of all real and tangible personal property, excluding  
8 personal motor vehicles, having a tax situs within a development or  
9 redevelopment district as shown upon the landbook and personal  
10 property records of the assessor.

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

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

23 (A) The acquisition of land and improvements, if any, within  
24 the development or redevelopment district and clearance or

1 remediation, or both, of the land so acquired; or

2       (B) The development, redevelopment, revitalization or  
3 conservation of the project area whenever necessary to provide land  
4 for needed public facilities, public housing, or industrial or  
5 commercial development or revitalization, to eliminate unhealthful,  
6 unsanitary or unsafe conditions, to lessen density, mitigate or  
7 eliminate traffic congestion, reduce traffic hazards, eliminate  
8 obsolete or other uses detrimental to public welfare or otherwise  
9 remove or prevent the spread of blight or deterioration;

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

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

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

1           (9) "Development or redevelopment district" means an area  
2 proposed by one or more agencies as a development or redevelopment  
3 district, which may include one or more counties, one or more  
4 municipalities or any combination, ~~thereof~~, that has been approved  
5 by the county commission of each county in which the project area  
6 is located if the project is located outside the corporate limits  
7 of a municipality, or by the governing body of a municipality if  
8 the project area is located within a municipality, or by both the  
9 county commission and the governing body of the municipality when  
10 the development or redevelopment district is located both within  
11 and without a municipality.

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

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

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

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

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

5 (12) "Incremental value" for ~~any~~ a development or  
6 redevelopment district means the difference between the base  
7 assessed value and the current assessed value. The incremental  
8 value will be positive if the current value exceeds the base value  
9 and the incremental value will be negative if the current value is  
10 less than the base assessed value.

11 (13) "Includes" and "including" when used in a definition  
12 contained in this article ~~shall not be deemed to~~ does not exclude  
13 other things otherwise within the meaning of the term being  
14 defined.

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

20 (15) "Municipality" means any Class I, Class II and Class III  
21 city and any Class IV town or village heretofore or hereafter  
22 incorporated as a municipal corporation under the laws of this  
23 state.

24 ~~(15)~~ (16) "Obligations" or "tax increment financing

1 obligations" means bonds, loans, debentures, notes, special  
2 certificates or other evidences of indebtedness issued by a county  
3 commission or municipality pursuant to this article to carry out a  
4 development or redevelopment project or to refund outstanding  
5 obligations under this article.

6 ~~(16)~~ (17) "Order" means an order of the county commission  
7 adopted in conformity with the provisions of this article and as  
8 provided in this chapter.

9 ~~(17)~~ (18) "Ordinance" means a law adopted by the governing  
10 body of a municipality in conformity with the provisions of this  
11 article and as provided in chapter eight of this code.

12 ~~(18)~~ (19) "Payment in lieu of taxes" means those estimated  
13 revenues from real property and tangible personal property having  
14 a tax situs in the area selected for a development or redevelopment  
15 project which revenues, according to the development or  
16 redevelopment project or plan, are to be used for a private use and  
17 which levying bodies would have received had a county or  
18 municipality not adopted one or more tax increment financing plans  
19 and which would result from levies made after the date of adoption  
20 of a tax increment financing plan during the time the current  
21 assessed value of all taxable real and tangible personal property  
22 in the area selected for the development or redevelopment project  
23 exceeds the total base assessed value of all taxable real and  
24 tangible personal property in the development or redevelopment

1 district until the designation is terminated as provided in this  
2 article.

3 ~~(19)~~ (20) "Person" means ~~any~~ a natural person and ~~any~~ a  
4 corporation, association, partnership, limited partnership, limited  
5 liability company or other entity, regardless of its form,  
6 structure or nature, other than a government agency or  
7 instrumentality.

8 ~~(20)~~ (21) "Private project" means any project that is subject  
9 to ad valorem property taxation in this state or to a payment in  
10 lieu of tax agreement that is undertaken by a project developer in  
11 accordance with a tax increment financing plan in a development or  
12 redevelopment district.

13 ~~(21)~~ (22) "Project" means any capital improvement, facility  
14 or both, as specifically set forth and defined in the project plan,  
15 requiring an investment of capital, including, but not limited to,  
16 extensions, additions or improvements to existing facilities,  
17 including water or wastewater facilities, and the remediation of  
18 ~~contaminated property as provided for in article twenty-two,~~  
19 ~~chapter twenty-two of this code~~ property located within the  
20 development or redevelopment district as provided herein but does  
21 not include performance of any governmental service by a county or  
22 municipal government.

