

**ENROLLED**

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 234**

(BY SENATORS KESSLER (ACTING PRESIDENT) AND HALL,  
BY REQUEST OF THE EXECUTIVE)

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[Passed March 9, 2011; in effect ninety days from passage.]

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AN ACT to amend and reenact §8-38-3, §8-38-4, §8-38-5, §8-38-7, §8-38-10, §8-38-12, §8-38-15, §8-38-16, §8-38-17 and §8-38-20 of the Code of West Virginia, 1931, as amended, all relating to revising the Municipal Economic Opportunity Development District Act generally; enlarging the types of municipal corporations that may use sales tax increment financing to finance certain economic development projects to any Class I, Class II and Class III city and any Class IV town or village; including “mining operations” in the definition of “remediation”; including remediation of former coal or other mining sites as a permissible development expenditure for a project; changing the standard by which the maximum amounts of reserves that may be established in the financing of a project are measured; recommending that the Development Office consider whether the economic development that a project enables is large enough to require that it contain mixed-use development consisting of a housing component with at least ten percent of housing units in the district allocated for affordable housing when determining whether

there is a pressing need for the project; defining “affordable housing”; reducing the amount of capital investment required for project approval; allowing the Development Office to reduce the minimum amount of local sales tax revenues that would be deposited into the state’s General Revenue Fund in certain circumstances; providing that the maximum repayment schedule of all notes, bonds or other instruments issued to fund projects is thirty years; and providing technical and clerical cleanup.

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

That §8-38-3, §8-38-4, §8-38-5, §8-38-7, §8-38-10, §8-38-12, §8-38-15, §8-38-16, §8-38-17 and §8-38-20 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

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

**§8-38-3. Definitions.**

1 For purposes of this article, the term:

2 (1) “Affordable housing” means housing that could be  
3 purchased with a cash down payment of at least ten percent  
4 and the proceeds of a mortgage loan, the monthly principal  
5 and interest payments on which do not exceed thirty percent  
6 of the gross monthly income of a household earning one  
7 hundred percent of the current median family income, as  
8 computed by the United States Department of Housing and  
9 Urban Development, for the county in which the district is  
10 located. For the purposes of this definition, the monthly  
11 principal and interest payments referred to in the preceding  
12 sentence are computed using a standard amortization  
13 calculation incorporating the prevailing annual rate of  
14 interest on mortgage loans offered by financial institutions  
15 in the vicinity of the district, as determined by the Develop-  
16 ment Office at the time of its review of a municipality’s

17 application in accordance with section seven of this article,  
18 and a thirty year amortization period.

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

24 (3) “District” means an economic opportunity development  
25 district created pursuant to this article;

26 (4) “District board” means a district board created pursu-  
27 ant to section ten of this article;

28 (5) “Eligible property” means any taxable or exempt real  
29 property located in a district established pursuant to this  
30 article;

31 (6) “Municipality” is a word of art and means any Class I,  
32 Class II and Class III city or any Class IV town or village as  
33 classified in section three, article one of this chapter;

34 (7) “Remediation” means measures undertaken to bring  
35 about the reconditioning or restoration of property located  
36 within the boundaries of an economic opportunity develop-  
37 ment district that has been affected by exploration, mining,  
38 industrial operations or solid waste disposal and which  
39 measures, when undertaken, will eliminate or ameliorate the  
40 existing state of the property and enable the property to be  
41 commercially developed.

**§8-38-4. Authorization to create economic opportunity develop-  
ment districts.**

1 A municipality may, in accordance with the procedures  
2 and subject to the limitations set forth in this article:

3 (1) Create one or more economic opportunity development  
4 districts within its limits;

5 (2) Provide for the administration and financing of devel-  
6 opment expenditures within the districts; and

7 (3) Provide for the administration and financing of a  
8 continuing program of development expenditures within the  
9 districts.

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

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

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

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

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

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

28 (5) Acquiring, building, demolishing, razing, constructing,  
29 repairing, reconstructing, refurbishing, renovating, rehabili-  
30 tating, expanding, altering, otherwise developing, operating  
31 and maintaining real property generally, parking facilities,  
32 commercial structures and other capital improvements to  
33 real property, fixtures and tangible personal property,  
34 whether or not physically situate within the district's  
35 boundaries: *Provided*, That the expenditure directly benefits  
36 the district;

37 (6) Developing plans for the architectural design of the  
38 district and portions thereof and developing plans and  
39 programs for the future development of the district;

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

43 (8) Providing the administrative costs for a district man-  
44 agement program;

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

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

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

56 (12) Acquiring an interest in any entity or entities that own  
57 any portion of the real property situate in the district and  
58 contributing capital to any entity or entities;

59 (13) Remediation of publicly or privately owned landfills,  
60 former coal or other mining sites, solid waste facilities or  
61 hazardous waste sites to facilitate commercial development  
62 which would not otherwise be economically feasible; and

63 (14) To do any and all things necessary, desirable or  
64 appropriate to carry out and accomplish the purposes of this  
65 article notwithstanding any provision of this code to the  
66 contrary.

