

1 **Senate Bill No. 235**

2 (By Senators Kessler (Acting President) and Hall,

3 By Request of the Executive)

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5 [Introduced January 21, 2011; referred to the Committee on  
6 Energy, Industry and Mining; and then to the Committee on  
7 Finance.]

**FISCAL  
NOTE**

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11 A BILL to amend and reenact §7-22-3, §7-22-4, §7-22-5, §7-22-7,  
12 §7-22-10, §7-22-12, §7-22-15, §7-22-17 and §7-22-20 of the  
13 Code of West Virginia, 1931, as amended, all relating to  
14 revising the County Economic Opportunity Development District  
15 Act generally; defining the term "remediation"; including  
16 remediation of landfills, former coal mining sites, solid  
17 waste facilities or hazardous waste sites as permissible  
18 development expenditures for approved projects; changing  
19 standard by which the maximum amounts of reserves that may be  
20 established in the financing of a project are measured;  
21 providing that the Development Office cannot approve a project  
22 involving remediation unless all development expenditures  
23 proposed within a certain timeframe result in more than \$50  
24 million in capital investment in the district; changing  
25 "ordinance" to "order"; correcting language by changing

1 "municipality" to "county"; providing that the Development  
2 Office may not approve a project involving remediation unless  
3 the county commission submits clear and convincing information  
4 that the proposed remediation expenditures to be financed with  
5 bonds or notes do not constitute more than twenty-five percent  
6 of a project's total development expenditures; and providing  
7 technical and clerical cleanup.

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

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

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

13 **§7-22-3. Definitions.**

14 For purposes of this article, the term:

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

17 (2) "Development expenditures" means payments for governmental  
18 functions, programs, activities, facility construction,  
19 improvements and other goods and services which a district board is  
20 authorized to perform or provide under section five of this  
21 article;

22 (3) "District" means an economic opportunity development  
23 district created pursuant to this article;

24 (4) "District board" means a district board created pursuant  
25 to section ten of this article; and

1 (5) "Eligible property" means any taxable or exempt real  
2 property located in a district established pursuant to this  
3 article.

4 (6) "Remediation" means measures undertaken to bring about the  
5 reconditioning or restoration of property located within the  
6 boundaries of an economic opportunity development district that has  
7 been affected by exploration, mining, industrial operations or  
8 solid waste disposal and which measures, when undertaken, will  
9 eliminate or ameliorate the existing state of the property and  
10 enable the property to be commercially developed.

11 **§7-22-4. Authorization to create economic opportunity development**  
12 **districts.**

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

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

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

19 (3) Provide for the administration and financing of a  
20 continuing program of development ~~and redevelopment~~ expenditures  
21 within the districts.

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

23 Any county commission that has established an economic  
24 opportunity development district under this article may make, or  
25 authorize to be made by a district board and other public or

1 private parties, development expenditures as will promote the  
2 economic vitality of the district and the general welfare of the  
3 county, including, but not limited to, expenditures for the  
4 following purposes:

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

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

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

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

24 (5) Acquiring, building, demolishing, razing, constructing,  
25 repairing, reconstructing, refurbishing, renovating,

1 rehabilitating, expanding, altering, otherwise developing,  
2 operating and maintaining real property generally, parking  
3 facilities, commercial structures and other capital improvements to  
4 real property, fixtures and tangible personal property, whether or  
5 not physically situate within the district's boundaries: *Provided,*  
6 That the expenditure directly benefits the district;

7 (6) Developing plans for the architectural design of the  
8 district and portions thereof and developing plans and programs for  
9 the future development of the district;

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

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

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

18 (10) Providing any other services that the county commission  
19 or district board is authorized to perform and which the county  
20 commission does not also perform to the same extent on a countywide  
21 basis;

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

25 (12) Acquiring an interest in any entity or entities that own

1 any portion of the real property situate in the district and  
2 contributing capital to any entity or entities; ~~and~~

3 (13) Remediation of publicly or privately owned landfills,  
4 former coal mining sites, solid waste facilities or hazardous waste  
5 sites to facilitate commercial development which would not  
6 otherwise be economically feasible; and

7 ~~(13)~~ (14) To do any and all things necessary, desirable or  
8 appropriate to carry out and accomplish the purposes of this  
9 article notwithstanding any provision of this code to the contrary.