23 ~~(22)~~ (23) "Project area" means an area within the boundaries  
24 of a development or redevelopment district in which a development

1 or redevelopment project is undertaken as specifically set forth  
2 and defined in the project plan.

3 ~~(23)~~ (24) "Project costs" means expenditures made in  
4 preparation of the development or redevelopment project plan and  
5 made, or estimated to be made, or monetary obligations incurred, or  
6 estimated to be incurred, by the county commission which are listed  
7 in the project plan as capital improvements within a development or  
8 redevelopment district, plus any costs incidental thereto. "Project  
9 costs" include, but are not limited to:

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

17 (B) Costs of remediation of publicly or privately owned  
18 landfills, former coal mining sites, solid waste facilities or  
19 hazardous waste sites to facilitate commercial development which  
20 would not otherwise be economically feasible;

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

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

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

9       ~~(E)~~ (F) Imputed administrative costs, including, but not  
10 limited to, reasonable charges for time spent by county employees  
11 or municipal employees in connection with the implementation of a  
12 project plan;

13       ~~(F)~~ (G) Relocation costs, including, but not limited to, ~~those~~  
14 relocation payments made following condemnation and job training  
15 and retraining;

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

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

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

9       ~~(24)~~ (25) "Project developer" means any person who engages in  
10 the development of projects in the state.

11       ~~(25)~~ (26) "Project plan" means the plan for a development or  
12 redevelopment project that is adopted by a county commission or  
13 governing body of a municipality in conformity with the  
14 requirements of this article and this chapter or chapter eight of  
15 this code.

16       ~~(26)~~ (27) "Real property" means all lands, including  
17 improvements and fixtures on them and property of any nature  
18 appurtenant to them or used in connection with them and every  
19 estate, interest and right, legal or equitable, in them, including  
20 terms of years and liens by way of judgment, mortgage or otherwise,  
21 and indebtedness secured by the liens.

22       ~~(27)~~ (28) "Redevelopment area" means an area designated by a  
23 county commission or the governing body of a municipality in  
24 respect to which the commission or governing body has made a

1 finding that there exist conditions which cause the area to be  
2 classified as a blighted area, a conservation area, an economic  
3 development area or a combination thereof, which area includes only  
4 those parcels of real property directly and substantially  
5 benefitted by the proposed redevelopment project located within the  
6 development or redevelopment district or ~~land contiguous thereto.~~  
7 contiguous land.

8 (29) "Remediation" means measures undertaken to bring about  
9 the reconditioning or restoration of property located within the  
10 boundaries of a development or redevelopment district that has been  
11 affected by exploration, mining, industrial operations or solid  
12 waste disposal and which measures, when undertaken, will eliminate  
13 or ameliorate the existing state of the property and enable the  
14 property to be commercially developed.

15 ~~(28)~~ (30) "Redevelopment plan" means the comprehensive program  
16 under this article of a county or municipality for redevelopment  
17 intended by the payment of redevelopment costs to reduce or  
18 eliminate those conditions, the existence of which qualified the  
19 redevelopment area as a blighted area, conservation area, economic  
20 development area or combination thereof and to thereby enhance the  
21 tax bases of the levying bodies which extend into the redevelopment  
22 area. Each redevelopment plan shall conform to the requirements of  
23 this article.

24 ~~(29)~~ (31) "Tax increment" means the amount of regular levy

1 property taxes attributable to the amount by which the current  
 2 assessed value of real and tangible personal property having a tax  
 3 situs in a development or redevelopment district exceeds the base  
 4 assessed value of the property.

5 ~~(30)~~ (32) "Tax increment financing fund" means a separate fund  
 6 for a development or redevelopment district established by the  
 7 county commission or governing body of the municipality into which  
 8 all tax increment revenues and other pledged revenues are deposited  
 9 and from which projected project costs, debt service and other  
 10 expenditures authorized by this article are paid.

11 ~~(31)~~ (33) "This code" means the Code of West Virginia, 1931,  
 12 as amended by the Legislature.

13 ~~(32)~~ (34) "Total ad valorem property tax regular levy rate"  
 14 means the aggregate levy rate of all levying bodies on all taxable  
 15 property having a tax situs within a development or redevelopment  
 16 district in a tax year but does not include excess levies, levies  
 17 for general obligation bonded indebtedness or any other levies that  
 18 are not regular levies.