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

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

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

6 (2) The total cost of the project;

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

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

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

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

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

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

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

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

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

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

52 (13) The Tax Commissioner’s certification of: (i) The  
53 amount of consumers sales and service taxes collected from

54 businesses located in the economic opportunity district  
55 during the twelve calendar months preceding the calendar  
56 quarter during which the application will be submitted to  
57 the Development Office; (ii) the estimated amount of eco-  
58 nomic opportunity district excise tax that will be collected  
59 during the first twelve months after the month in which the  
60 Tax Commissioner would first begin to collect that tax; and  
61 (iii) the estimated amount of economic opportunity district  
62 excise tax that will be collected during the first thirty-six  
63 months after the month in which the Tax Commissioner  
64 would first begin to collect that tax; and

65 (14) Any additional information the Development Office  
66 may require.

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

72 (1) The quality of the proposed project and how it ad-  
73 dresses economic problems in the area in which the project  
74 will be located;

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

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

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



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

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

93 (7) Whether the project will, directly or indirectly, assist in  
94 the creation of additional long-term employment opportuni-  
95 ties in the area and the quality of jobs created in all phases  
96 of the project, to include, but not be limited to, wages and  
97 benefits;

98 (8) Whether the project will fulfill a pressing need for the  
99 area, or part of the area, in which the economic opportunity  
100 district is located: *Provided*, That the Development Office  
101 should consider whether the economic development project  
102 is large enough to require that it contain a mixed use  
103 development provision consisting of a housing component  
104 with at least ten percent of housing units in the district  
105 allocated for affordable housing;

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

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

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

113 (12) Whether the project is economically and fiscally sound  
114 using recognized business standards of finance and account-  
115 ing; and

116 (13) (A) The ability of the municipality and the project  
117 developer or project team to carry out the project: *Provided*,

118 That no project may be approved by the Development Office  
119 unless the amount of all development expenditures proposed  
120 to be made in the first twenty-four months following the  
121 creation of the district results in capital investment of more  
122 than \$25 million in the district and the municipality submits  
123 clear and convincing information, to the satisfaction of the  
124 Development Office, that the investment will be made if the  
125 Development Office approves the project and the Legislature  
126 authorizes the municipality to levy an excise tax on sales of  
127 goods and services made within the economic opportunity  
128 development district as provided in this article.

129 (B) Notwithstanding any provision of paragraph (A) of this  
130 subdivision to the contrary, no project involving remediation  
131 may be approved by the Development Office unless the  
132 amount of all development expenditures proposed to be made  
133 in the first forty-eight months following the creation of the  
134 district results in capital investment of more than \$25  
135 million in the district. In addition to the remaining provi-  
136 sions of paragraph (A) of this subdivision the Development  
137 Office may not approve a project involving remediation  
138 authorized under section five of this article unless the  
139 municipality submits clear and convincing information, to  
140 the satisfaction of the Development Office, that the proposed  
141 remediation expenditures to be financed by the issuance of  
142 bonds or notes pursuant to section sixteen of this article do  
143 not constitute more than twenty-five percent of the total  
144 development expenditures associated with the project.

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

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

153 (e) *Certification of project.* — If the Executive Director of  
154 the Development Office approves a municipality’s economic  
155 opportunity district project application, he or she shall issue  
156 to the municipality a written certificate evidencing the  
157 approval.

158 The certificate shall expressly state a base tax revenue  
159 amount, the gross annual district tax revenue amount and  
160 the estimated net annual district tax revenue amount which,  
161 for purposes of this article, is the difference between the  
162 gross annual district tax revenue amount and the base tax  
163 revenue amount, all of which the Development Office has  
164 determined with respect to the district’s application based on  
165 any investigation it considers reasonable and necessary,  
166 including, but not limited to, any relevant information the  
167 Development Office requests from the Tax Commissioner  
168 and the Tax Commissioner provides to the Development  
169 Office: *Provided*, That in determining the net annual district  
170 tax revenue amount, the Development Office may not use a  
171 base tax revenue amount less than that amount certified by  
172 the Tax Commissioner but, in lieu of confirmation from the  
173 Tax Commissioner of the gross annual district tax revenue  
174 amount, the Development Office may use the estimate of the  
175 gross annual district tax revenue amount provided by the  
176 municipality pursuant to subsection (a) of this section.