10 **§7-22-7. Application to development office for approval of an**  
11 **economic opportunity development district project.**

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

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

17 (2) The total cost of the project;

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

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

23 (5) A description of the proposed method of financing the  
24 development expenditures, together with a description of the  
25 reserves to be established for financing ongoing development ~~or~~

1 ~~redevelopment~~ expenditures necessary to permanently maintain the  
2 optimum economic viability of the district following its inception:  
3 *Provided*, That the amounts of the reserves ~~shall~~ may not exceed the  
4 amounts that would be required by ~~ordinary~~ prevailing commercial  
5 capital market considerations;

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

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

13 (8) Identification of any businesses that the county  
14 commission expects to relocate their business locations from the  
15 district to another place in the state in connection with the  
16 establishment of the district or from another place in this state  
17 to the district: *Provided*, That for purposes of this article, any  
18 entities shall be designated "relocated entities";

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

23 (10) A good faith estimate of the aggregate amount of  
24 consumers sales and service tax that was actually remitted to the  
25 Tax Commissioner by all business locations identified as provided

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

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

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

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

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



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

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

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

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

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

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

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

25          (7) Whether the project will, directly or indirectly, assist

1 in the creation of additional long-term employment opportunities in  
2 the area and the quality of jobs created in all phases of the  
3 project, to include, but not be limited to, wages and benefits;

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

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

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

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

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

15 (13) (A) The ability of the county commission and the project  
16 developer or project team to carry out the project: *Provided*, That  
17 no project may be approved by the development office unless the  
18 amount of all development expenditures proposed to be made in the  
19 first twenty-four months following the creation of the district  
20 results in capital investment of more than \$50 million in the  
21 district and the county submits clear and convincing information,  
22 to the satisfaction of the development office, that ~~such~~ the  
23 investment will be made if the development office approves the  
24 project and the Legislature authorizes the county commission to  
25 levy an excise tax on sales of goods and services made within the

1 economic opportunity district as provided in this article.

2       (B) Notwithstanding any provision of paragraph (A) of this  
3 subdivision to the contrary, no project involving remediation may  
4 be approved by the Development Office unless the amount of all  
5 development expenditures proposed to be made in the first  
6 forty-eight months following the creation of the district results  
7 in capital investment of more than \$50 million in the district. In  
8 addition to the remaining provisions of paragraph (A) of this  
9 subdivision the development office may not approve a project  
10 involving remediation authorized under section five of this article  
11 unless the county commission submits clear and convincing  
12 information, to the satisfaction of the development office, that  
13 the proposed remediation expenditures to be financed by the  
14 issuance of bonds or notes pursuant to section sixteen of this  
15 article do not constitute more than twenty-five percent of the  
16 total development expenditures associated with the project.

17       (c) *Additional criteria.* -- The development office may  
18 establish other criteria for consideration when approving the  
19 applications.

20       (d) *Action on the application.* -- The executive director of  
21 the development office shall act to approve or not approve any  
22 application within thirty days following the receipt of the  
23 application or the receipt of any additional information requested  
24 by the development office, whichever is the later.

25       (e) *Certification of project.* -- If the executive director of

1 the development office approves a county's economic opportunity  
2 district project application, he or she shall issue to the county  
3 commission a written certificate evidencing the approval.

4       The certificate shall expressly state a base tax revenue  
5 amount, the gross annual district tax revenue amount and the  
6 estimated net annual district tax revenue amount which, for  
7 purposes of this article, is the difference between the gross  
8 annual district tax revenue amount and the base tax revenue amount,  
9 all of which the development office has determined with respect to  
10 the district's application based on any investigation it considers  
11 reasonable and necessary, including, but not limited to, any  
12 relevant information the development office requests from the Tax  
13 Commissioner and the Tax Commissioner provides to the development  
14 office: *Provided*, That in determining the net annual district tax  
15 revenue amount, the development office may not use a base tax  
16 revenue amount less than that amount certified by the Tax  
17 Commissioner but, in lieu of confirmation from the Tax Commissioner  
18 of the gross annual district tax revenue amount, the development  
19 office may use the estimate of the gross annual district tax  
20 revenue amount provided by the county commission pursuant to  
21 subsection (a) of this section.