19 **§7-11B-4. Powers generally.**

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

24 (1) Create development and redevelopment areas or districts

1 and to define the boundaries of those areas or districts;

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

5 (3) Establish tax increment financing funds for each  
6 development or redevelopment district;

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

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

11 (6) Enter into any contracts or agreements, including, but not  
12 limited to, agreements with project developers, consultants,  
13 professionals, financing institutions, trustees and bondholders  
14 determined by the county commission to be necessary or convenient  
15 to implement the provisions and effectuate the purposes of project  
16 plans which may include provisions for reimbursement of project  
17 costs expended by such entities from tax increment or the proceeds  
18 of tax increment financing obligations;

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

23 (8) Exercise the right of eminent domain to condemn property  
24 for the purposes of implementing the project plan with the rules

1 and procedures set forth in chapter fifty-four of this code ~~shall~~  
2 ~~govern~~ governing all condemnation proceedings authorized in this  
3 article;

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

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

12       (11) Cause parks, playgrounds or water, sewer or drainage  
13 facilities or any other public improvements, including, but not  
14 limited to, fire stations, community centers and other public  
15 buildings which the county commission is otherwise authorized to  
16 undertake to be laid out, constructed or furnished in connection  
17 with the development or redevelopment project. When the public  
18 improvement of the county commission is to be located, in whole or  
19 in part, within the corporate limits of a municipality, the county  
20 commission shall consult with the mayor and the governing body of  
21 the municipality regarding the public improvement and shall pay for  
22 the cost of the public improvement from the tax increment financing  
23 fund;

24       (12) Lay out and construct, alter, relocate, change the grade

1 of, make specific repairs upon or discontinue public ways and  
2 construct sidewalks in, or adjacent to, the project area. ~~Provided,~~  
3 ~~That~~ When the public way or sidewalk is located within a  
4 municipality, the governing body of the municipality shall consent  
5 ~~to the same~~ and if the public way is a state road, the consent of  
6 the commissioner of highways ~~shall be~~ is necessary;

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

12 (14) Construct any capital improvements of a public nature;

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

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

19 (17) Designate one or more official or employee of the county  
20 commission to make decisions and handle the affairs of development  
21 and redevelopment project areas or ~~districts~~ district created by  
22 the county commission pursuant to this article;

23 (18) Adopt orders, ordinances or bylaws or repeal or modify  
24 such ordinances or bylaws or establish exceptions to existing

1 ordinances and bylaws regulating the design, construction and use  
2 of buildings within the development or redevelopment district  
3 created by a county commission or governing body of a municipality  
4 under this article;

5 ~~(19) Enter orders, adopt bylaws or repeal or modify such~~  
6 ~~orders or bylaws or establish exceptions to existing orders and~~  
7 ~~bylaws regulating the design, construction and use of buildings~~  
8 ~~within the development or redevelopment district created by a~~  
9 ~~county commission or governing body of a municipality under this~~  
10 ~~article;~~

11 ~~(20)~~ (19) Sell, mortgage, lease, transfer or dispose of any  
12 property or interest therein, by contract or auction, acquired by  
13 it the county commission or governing body of the municipality  
14 pursuant to the project plan for development, redevelopment or  
15 rehabilitation in accordance with the project plan;

16 ~~(21)~~ (20) Expend project revenues as provided in this article;  
17 and

18 (21) Temporarily finance any project costs through the  
19 issuance of bonds, loans, debentures, notes, special certificates  
20 or other evidences of indebtedness or the expenditure of the  
21 General Funds of a county commission or municipality: Provided,  
22 That any temporary financing may be paid from tax increments or the  
23 proceeds of any tax increment financing obligations and any  
24 expenditure of general funds for such costs may be reimbursed from

1 tax increment or the proceeds of any tax increment financing  
2 obligations; and

3 (22) Do all things necessary or convenient to carry out the  
4 powers granted in this article.

5 **§7-11B-7. Creation of a development or redevelopment or district.**

6 (a) County commissions and the governing bodies of ~~Class I and~~  
7 ~~II~~ municipalities, upon their own initiative or upon application of  
8 an agency or a developer, may propose creation of a development or  
9 redevelopment district and designate the boundaries of the district  
10 ~~Provided, That a district may not include noncontiguous land. which~~  
11 must be comprised of contiguous land.