177 (f) *Certification of enlargement of geographic boundaries of*  
178 *previously certified district.* — If the Executive Director of  
179 the Development Office approves a municipality’s economic  
180 opportunity district project application to expand the  
181 geographic boundaries of a previously certified district, he or  
182 she shall issue to the municipality a written certificate  
183 evidencing the approval.

184 The certificate shall expressly state a base tax revenue  
185 amount, the gross annual district tax revenue amount and  
186 the estimated net annual district tax revenue amount which,  
187 for purposes of this article, is the difference between the  
188 gross annual district tax revenue amount and the base tax  
189 revenue amount, all of which the Development Office has

190 determined with respect to the district's application based on  
191 any investigation it considers reasonable and necessary,  
192 including, but not limited to, any relevant information the  
193 Development Office requests from the Tax Commissioner  
194 and the Tax Commissioner provides to the Development  
195 Office: *Provided*, That in determining the net annual district  
196 tax revenue amount, the Development Office may not use a  
197 base tax revenue amount less than that amount certified by  
198 the Tax Commissioner, but, in lieu of confirmation from the  
199 Tax Commissioner of the gross annual district tax revenue  
200 amount, the Development Office may use the estimate of the  
201 gross annual district tax revenue amount provided by the  
202 municipality pursuant to subsection (a) of this section.

203 (g) *Promulgation of rules.* — The Executive Director of the  
204 Development Office may promulgate rules to implement the  
205 economic opportunity development district project applica-  
206 tion approval process and to describe the criteria and  
207 procedures it has established in connection therewith. These  
208 rules are not subject to the provisions of chapter  
209 twenty-nine-a of this code but shall be filed with the  
210 Secretary of State.

**§8-38-10. Ordinance to create district as approved by Development Office and authorized by the Legislature.**

1 (a) *General.* — If an economic opportunity development  
2 district project has been approved by the Executive Director  
3 of the Development Office and the levying of a special  
4 district excise tax for the district has been authorized by the  
5 Legislature, all in accordance with this article, the munici-  
6 pality may create the district by ordinance entered of record  
7 as provided in article one of this chapter: *Provided*, That the  
8 municipality may not amend, alter or change in any manner  
9 the boundaries of the economic opportunity development  
10 district authorized by the Legislature. In addition to all  
11 other requirements, the ordinance shall contain the follow-  
12 ing:

13 (1) The name of the district and a description of its bound-  
14 aries;

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

18 (3) The base and rate of any special district excise tax that  
19 may be imposed upon sales by businesses for the privilege of  
20 operating within the district, which tax shall be passed on to  
21 and paid by the consumer, and the manner in which the  
22 taxes will be imposed, administered and collected, all of  
23 which shall be in conformity with the requirements of this  
24 article; and

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

28 (A) To make and adopt all necessary bylaws and rules for  
29 its organization and operations not inconsistent with any  
30 applicable laws;

31 (B) To elect its own officers, to appoint committees and to  
32 employ and fix compensation for personnel necessary for its  
33 operations;

34 (C) To enter into contracts with any person, agency,  
35 government entity, agency or instrumentality, firm, partner-  
36 ship, limited partnership, limited liability company or  
37 corporation, including both public and private corporations,  
38 and for-profit and not-for-profit organizations and generally  
39 to do any and all things necessary or convenient for the  
40 purpose of promoting, developing and advancing the pur-  
41 poses described in section two of this article;

42 (D) To amend or supplement any contracts or leases or to  
43 enter into new, additional or further contracts or leases upon  
44 the terms and conditions for consideration and for any term  
45 of duration, with or without option of renewal, as agreed

46 upon by the district board and any person, agency, govern-  
47 ment entity, agency or instrumentality, firm, partnership,  
48 limited partnership, limited liability company or corpora-  
49 tion;