22       (f) *Certification of enlargement of geographic boundaries of*  
23 *previously certified district.* -- If the executive director of the  
24 development office approves a county's economic opportunity  
25 district project application to expand the geographic boundaries of

1 a previously certified district, he or she shall issue to the  
2 county commission a written certificate evidencing the approval.

3       The certificate shall expressly state a base tax revenue  
4 amount, the gross annual district tax revenue amount and the  
5 estimated net annual district tax revenue amount which, for  
6 purposes of this article, is the difference between the gross  
7 annual district tax revenue amount and the base tax revenue amount,  
8 all of which the development office has determined with respect to  
9 the district's application based on any investigation it considers  
10 reasonable and necessary, including, but not limited to, any  
11 relevant information the development office requests from the tax  
12 commissioner and the tax commissioner provides to the development  
13 office: *Provided*, That in determining the net annual district tax  
14 revenue amount, the development office may not use a base tax  
15 revenue amount less than that amount certified by the tax  
16 commissioner but, in lieu of confirmation from the Tax Commissioner  
17 of the gross annual district tax revenue amount, the development  
18 office may use the estimate of the gross annual district tax  
19 revenue amount provided by the county commission pursuant to  
20 subsection (a) of this section.

21       (g) *Promulgation of rules.* -- The executive director of the  
22 development office may promulgate rules to implement the economic  
23 opportunity development district project application approval  
24 process and to describe the criteria and procedures it has  
25 established in connection therewith. These rules are not subject to

1 the provisions of chapter twenty-nine-a of this code but shall be  
2 filed with the Secretary of State.

3 **§7-22-10. Ordinance Order to create district as approved by**  
4 **Development Office and authorized by the**  
5 **Legislature.**

6 (a) *General.* -- If an economic opportunity development  
7 district project has been approved by the executive director of the  
8 development office and the levying of a special district excise tax  
9 for the district has been authorized by the Legislature, all in  
10 accordance with this article, the county commission may create the  
11 district by order entered of record as provided in article one of  
12 this chapter: *Provided,* That the county commission may not amend,  
13 alter or change in any manner the boundaries of the economic  
14 opportunity development district authorized by the Legislature. In  
15 addition to all other requirements, the order shall contain the  
16 following:

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

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

22 (3) The base and rate of any special district excise tax that  
23 may be imposed upon sales by businesses for the privilege of  
24 operating within the district, which tax shall be passed on to and

1 paid by the consumer, and the manner in which the taxes will be  
2 imposed, administered and collected, all of which shall be in  
3 conformity with the requirements of this article; and

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

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

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

13 (C) To enter into contracts with any person, agency,  
14 government entity, agency or instrumentality, firm, partnership,  
15 limited partnership, limited liability company or corporation,  
16 including both public and private corporations, and for-profit and  
17 not-for-profit organizations and generally to do any and all things  
18 necessary or convenient for the purpose of promoting, developing  
19 and advancing the purposes described in section two of this  
20 article;

21 (D) To amend or supplement any contracts or leases or to enter  
22 into new, additional or further contracts or leases upon the terms  
23 and conditions for consideration and for any term of duration, with  
24 or without option of renewal, as agreed upon by the district board  
25 and any person, agency, government entity, agency or

1 instrumentality, firm, partnership, limited partnership, limited  
2 liability company or corporation;

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

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

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

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

25       (I) To purchase or otherwise acquire, own, hold, sell, lease



1 and dispose of all or part of any personal property which it may  
2 own, either by contract or at public auction;

3 (J) Pursuant to a determination by the district board that  
4 there exists a continuing need for ~~redevelopment~~ development  
5 expenditures and that moneys or funds of the district are necessary  
6 therefor, to borrow money and execute and deliver the district's  
7 negotiable notes and other evidences of indebtedness therefor, on  
8 the terms as the district shall determine, and give security  
9 therefor as is requisite, including, without limitation, a pledge  
10 of the district's rights in its subaccount of the economic  
11 opportunity development district fund;

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

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

25 (b) *Additional contents of order.* -- The county commission's

1 order shall also state the general intention of the county  
2 commission to develop and increase services and to make capital  
3 improvements within the district.

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

9 **§7-22-12. Special district excise tax authorized.**

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

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

1 district excise tax.