12 (b) The county commission or municipality proposing creation  
13 of a development or redevelopment district shall then hold a public  
14 hearing at which interested parties are afforded a reasonable  
15 opportunity to express their views on the proposed creation of a  
16 development or redevelopment district and its proposed boundaries.

17 (1) Notice of the hearing shall be published as a Class II  
18 legal advertisement in accordance with section two, article three,  
19 chapter fifty-nine of this code.

20 (2) The notice shall include the time, place and purpose of  
21 the public hearing, describe in sufficient detail the tax increment  
22 financing plan, the proposed boundaries of the development or  
23 redevelopment district and, when a development or redevelopment  
24 project plan is being proposed, the proposed tax increment

1 financing obligations to be issued to finance the development or  
2 redevelopment project costs.

3 (3) Prior to the first day of publication, a copy of the  
4 notice shall be sent by first-class mail to the director of the  
5 Development Office and to the chief executive officer of all other  
6 local levying bodies having the power to levy taxes on real and  
7 tangible personal property located within the proposed development  
8 or redevelopment district.

9 (4) All parties who appear at the hearing shall be afforded an  
10 opportunity to express their views on the proposal to create the  
11 development or redevelopment district and, if applicable, the  
12 development or redevelopment project plan and proposed tax  
13 increment financing obligations.

14 (c) After the public hearing, the county commission or the  
15 governing body of the municipality, shall finalize the boundaries  
16 of the development or redevelopment district, the development or  
17 redevelopment project plan, or both, and submit the same to the  
18 director of the Development Office for his or her review and  
19 approval. The director, within sixty days after receipt of the  
20 application, shall approve the application as submitted, reject the  
21 application or return the application to the county commission or  
22 governing body of the municipality for further development or  
23 review in accordance with instructions of the director of the  
24 Development Office. A development or redevelopment district or

1 development or redevelopment project plan may not be adopted by the  
2 county commission or the governing body of a municipality until  
3 ~~after~~ it has been approved by the ~~executive~~ director of the  
4 Development Office. On February 1 and August 1 of each year, the  
5 director of the Development Office shall deliver to the Legislature  
6 of this state an itemized list of all applications seeking approval  
7 of :(i) the boundaries of a development or redevelopment district  
8 and :(ii) a development or redevelopment project plan, or both,  
9 that have not been approved, rejected or returned to the county  
10 commission or governing body of the municipality as required  
11 herein. Such itemized list shall include a detailed explanation of  
12 the reasons why such applications, if any, have not been approved,  
13 rejected or returned to the county commission or governing body of  
14 the municipality within the timeframe provided herein.

15 (d) Upon approval of the application by the Development  
16 Office, the county commission may enter an order and the governing  
17 body of the municipality proposing the district or development or  
18 redevelopment project plan may adopt an ordinance that:

19 (1) Describes the boundaries of a development or redevelopment  
20 district sufficiently to identify with ordinary and reasonable  
21 certainty the territory included in the district, which boundaries  
22 shall create a contiguous district;

23 (2) Creates the development or redevelopment district as of a  
24 date provided in the order or ordinance;

1           (3) Assigns a name to the development or redevelopment  
2 district for identification purposes and which:

3           (A) ~~The name~~ May include a geographic or other designation;

4           (B) Shall identify the county or municipality authorizing the  
5 district; and

6           (C) Shall be assigned a number, beginning with the number one  
7 ~~(B) Each subsequently~~ and each subsequently created district in the  
8 county or municipality shall be assigned the next consecutive  
9 number;

10          (4) Contains findings that the real property within the  
11 development or redevelopment district will be benefitted by  
12 eliminating or preventing the development or spread of slums or  
13 blighted, deteriorated or deteriorating areas, discouraging the  
14 loss of commerce, industry or employment, increasing employment or  
15 any combination thereof;

16          (5) Approves the development or redevelopment project plan, if  
17 applicable;

18          (6) Establishes a tax increment financing fund as a separate  
19 fund into which all tax increment revenues and other revenues  
20 designated by the county commission or governing body of the  
21 municipality for the benefit of the development or redevelopment  
22 district shall be deposited and from which all project costs shall  
23 be paid, which may be assigned to and held by a trustee for the  
24 benefit of bondholders if tax increment financing obligations are

1 issued by the county commission or the governing body of the  
2 municipality; and