50 (E) To, unless otherwise provided in, and subject to the  
51 provisions of any contracts or leases to operate, repair,  
52 manage, and maintain buildings and structures and provide  
53 adequate insurance of all types and in connection with the  
54 primary use thereof and incidental thereto to provide  
55 services, such as retail stores and restaurants, and to effectu-  
56 ate incidental purposes, grant leases, permits, concessions or  
57 other authorizations to any person or persons upon the terms  
58 and conditions for consideration and for the term of duration  
59 as agreed upon by the district board and any person, agency,  
60 governmental department, firm or corporation;

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

63 (G) To apply for, receive and use grants-in-aid, donations  
64 and contributions from any source or sources and to accept  
65 and use bequests, devises, gifts and donations from any  
66 person, firm or corporation;

67 (H) To acquire real property by gift, purchase or construc-  
68 tion or in any other lawful manner and hold title thereto in  
69 its own name and to sell, lease or otherwise dispose of all or  
70 part of any real property which it may own, either by  
71 contract or at public auction, upon the approval by the  
72 district board;

73 (I) To purchase or otherwise acquire, own, hold, sell, lease  
74 and dispose of all or part of any personal property which it  
75 may own, either by contract or at public auction;

76 (J) Pursuant to a determination by the district board that  
77 there exists a continuing need for development expenditures  
78 and that moneys or funds of the district are necessary  
79 therefor, to borrow money and execute and deliver the

80 district's negotiable notes and other evidences of indebted-  
81 ness therefor, on the terms as the district shall determine,  
82 and give security therefor as is requisite, including, without  
83 limitation, a pledge of the district's rights in its subaccount  
84 of the Economic Opportunity Development District Fund;

85 (K) To acquire (either directly or on behalf of the munici-  
86 pality) an interest in any entity or entities that own any real  
87 property situate in the district, to contribute capital to any  
88 entity or entities and to exercise the rights of an owner with  
89 respect thereto; and

90 (L) To expend its funds in the execution of the powers and  
91 authority given in this section, which expenditures, by the  
92 means authorized in this section, are hereby determined and  
93 declared as a matter of legislative finding to be for a public  
94 purpose and use, in the public interest and for the general  
95 welfare of the people of West Virginia, to alleviate and  
96 prevent economic deterioration and to relieve the existing  
97 critical condition of unemployment existing within the state.

98 (b) *Additional contents of ordinance.* — The municipality's  
99 ordinance shall also state the general intention of the  
100 municipality to develop and increase services and to make  
101 capital improvements within the district.

102 (c) *Mailing of certified copies of ordinance.* — Upon  
103 enactment of an ordinance establishing an economic oppor-  
104 tunity development district excise tax, a certified copy of the  
105 ordinance shall be mailed to the State Auditor, as ex officio  
106 the chief inspector and supervisor of public offices, the State  
107 Treasurer and the Tax Commissioner.

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

1 (a) *General.* — The council of a municipality, authorized  
2 by the Legislature to levy a special district excise tax for the  
3 benefit of an economic opportunity development district,  
4 may, by ordinance, impose that tax on the privilege of selling

5 tangible personal property and rendering select services in  
6 the district in accordance with this section.

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

19 (c) *Tax rate.* — The rate or rates of a special district excise  
20 tax levied pursuant to this section shall be stated in an  
21 ordinance enacted by the municipality and identical to the  
22 rate or rates of the consumers sales and service tax imposed  
23 pursuant to article fifteen, chapter eleven of this code on  
24 sales rendered within the boundaries of the district autho-  
25 rized by this section.

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

32 (1) The State Tax Commissioner may require the electronic  
33 filing of returns related to the special district excise tax  
34 imposed pursuant to this section and may require the  
35 electronic payment of the special district excise tax imposed  
36 pursuant to this section. The State Tax Commissioner may  
37 prescribe by rules adopted or proposed pursuant to article  
38 three, chapter twenty-nine-a of this code, administrative  
39 notices, and forms and instructions, the procedures and  
40 criteria to be followed to electronically file those returns and



41 to electronically pay the special district excise tax imposed  
42 pursuant to this section.

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

46 (A) Acceptable indicia of timely payment;

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

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

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

53 (E) Procedures for making voluntary or mandatory elec-  
54 tronic payments or both; and

55 (F) Any other provisions necessary to ensure the timely  
56 electronic filing of returns related to the special district  
57 excise tax and the making of payments electronically of the  
58 special district excise tax imposed pursuant to this section.