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

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

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

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

- 1 (A) Acceptable indicia of timely payment;
- 2 (B) Which type of electronic filing method or methods a  
3 particular type of taxpayer may or may not use;
- 4 (C) What type of electronic payment method or methods a  
5 particular type of taxpayer may or may not use;
- 6 (D) What, if any, exceptions are allowable, and alternative  
7 methods of payment that may be used for any exceptions;
- 8 (E) Procedures for making voluntary or mandatory electronic  
9 payments or both; and
- 10 (F) Any other provisions necessary to ensure the timely  
11 electronic filing of returns related to the special district excise  
12 tax and the making of payments electronically of the special  
13 district excise tax imposed pursuant to this section.
- 14 (3)(A) Notwithstanding the provisions of section five-d,  
15 article ten, chapter eleven of this code: (i) So long as bonds are  
16 outstanding pursuant to this article, the Tax Commissioner shall  
17 provide on a monthly basis to the trustee for bonds issued pursuant  
18 to this article information on returns submitted pursuant to this  
19 article; and (ii) the trustee may share the information so obtained  
20 with the county commission that established the economic  
21 opportunity development district that issued the bonds pursuant to  
22 this article and with the bondholders and with bond counsel for  
23 bonds issued pursuant to this article. The Tax Commissioner and  
24 the trustee may enter into a written agreement in order to  
25 accomplish ~~the~~ exchange of the information.

1           (B) Any confidential information provided pursuant to this  
2 subdivision shall be used solely for the protection and enforcement  
3 of the rights and remedies of the bondholders of bonds issued  
4 pursuant to this article. Any person or entity that is in  
5 possession of information disclosed by the Tax Commissioner or  
6 shared by the trustee pursuant to subdivision (a) of this  
7 subsection is subject to the provisions of section five-d, article  
8 ten, chapter eleven of this code as if ~~that~~ the person or entity  
9 that is in possession of the tax information is an officer,  
10 employee, agent or representative of this state or of a local or  
11 municipal governmental entity or other governmental subdivision.

12           (e) *Deposit of net tax collected.* --

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

21           (2) The State Treasurer shall withhold from the county  
22 commission's subaccount in the Economic Opportunity Development  
23 District Fund and shall deposit in the General Revenue Fund of this  
24 state, on or before the twentieth day of each calendar month next  
25 following the effective date of a special district excise tax, a

1 sum equal to one twelfth of the base tax revenue amount last  
2 certified by the development office pursuant to section seven of  
3 this article.

4 (f) *Effective date of special district excise tax.* -- Any  
5 taxes imposed pursuant to the authority of this section ~~shall be~~  
6 are effective on the first day of the calendar month that begins  
7 sixty days after the date of adoption of an order entered of record  
8 imposing the tax or the first day of any later calendar month  
9 expressly designated in the order.

10 (g) *Copies of order.* -- Upon entry of an order levying a  
11 special district excise tax, a certified copy of the order shall be  
12 mailed to the State Auditor, as ex officio the chief inspector and  
13 supervisor of public offices, the State Treasurer and the Tax  
14 Commissioner.

15 **§7-22-15. Abolishment and dissolution of district; notice;**  
16 **hearing.**

17 (a) *General.* -- Except upon the express written consent of  
18 the executive director of the development office and of all the  
19 holders or obligees of any indebtedness or other instruments the  
20 proceeds of which were applied to any development ~~or redevelopment~~  
21 expenditures or any indebtedness the payment of which is secured by  
22 revenues payable into the fund provided under section eight of this  
23 article or by any public property, a district may only be abolished  
24 by the county commission when there is no outstanding indebtedness,

1 the proceeds of which were applied to any development ~~or~~  
2 ~~redevelopment~~ expenditures or the payment of which is secured by  
3 revenues payable into the fund provided under section eight of this  
4 article, or by any public property, and following a public hearing  
5 upon the proposed abolishment.

6 (b) *Notice of public hearing.* -- Notice of the public hearing  
7 required by subsection (a) of this section shall be provided by  
8 first-class mail to all owners of real property within the district  
9 and shall be published as a Class I-0 legal advertisement in  
10 compliance with article three, chapter fifty-nine of this code at  
11 least twenty days prior to the public hearing.