3 (7) Provides that ad valorem property taxes on real and  
4 tangible personal property having a tax situs in the development or  
5 redevelopment district shall be assessed, collected and allocated  
6 in the following manner, commencing upon the date of adoption of  
7 such order or ordinance and continuing for so long as any tax  
8 increment financing obligations ~~are~~ payable from the tax increment  
9 financing fund, hereinafter authorized, are outstanding and unpaid:

10 (A) For each tax year, the county assessor shall record in the  
11 land and personal property books both the base assessed value and  
12 the current assessed value of the real and tangible personal  
13 property having a tax situs in the development or redevelopment  
14 district;

15 (B) Ad valorem taxes collected from regular levies upon real  
16 and tangible personal property having a tax situs in the district  
17 that are attributable to the lower of the base assessed value or  
18 the current assessed value of real and tangible personal property  
19 located in the development project shall be allocated to the  
20 levying bodies in the same manner as applicable to the tax year in  
21 which the development or redevelopment project plan is adopted by  
22 order of the county commission or by ordinance adopted by the  
23 governing body of the municipality;

24 (C) The tax increment with respect to real and tangible

1 personal property in the development or redevelopment district  
2 shall be allocated and paid into the tax increment financing fund  
3 and shall be used to pay the principal of and interest on tax  
4 increment financing obligations issued to finance the costs of the  
5 development or redevelopment projects in the development or  
6 redevelopment district. Any levying body having a development or  
7 redevelopment district within its taxing jurisdiction shall not  
8 receive any portion of the annual tax increment except as otherwise  
9 provided in this article; and

10 (D) In no event shall the tax increment include any taxes  
11 collected from excess levies, levies for general obligation bonded  
12 indebtedness or any levies other than the regular levies provided  
13 for in article eight, chapter eleven of this code.

14 (e) Proceeds from tax increment financing obligations issued  
15 under this article may only be used to pay for costs of development  
16 or redevelopment projects to foster economic development in the  
17 development or redevelopment district or ~~land contiguous thereto.~~  
18 contiguous land.

19 (f) Notwithstanding subsection ~~(e)~~ (d) of this section, a  
20 county commission may not enter an order approving a development or  
21 redevelopment project plan unless the county commission expressly  
22 finds and states in the order that the development or redevelopment  
23 project is not reasonably expected to occur without the use of tax  
24 increment financing.

1 (g) Notwithstanding subsection ~~(e)~~ (d) of this section, the  
2 governing body of a municipality may not adopt an ordinance  
3 approving a development or redevelopment project plan unless the  
4 governing body expressly finds and states in the ordinance that the  
5 development or redevelopment project is not reasonably expected to  
6 occur without the use of tax increment financing.

7 (h) No county commission shall establish a development or  
8 redevelopment district any portion of which is within the boundaries  
9 of a ~~Class I or Class II~~ municipality without the formal consent of  
10 the governing body of such municipality.

11 (i) A tax increment financing plan that has been approved by  
12 a county commission or the governing body of a municipality may be  
13 amended by following the procedures set forth in this article for  
14 adoption of a new development or redevelopment project plan.

15 (j) The county commission may modify the boundaries of the  
16 development or redevelopment district, from time to time, by entry  
17 of an order modifying the order creating the development or  
18 redevelopment district.

19 (k) The governing body of a municipality may modify the  
20 boundaries of the development or redevelopment district, from time  
21 to time, by amending the ordinance establishing the boundaries of  
22 the district.

23 (l) Before a county commission or the governing body of a  
24 municipality may amend such an order or ordinance, the county

1 commission or municipality shall give the public notice, hold a  
2 public hearing and obtain the approval of the director of the  
3 Development Office, following the procedures for establishing a new  
4 development or redevelopment district. In the event any tax  
5 increment financing obligations are outstanding with respect to the  
6 development or redevelopment district, any change in the boundaries  
7 shall not reduce the amount of tax increment available to secure the  
8 outstanding tax increment financing obligations.

9 **§7-11B-8. Project plan - approval.**

10 (a) The county commission or municipality creating the district  
11 shall cause the preparation of a project plan for each development  
12 or redevelopment district and the project plan shall be adopted by  
13 order of the county commission or ordinance adopted by the governing  
14 body of the municipality after it is approved by the executive  
15 director of the Development Office. This process shall conform to  
16 the procedures set forth in this section.