59 (3) (A) Notwithstanding the provisions of section five-d,  
60 article ten, chapter eleven of this code: (i) So long as bonds  
61 are outstanding pursuant to this article, the Tax Commis-  
62 sioner shall provide on a monthly basis to the trustee for  
63 bonds issued pursuant to this article information on returns  
64 submitted pursuant to this article; and (ii) the trustee may  
65 share the information so obtained with the municipality that  
66 established the economic opportunity development district  
67 that issued the bonds pursuant to this article and with the  
68 bondholders and with bond counsel for bonds issued pursu-  
69 ant to this article. The Tax Commissioner and the trustee  
70 may enter into a written agreement in order to accomplish  
71 exchange of the information.

72 (B) Any confidential information provided pursuant to this  
73 subdivision shall be used solely for the protection and  
74 enforcement of the rights and remedies of the bondholders of  
75 bonds issued pursuant to this article. Any person or entity  
76 that is in possession of information disclosed by the Tax  
77 Commissioner or shared by the trustee pursuant to subdivi-  
78 sion (a) of this subsection is subject to the provisions of  
79 section five-d, article ten, chapter eleven of this code as if the  
80 person or entity that is in possession of the tax information  
81 is an officer, employee, agent or representative of this state  
82 or of a local or municipal governmental entity or other  
83 governmental subdivision.

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

85 (1) The ordinance of the municipality imposing a special  
86 district excise tax shall provide that the Tax Commissioner  
87 deposit the net amount of tax collected in the special  
88 Economic Opportunity Development District Fund to the  
89 credit of the municipality's subaccount therein for the  
90 economic opportunity development district and that the  
91 money in the subaccount may only be used to pay for  
92 development expenditures as provided in this article except  
93 as provided in subsection (f) of this section.

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

102 (B) In addition to the amounts described in paragraph (A)  
103 of this subdivision, the Tax Commissioner shall deposit in  
104 the General Revenue Fund of this state on the dates specified  
105 in paragraph (A) not less than twenty percent nor more than  
106 fifty percent of the excess of the special district excise taxes  
107 collected during the preceding month above one twelfth of

108 the base tax revenue, said percentage to be fixed by the  
109 Development Office in conjunction with its approval of an  
110 application in accordance with section seven of this article  
111 based on the amount of state funds, if any, to be expended in  
112 conjunction with the respective economic opportunity  
113 development district project for items including, but not  
114 limited to, the acquisition, construction, reconstruction,  
115 improvement, enlargement or extension of roadways,  
116 rights-of-way, sidewalks, traffic signals, water or sewer lines  
117 and other public infrastructure and such other expenditures  
118 of state funds identified by the Development Office: *Pro-*  
119 *vided*, That the Development Office has the discretion to  
120 reduce the minimum percentage of the excess special district  
121 excise taxes deposited by the Tax Commissioner in the  
122 General Revenue Fund as outlined above from twenty  
123 percent to ten percent in conjunction with its approval of an  
124 application in accordance with section seven of this article  
125 based on its determination that:

126 (i) The economic development project provides for expen-  
127 ditures in excess of \$100 million;

128 (ii) The economic opportunity development district project  
129 does not require the state to expend any additional state  
130 funds for items within the district including, but not limited  
131 to, the acquisition, construction, reconstruction, improve-  
132 ment, enlargement or extension of roadways, rights-of-way,  
133 sidewalks, traffic signals, water or sewer lines and other  
134 public infrastructure; and

135 (iii) The economic development project contains a provi-  
136 sion for a mixed use development with a housing component  
137 with at least ten percent of housing units in the district  
138 allocated as affordable housing.

139 (f) *Effective date of special district excise tax.* — Any taxes  
140 imposed pursuant to the authority of this section are effec-  
141 tive on the first day of the calendar month that begins at  
142 least sixty days after the date of enactment of the ordinance  
143 imposing the tax or at any later date expressly designated in

144 the ordinance that begins on the first day of a calendar  
145 month.

146 (g) *Copies of ordinance.* — Upon enactment of an ordi-  
147 nance levying a special district excise tax, a certified copy of  
148 the ordinance shall be mailed to the State Auditor, as ex  
149 officio the chief inspector and supervisor of public offices,  
150 the State Treasurer and the Tax Commissioner.

**§8-38-15. Abolishment and dissolution of district; notice; hearing.**

1 (a) *General.* — Except upon the express written consent of  
2 the Executive Director of the Development Office and of all  
3 the holders or obligees of any indebtedness or other instru-  
4 ments the proceeds of which were applied to any develop-  
5 ment expenditures or any indebtedness, the payment of  
6 which is secured by revenues payable into the fund provided  
7 under section eight of this article or by any public property,  
8 a district may only be abolished by the municipality when  
9 there is no outstanding indebtedness the proceeds of which  
10 were applied to any development expenditures or the  
11 payment of which is secured by revenues payable into the  
12 fund provided under section eight of this article, or by any  
13 public property, and following a public hearing upon the  
14 proposed abolishment.