12 (c) *Transfer of district assets and funds.* -- Upon the  
13 abolishment of any economic opportunity development district, any  
14 funds or other assets, contractual rights or obligations, claims  
15 against holders of indebtedness or other financial benefits,  
16 liabilities or obligations existing after full payment has been  
17 made on all existing contracts, bonds, notes or other obligations  
18 of the district are transferred to and assumed by the county  
19 commission. Any funds or other assets transferred shall be used for  
20 the benefit of the area included in the district being abolished.

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

1 **§7-22-17. Security for bonds.**

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

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

18 (c) *Trust indenture.* --

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

24 (2) The resolution order authorizing the bonds or notes and  
25 fixing the details thereof may provide that the trust indenture may



1 contain provisions for the protection and enforcing the rights and  
2 remedies of the bondholders as are reasonable and proper, not in  
3 violation of law, including covenants setting forth the duties of  
4 the county commission in relation to the construction, acquisition  
5 or financing of an economic opportunity development district  
6 project, or part thereof or an addition thereto, and the  
7 improvement, repair, maintenance and insurance thereof and for the  
8 custody, safeguarding and application of all moneys and may provide  
9 that the economic opportunity development district project shall be  
10 constructed and paid for under the supervision and approval of the  
11 consulting engineers or architects employed and designated by the  
12 county commission or, if directed by the county commission in the  
13 resolution order, by the district board, and satisfactory to the  
14 purchasers of the bonds or notes, their successors, assigns or  
15 nominees who may require the security given by any contractor or  
16 any depository of the proceeds of the bonds or notes or the  
17 revenues received from the district project be satisfactory to the  
18 purchasers, their successors, assigns or nominees.

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

25       (4) The county commission may also provide by resolution and

1 in the trust indenture for the payment of the proceeds of the sale  
2 of the bonds or notes and the revenues from the economic  
3 opportunity development district project to any depository it  
4 determines, for the custody and investment thereof and for the  
5 method of distribution thereof, with safeguards and restrictions it  
6 determines to be necessary or advisable for the protection thereof  
7 and upon the filing of a certified copy of the resolution or of the  
8 indenture for record in the office of the clerk of the county  
9 commission of the county in which the economic opportunity  
10 development project is located, the resolution has the same effect,  
11 as to notice, as the recordation of a deed of trust or other  
12 recordable instrument.

13 (5) In the event that more than one certified resolution or  
14 indenture is recorded, the security interest granted by the first  
15 recorded resolution or indenture has priority in the same manner as  
16 an earlier filed deed of trust except to the extent the earlier  
17 recorded resolution or indenture provides otherwise.

18 (d) *Mortgage or deed of trust.* --

19 (1) In addition to or in lieu of the indenture provided in  
20 subsection (c) of this section, the principal of and interest on  
21 the bonds or notes may, but need not, be secured by a mortgage or  
22 deed of trust covering all or any part of the economic opportunity  
23 development district project from which the revenues pledged are  
24 derived and the same may be secured by an assignment or pledge of  
25 the income received from the economic opportunity development

1 district project.

2       (2) The proceedings under which bonds or notes are authorized  
3 to be issued, when secured by a mortgage or deed of trust, may  
4 contain the same terms, conditions and provisions provided ~~for~~  
5 herein when an indenture is entered into between the county  
6 commission and a trustee and any mortgage or deed of trust may  
7 contain any agreements and provisions customarily contained in  
8 instruments securing bonds or notes, including, without limiting  
9 the generality of the foregoing, provisions respecting the fixing  
10 and collection of revenues from the economic opportunity  
11 development district project covered by the proceedings or  
12 mortgage, the terms to be incorporated in any lease, sale or  
13 financing agreement with respect to the economic opportunity  
14 development district project, the improvement, repair, maintenance  
15 and insurance of the economic opportunity district project, the  
16 creation and maintenance of special funds from the revenues  
17 received from the economic opportunity development district project  
18 and the rights and remedies available in event of default to the  
19 bondholders or note holders, the county commission, or to the  
20 trustee under an agreement, indenture, mortgage or deed of trust,  
21 all as the county commission body considers advisable and shall not  
22 be in conflict with the provisions of this article or any existing  
23 law: *Provided*, That in making any agreements or provisions, a  
24 county commission shall not have the power to incur original  
25 indebtedness by indenture, order, resolution, mortgage or deed of

1 trust except with respect to the economic opportunity development  
2 district project and the application of the revenues therefrom and  
3 shall not have the power to incur a pecuniary liability or a charge  
4 upon its general credit or against its taxing powers unless  
5 approved by the voters in accordance with article one, chapter  
6 thirteen of this code or as otherwise permitted by the Constitution  
7 of this state.