17 (b) Each project plan shall include:

18 (1) A statement listing the kind, number and location of all  
19 proposed public works or other improvements within the district and  
20 on land outside but contiguous to the district;

21 (2) A cost-benefit analysis showing the economic impact of the  
22 plan on each levying body that is at least partially within the  
23 boundaries of the development or redevelopment district. This  
24 analysis shall show the impact on the economy if the project is not

1 built and is built pursuant to the development or redevelopment plan  
2 under consideration. The cost-benefit analysis shall include a  
3 fiscal impact study on every affected levying body and sufficient  
4 information from the developer for the agency, if any are proposing  
5 the plan, to enable the county commission ~~be asked~~ to approve the  
6 project and the Development Office to evaluate whether the project  
7 as proposed is financially feasible;

8 (3) An economic feasibility study;

9 (4) A detailed list of estimated project costs;

10 (5) A description of the methods of financing all estimated  
11 project costs including the issuance of tax increment obligations  
12 and the time when the costs or ~~monetary obligations related thereto~~  
13 related monetary obligations are to be incurred;

14 (6) A certification by the county assessor of the base assessed  
15 value of real and tangible personal property having a tax situs in  
16 a development or redevelopment district. ~~Provided, That~~ If such  
17 certification is made during the months of January or February of  
18 each year, the county assessor may certify an estimated base  
19 assessed value of real and tangible personal property having a tax  
20 situs in a development or redevelopment district ~~Provided, however,~~  
21 and that prior to issuance of tax increment obligations, the county  
22 assessor shall certify a final base assessed value for the estimated  
23 base assessed value permitted by this section;

24 (7) The type and amount of any other revenues that are expected

1 to be deposited to the tax increment financing fund of the  
2 development or redevelopment district;

3 (8) A map showing existing uses and conditions of real property  
4 in the development or redevelopment district;

5 (9) A map of proposed improvements and uses in the district;

6 (10) Proposed changes of zoning ordinances, if any;

7 (11) Appropriate cross-references to any master plan, map,  
8 building codes and municipal ordinances or county commission orders  
9 affected by the project plan;

10 (12) A list of estimated nonproject costs;

11 (13) A statement of the proposed method for the relocation of  
12 any persons, businesses or organizations to be displaced;

13 (14) A certificate from the executive director of the Workers'  
14 Compensation Commission, the Commissioner of the Bureau of  
15 Employment Programs and the State Tax Commissioner that the project  
16 developer, if any, is in good standing with the Workers'  
17 Compensation Commission, the Bureau of Employment Programs and the  
18 State Tax Division; and

19 (15) A certificate from the sheriff of the county or counties  
20 in which the development or redevelopment district is located that  
21 the project developer, if any, is not delinquent on payment of any  
22 real and personal property taxes in such county.

23 (c) If the project plan is to include tax increment financing,  
24 the tax increment financing portion of the plan shall set forth:

1 (1) The amount of indebtedness to be incurred pursuant to this  
2 article;

3 (2) An estimate of the tax increment to be generated as a  
4 result of the project;

5 (3) The method for calculating the tax increment which shall  
6 be in conformance with the provisions of this article together with  
7 any provision for adjustment of the method of calculation;

8 (4) Any other revenues, such as payment in lieu of tax  
9 revenues, to be used to secure the tax increment financing; and

10 (5) ~~Any~~ Other provisions as may be deemed necessary in order  
11 to carry out any tax increment financing to be used for the  
12 development or redevelopment project.

13 (d) If less than all of the tax increment is to be used to fund  
14 a development or redevelopment project or to pay project costs or  
15 retire tax increment financing obligations, the project plan shall  
16 set forth the portion of the tax increment to be deposited in the  
17 tax increment financing fund of the development or redevelopment  
18 district and provide for the distribution of the remaining portion  
19 of the tax increment to the levying bodies in whose jurisdiction the  
20 district lies.

21 (e) The county commission or governing body of the municipality  
22 that established the tax increment financing fund shall hold a  
23 public hearing at which interested parties shall be afforded a  
24 reasonable opportunity to express their views on the proposed

1 project plan being considered by the county commission or the  
2 governing body of the municipality.

3 (1) Notice of the hearing shall be published as a Class II  
4 legal advertisement in accordance with section two, article three,  
5 chapter fifty-nine of this code.