15 (b) *Notice of public hearing.* — Notice of the public  
16 hearing required by subsection (a) of this section shall be  
17 provided by first-class mail to all owners of real property  
18 within the district and shall be published as a Class I-0 legal  
19 advertisement in compliance with article three, chapter  
20 fifty-nine of this code at least twenty days prior to the public  
21 hearing.

22 (c) *Transfer of district assets and funds.* — Upon the  
23 abolishment of any economic opportunity development  
24 district, any funds or other assets, contractual rights or  
25 obligations, claims against holders of indebtedness or other  
26 financial benefits, liabilities or obligations existing after full  
27 payment has been made on all existing contracts, bonds,

28 notes or other obligations of the district are transferred to  
29 and assumed by the municipality. Any funds or other assets  
30 transferred shall be used for the benefit of the area included  
31 in the district being abolished.

32 (d) *Reinstatement of district.* — Following abolishment of  
33 a district pursuant to this section, its reinstatement requires  
34 compliance with all requirements and procedures set forth in  
35 this article for the initial development, approval, establish-  
36 ment and creation of an economic opportunity development  
37 district.

**§8-38-16. Bonds issued to finance economic opportunity develop-  
ment district projects.**

1 (a) *General.* — The municipality that established the  
2 economic opportunity development district may issue bonds  
3 or notes for the purpose of financing development expendi-  
4 tures, as described in section five of this article, with respect  
5 to one or more projects within the economic opportunity  
6 development district.

7 (b) *Limited obligations.* — All bonds and notes issued by  
8 a municipality under the authority of this article are limited  
9 obligations of the municipality.

10 (c) *Term of obligations.* — No municipality may issue  
11 notes, bonds or other instruments for funding district  
12 projects or improvements that exceed a repayment schedule  
13 of thirty years.

14 (d) *Debt service.* — The principal and interest on the bonds  
15 is payable out of the funds on deposit in the subaccount  
16 established for the economic opportunity development  
17 district pursuant to section eight of this article, including,  
18 without limitation, any funds derived from the special  
19 district excise tax imposed by section twelve of this article  
20 or other revenues derived from the economic opportunity  
21 development district to the extent pledged for the purpose by  
22 the municipality in the ordinance authorizing the bonds.

23 (e) *Surplus funds.* — To the extent that the average daily  
24 amount on deposit in the subaccount established for a  
25 district pursuant to section eight of this article exceeds, for  
26 more than six consecutive calendar months, the sum of: (1)  
27 \$100,000; plus (2) the amount required to be kept on deposit  
28 pursuant to the documents authorizing, securing or other-  
29 wise relating to the bonds or notes issued under this section,  
30 then the excess shall be used by the district either to redeem  
31 the bonds or notes previously issued or remitted to the  
32 General Fund of this state.

33 (f) *Debt not general obligation of municipality.* — Neither  
34 the notes or bonds and any interest coupons issued under the  
35 authority of this article shall ever constitute an indebtedness  
36 of the municipality issuing the notes or bonds within the  
37 meaning of any Constitutional provision or statutory limita-  
38 tion and do not constitute or give rise to a pecuniary liability  
39 of the municipality issuing the notes or bonds.

40 (g) *Debt not a charge general credit or taxing powers of*  
41 *municipality.* — Neither the bonds or notes, nor interest  
42 thereon, is a charge against the general credit or taxing  
43 powers of the municipality and that fact shall be plainly  
44 stated on the face of each bond or note.

45 (h) *Issuance of bonds or notes.* —

46 (1) Bonds or notes allowed under this section may be  
47 executed, issued and delivered at any time and, from time to  
48 time, may be in a form and denomination, may be of a tenor,  
49 must be negotiable but may be registered as to the principal  
50 thereof or as to the principal and interest thereof, may be  
51 payable in any amounts and at any time or times, may be  
52 payable at any place or places, may bear interest at any rate  
53 or rates payable at any place or places and evidenced in any  
54 manner and may contain any provisions therein not inconsis-  
55 tent herewith, all as provided in the ordinance of the munici-  
56 pality whereunder the bonds or notes are authorized to be  
57 issued.

58 (2) The bonds may be sold by the municipality at public or  
59 private sale at, above or below par as the municipality  
60 authorizes.