8       (e) *Enforcement of obligations.* --

9       (1) The proceedings authorizing any bonds and any indenture,  
10 mortgage or deed of trust securing the bonds may provide that, in  
11 the event of default in payment of the principal of or the interest  
12 on the bonds, or notes, or in the performance of any agreement  
13 contained in the proceedings, indenture, mortgage or deed of trust,  
14 payment and performance may be enforced by the appointment of a  
15 receiver in equity with power to charge and collect rents or other  
16 amounts and to apply the revenues from the economic opportunity  
17 development district project in accordance with the proceedings or  
18 the provisions of the agreement, indenture, mortgage or deed of  
19 trust.

20       (2) Any agreement, indenture, mortgage or deed of trust may  
21 provide also that, in the event of default in payment or the  
22 violation of any agreement contained in the mortgage or deed of  
23 trust, the agreement, indenture, mortgage or deed of trust may be  
24 foreclosed either by sale at public outcry or by proceedings in  
25 equity and may provide that the holder or holders of any of the

1 bonds secured thereby may become the purchaser at any foreclosure  
2 sale, if the highest bidder therefor.

3 (f) *No pecuniary liability.* -- No breach of any agreement,  
4 indenture, mortgage or deed of trust ~~shall~~ may impose any pecuniary  
5 liability upon a county or any charge upon its general credit or  
6 against its taxing powers.

7 **§7-22-20. Use of proceeds from sale of bonds.**

8 (a) *General.* -- The proceeds from the sale of any bonds issued  
9 under authority of this article shall be applied only for the  
10 purpose for which the bonds were issued: *Provided,* That any  
11 accrued interest received in any sale shall be applied to the  
12 payment of the interest on the bonds sold: *Provided, however,* That  
13 if for any reason any portion of the proceeds may not be needed for  
14 the purpose for which the bonds were issued, then the unneeded  
15 portion of the proceeds may be applied to the purchase of bonds for  
16 cancellation or payment of the principal of or the interest on the  
17 bonds, or held in reserve for the payment thereof.

18 (b) *Payment of costs.* -- The costs that may be paid with the  
19 proceeds of the bonds include all development ~~and redevelopment~~  
20 ~~costs~~ expenditures described in section five of this article and  
21 may also include, but not be limited to, the following:

22 (1) The cost of acquiring any real estate determined  
23 necessary;

24 (2) The actual cost of the construction of any part of an

1 economic opportunity development district project which may be  
2 constructed, including architects', engineers', financial or other  
3 consultants' and legal fees;

4 (3) The purchase price or rental of any part of an economic  
5 opportunity development district project that may be acquired by  
6 purchase or lease;

7 (4) All expenses incurred in connection with the  
8 authorization, sale and issuance of the bonds to finance the  
9 acquisition and the interest on the bonds for a reasonable time  
10 prior to construction during construction and for not exceeding  
11 twelve months after completion of construction; and

12 (5) Any other costs and expenses reasonably necessary in the  
13 establishment and acquisition of an economic opportunity  
14 development district project and the financing thereof.

NOTE: The purpose of this bill is to revise the County Economic Opportunity Development District Act. The bill defines remediation and includes remediation of landfills, former coal mining sites, solid waste facilities or hazardous waste sites as permissible development expenditures for approved projects. The bill changes the standard by which the maximum amounts of reserves that may be established in the financing of a project are measured. The bill provides that the development office cannot approve a project involving remediation unless all development expenditures proposed within a certain timeframe result in more than \$50 million in capital investment in the district. The bill also changes the term ordinance to order and corrects other language by changing municipality to county. The bill provides that the development office may not approve a project involving remediation unless the county commission submits clear and convincing information that the proposed remediation expenditures to be financed with bonds or notes do not constitute more than twenty-five percent of a project's total development expenditures.

Strike-throughs indicate language that would be stricken from

the present law, and underscoring indicates new language that would be added.