6 (2) Prior to this publication, a copy of the notice shall be  
7 sent by first-class mail to the chief executive officer of all other  
8 levying bodies having the power to levy taxes on property located  
9 within the proposed development or redevelopment district.-

10 (f) Approval by the county commission or the governing body of  
11 a municipality of an initial development or redevelopment project  
12 plan must be within one year after the date of the county assessor's  
13 certification required by subdivision (6), subsection (b) of this  
14 section. ~~Provided, That~~ Additional development or redevelopment  
15 project plans may be approved by the county commission or the  
16 governing body of a municipality in subsequent years so long as the  
17 development or redevelopment district continues to exist. The  
18 approval shall be by order of the county commission or ordinance of  
19 the municipality which shall contain a finding that the plan is  
20 economically feasible.

21 **§7-11B-9. Project plan - amendment.**

22 (a) The county commission may by order, or the governing body  
23 of a municipality by ordinance, adopt an amendment to a project  
24 plan.

1 (b) Adoption of an amendment to a project plan shall be  
2 preceded by a public hearing held by the county commission or  
3 governing body of the municipality at which interested parties shall  
4 be afforded a reasonable opportunity to express their views on the  
5 amendment.

6 (1) Notice of the hearing shall be published as a Class II  
7 legal advertisement in accordance with section two, article three,  
8 chapter fifty-nine of this code.

9 (2) Prior to publication, a copy of the notice shall be sent  
10 by first-class mail to the chief executive officer of all other  
11 local levying bodies having the power to levy taxes on property  
12 within the development or redevelopment district.

13 (3) Copies of the proposed plan amendments shall be made  
14 available to the public at the county clerk's office or municipal  
15 clerk's office at least fifteen days prior to the hearing.

16 (c) One or more existing development or redevelopment districts  
17 may be combined pursuant to lawfully adopted amendments to the  
18 original plans for each district: *Provided*, That the county  
19 commission or governing body of the municipality finds that the  
20 combination of the districts will not impair the security for any  
21 tax increment financing obligations previously issued pursuant to  
22 this article.

23 (d) A municipality or county commission is not required to  
24 obtain the approval of the director of the Development Office prior

1 to amending a project plan if the amendment does not enlarge the  
2 development or redevelopment district or increase the total amount  
3 of indebtedness contained in the tax increment financing portion of  
4 the project plan application.

5 **§7-11B-10. Termination of development or redevelopment district.**

6 (a) No development or redevelopment district may be in  
7 existence for a period longer than thirty years and no tax increment  
8 financing obligations may have a final maturity date later than the  
9 termination date of the ~~area or~~ district.

10 (b) The county commission or governing body of the municipality  
11 creating the development or redevelopment district may set a shorter  
12 period for the existence of the district. In this event, no tax  
13 increment financing obligations may have a final maturity date later  
14 than the termination date of the district.

15 (c) Upon termination of the district, no further ad valorem tax  
16 revenues shall be distributed to the tax increment financing fund  
17 of the district.

18 (d) The county commission shall adopt, upon the expiration of  
19 the time periods set forth in this section, an order terminating the  
20 development or redevelopment district created by the county  
21 commission. ~~Provided, That No district shall~~ No district may be  
22 terminated so long as bonds tax increment financing obligations with  
23 respect to the district remain outstanding.

24 (e) The governing body of the county commission shall repeal,

1 upon the expiration of the time periods set forth in this section,  
 2 the ordinance establishing the development or redevelopment  
 3 district. ~~Provided, That no district shall~~ No district may be  
 4 terminated so long as ~~bonds~~ tax increment financing obligations with  
 5 respect to the district remain outstanding.

6 **§7-11B-17. Division of ad valorem real property tax revenue.**

7 (a) ~~For~~ So long as the development or redevelopment district  
 8 exists, the county sheriff shall divide the ad valorem tax revenue  
 9 collected, with respect to taxable property in the district, as  
 10 follows:

11 (1) The assessor shall determine for each tax year:

12 (A) The amount of ad valorem property tax revenue that should  
 13 be generated by multiplying the assessed value of the property for  
 14 the then current tax year by the aggregate of applicable levy rates  
 15 for the tax year;

16 (B) The amount of ad valorem tax revenue that should be  
 17 generated by multiplying the base assessed value of the property by  
 18 the applicable regular ad valorem levy rates for the tax year;

19 (C) The amount of ad valorem tax revenue that should be  
 20 generated by multiplying the assessed value of the property for the  
 21 current tax year by the applicable levy rates for general obligation  
 22 bond debt service for the tax year;

23 (D) The amount of ad valorem property tax revenue that should  
 24 be generated by multiplying the assessed value of the property for

1 the current tax year by the applicable excess levy rates for the tax  
2 year; and

3 (E) The amount of ad valorem property tax revenue that should  
4 be generated by multiplying the incremental value by the applicable  
5 regular levy rates for the tax year.