61 (3) Bonds and notes issued pursuant to this article shall be  
62 signed by the authorized representative of the municipality  
63 and attested by the municipal clerk or recorder and be under  
64 the seal of the municipality.

65 (4) Any coupons attached to the bonds shall bear the  
66 facsimile signature of the authorized representative of the  
67 municipality. If any of the officials whose signatures appear  
68 on the bonds, notes or coupons cease to be officers before the  
69 delivery of the bonds or notes, their signatures are valid and  
70 sufficient for all purposes to the same extent as if they had  
71 remained in office until the delivery.

72 (i) *Additional bonds or notes.* — If the proceeds of the  
73 bonds or notes, by error of calculation or otherwise, are less  
74 than the cost of the economic opportunity development  
75 district project, or if additional real or personal property is  
76 to be added to the district project or if it is determined that  
77 financing is needed for additional development expenditures,  
78 additional bonds or notes may, in like manner, be issued to  
79 provide the amount of the deficiency or to defray the cost of  
80 acquiring or financing any additional real or personal  
81 property or development expenditures and, unless otherwise  
82 provided in the trust agreement, mortgage or deed of trust,  
83 are considered to be of the same issue and are entitled to  
84 payment from the same fund, without preference or priority,  
85 and are of equal priority as to any security.

#### **§8-38-17. Security for bonds.**

1 (a) *General.* — Unless the municipality otherwise deter-  
2 mines in the ordinance authorizing the issuance of the bonds  
3 or notes under the authority of this article, there is hereby  
4 created a statutory lien upon the subaccount created pursu-  
5 ant to section eight of this article and all special district  
6 excise tax revenues collected for the benefit of the district

7 pursuant to section eleven-a, article ten, chapter eleven of  
8 this code for the purpose of securing the principal of the  
9 bonds or notes and the interest thereon.

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

18 (c) *Trust indenture.* —

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

24 (2) The ordinance authorizing the bonds or notes and  
25 fixing the details thereof may provide that the trust inden-  
26 ture may contain provisions for the protection and enforcing  
27 the rights and remedies of the bondholders as are reasonable  
28 and proper, not in violation of law, including covenants  
29 setting forth the duties of the municipality in relation to the  
30 construction, acquisition or financing of an economic  
31 opportunity development district project, or part thereof or  
32 an addition thereto, and the improvement, repair, mainte-  
33 nance and insurance thereof and for the custody, safeguard-  
34 ing and application of all moneys and may provide that the  
35 economic opportunity development district project shall be  
36 constructed and paid for under the supervision and approval  
37 of the consulting engineers or architects employed and  
38 designated by the municipality or, if directed by the munici-  
39 pality in the ordinance, by the district board, and satisfac-  
40 tory to the purchasers of the bonds or notes, their successors,  
41 assigns or nominees who may require the security given by  
42 any contractor or any depository of the proceeds of the bonds



43 or notes or the revenues received from the district project be  
44 satisfactory to the purchasers, their successors, assigns or  
45 nominees.

46 (3) The indenture may set forth the rights and remedies of  
47 the bondholders, the municipality or trustee and the inden-  
48 ture may provide for accelerating the maturity of the revenue  
49 bonds, at the option of the bondholders or the municipality  
50 issuing the bonds, upon default in the payment of the  
51 amounts due under the bonds.

52 (4) The municipality may also provide by resolution and in  
53 the trust indenture for the payment of the proceeds of the  
54 sale of the bonds or notes and the revenues from the eco-  
55 nomic opportunity development district project to any  
56 depository it determines, for the custody and investment  
57 thereof and for the method of distribution thereof, with  
58 safeguards and restrictions it determines to be necessary or  
59 advisable for the protection thereof and upon the filing of a  
60 certified copy of the resolution or of the indenture for record  
61 with the clerk or recorder of the municipality in which the  
62 economic opportunity development project is located, the  
63 resolution has the same effect, as to notice, as the  
64 recordation of a deed of trust or other recordable instrument.

65 (5) In the event that more than one certified resolution or  
66 indenture is recorded, the security interest granted by the  
67 first recorded resolution or indenture has priority in the  
68 same manner as an earlier filed deed of trust except to the  
69 extent the earlier recorded resolution or indenture provides  
70 otherwise.