6 (2) The sheriff shall determine from the calculations set forth  
7 in subdivision (1) of this subsection the percentage share of total  
8 ad valorem revenue for each levying body according to paragraphs (B)  
9 through (D), inclusive, of said subdivision by dividing each of such  
10 amounts by the total ad valorem revenue figure determined by the  
11 calculation in paragraph (A) of said subdivision; and

12 (3) On each date on which ad valorem tax revenue is to be  
13 distributed to the levying bodies, such revenue shall be distributed  
14 by:

15 (A) Applying the percentage share determined according to  
16 paragraph (B), subdivision (1) of this subsection to the revenues  
17 received and distributing such share to the levying bodies entitled  
18 to such distribution pursuant to current law;

19 (B) Applying the percentage share determined according to  
20 paragraph (C), subdivision (1) of this subsection to the revenues  
21 received and distributing such share to the levying bodies entitled  
22 to such distribution by reason of having general obligation bonds  
23 outstanding;

24 (C) Applying the percentage share determined according to

1 paragraph (D), subdivision (1) of this subsection to the revenues  
2 received and distributing such share to the levying bodies entitled  
3 to such distribution by reason of having excess levies in effect for  
4 the tax year; and

5 (D) Applying the percentage share determined according to  
6 paragraph (E), subdivision (1) of this subsection to the revenues  
7 received and distributing such share to the tax increment financing  
8 fund of the development or redevelopment district.

9 (b) In each year for which there is a positive tax increment,  
10 the county sheriff shall remit to the tax increment financing fund  
11 of the development or redevelopment district that portion of the ad  
12 valorem property taxes collected that consists of the tax increment.

13 (c) Any additional moneys appropriated to the development or  
14 redevelopment district pursuant to an appropriation by the county  
15 commission that created the district and any additional moneys  
16 dedicated to the fund from other sources shall be deposited to the  
17 tax increment financing fund for the development or redevelopment  
18 district by the sheriff.

19 (d) Any funds deposited into the tax increment financing fund  
20 of the development or redevelopment district may be used to pay  
21 project costs, principal and interest on ~~bonds~~ tax increment  
22 financing obligations and the cost of any other improvements in the  
23 development or redevelopment district deemed proper by the county  
24 commission.

1 (e) Unless otherwise directed pursuant to ~~any~~ an agreement with  
2 the holders of tax increment financing obligations, moneys in the  
3 tax increment financing fund may be temporarily invested in the same  
4 manner as other funds of the county commission or the municipality  
5 that established the fund.

6 (f) If less than all of the tax increment is to be used for  
7 project costs or pledged to secure tax increment financing  
8 obligations as provided in the plan for the development or  
9 redevelopment district, the sheriff shall account for that fact in  
10 distributing the ad valorem property tax revenues.

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

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

16 (b) Tax increment financing obligations shall not be included  
17 in the computation of the Constitutional debt limitation of the  
18 county commission or municipality issuing the tax increment  
19 financing obligations.

20 (c) Tax increment financing obligations shall mature over a  
21 period not exceeding thirty years from the date of entry of the  
22 county commission's order, or the effective date of the municipal  
23 ordinance, creating the development or redevelopment district and  
24 approving the development or redevelopment plan, or a period

1 terminating with the date of termination of the development or  
2 redevelopment district, whichever period terminates earlier.

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

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

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

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

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

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

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

24 (k) The bonds may be refunded or refinanced and refunding bonds

1 may be issued in any principal amount: *Provided*, That the last  
2 maturity of the refunding bonds shall not be later than the ~~last~~  
3 ~~maturity of the bonds being refunded~~ maximum maturity provided in  
4 this article.

NOTE: The purpose of this bill is to clarify the power of municipalities to use tax increment financing for development and redevelopment projects. The bill also allows certain remediation projects to fall within the parameters of the article and provides that the Director of the Development Office must take action on applications for projects by a date certain or the projects are deemed approved by operation of law.

Strike-throughs indicate language that would be stricken from the present law and underscoring indicates new language that would be added.