71 (d) *Mortgage or deed of trust.* —

72 (1) In addition to or in lieu of the indenture provided in  
73 subsection (c) of this section, the principal of and interest on  
74 the bonds or notes may, but need not, be secured by a  
75 mortgage or deed of trust covering all or any part of the  
76 economic opportunity development district project from  
77 which the revenues pledged are derived and the same may be

78 secured by an assignment or pledge of the income received  
79 from the economic opportunity development district project.

80 (2) The proceedings under which bonds or notes are  
81 authorized to be issued, when secured by a mortgage or deed  
82 of trust, may contain the same terms, conditions and provi-  
83 sions provided herein when an indenture is entered into  
84 between the municipality and a trustee and any mortgage or  
85 deed of trust may contain any agreements and provisions  
86 customarily contained in instruments securing bonds or  
87 notes, including, without limiting the generality of the  
88 foregoing, provisions respecting the fixing and collection of  
89 revenues from the economic opportunity development  
90 district project covered by the proceedings or mortgage, the  
91 terms to be incorporated in any lease, sale or financing  
92 agreement with respect to the economic opportunity devel-  
93 opment district project, the improvement, repair, mainte-  
94 nance and insurance of the economic opportunity develop-  
95 ment district project, the creation and maintenance of  
96 special funds from the revenues received from the economic  
97 opportunity development district project and the rights and  
98 remedies available in event of default to the bondholders or  
99 note holders, the municipality, or to the trustee under an  
100 agreement, indenture, mortgage or deed of trust, all as the  
101 municipality considers advisable and shall not be in conflict  
102 with the provisions of this article or any existing law:  
103 *Provided*, That in making any agreements or provisions, a  
104 municipality shall not have the power to incur original  
105 indebtedness by indenture, ordinance, resolution, mortgage  
106 or deed of trust except with respect to the economic opportu-  
107 nity development district project and the application of the  
108 revenues therefrom and shall not have the power to incur a  
109 pecuniary liability or a charge upon its general credit or  
110 against its taxing powers unless approved by the voters in  
111 accordance with article one, chapter thirteen of this code or  
112 as otherwise permitted by the Constitution of this state.

113 (e) *Enforcement of obligations.* —

114 (1) The proceedings authorizing any bonds and any  
115 indenture, mortgage or deed of trust securing the bonds may  
116 provide that, in the event of default in payment of the  
117 principal of or the interest on the bonds, or notes, or in the  
118 performance of any agreement contained in the proceedings,  
119 indenture, mortgage or deed of trust, payment and perfor-  
120 mance may be enforced by the appointment of a receiver in  
121 equity with power to charge and collect rents or other  
122 amounts and to apply the revenues from the economic  
123 opportunity development district project in accordance with  
124 the proceedings or the provisions of the agreement, inden-  
125 ture, mortgage or deed of trust.

126 (2) Any agreement, indenture, mortgage or deed of trust  
127 may provide also that, in the event of default in payment or  
128 the violation of any agreement contained in the mortgage or  
129 deed of trust, the agreement, indenture, mortgage or deed of  
130 trust may be foreclosed either by sale at public outcry or by  
131 proceedings in equity and may provide that the holder or  
132 holders of any of the bonds secured thereby may become the  
133 purchaser at any foreclosure sale, if the highest bidder  
134 therefor.

135 (f) *No pecuniary liability.* — No breach of any agreement,  
136 indenture, mortgage or deed of trust may impose any pecuni-  
137 ary liability upon a municipality or any charge upon its  
138 general credit or against its taxing powers.

**§8-38-20. Use of proceeds from sale of bonds.**

1 (a) *General.* — The proceeds from the sale of any bonds  
2 issued under authority of this article shall be applied only for  
3 the purpose for which the bonds were issued: *Provided*, That  
4 any accrued interest received in any sale shall be applied to  
5 the payment of the interest on the bonds sold: *Provided*,  
6 *however*, That if for any reason any portion of the proceeds  
7 may not be needed for the purpose for which the bonds were  
8 issued, then the unneeded portion of the proceeds may be  
9 applied to the purchase of bonds for cancellation or payment

10 of the principal of or the interest on the bonds, or held in  
11 reserve for the payment thereof.

12 (b) *Payment of costs.* — The costs that may be paid with  
13 the proceeds of the bonds include all development expendi-  
14 tures described in section five of this article and may also  
15 include, but not be limited to, the following:

16 (1) The cost of acquiring any real estate determined  
17 necessary;

18 (2) The actual cost of the construction of any part of an  
19 economic opportunity development district project which  
20 may be constructed, including architects', engineers',  
21 financial or other consultants' and legal fees;

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

25 (4) All expenses incurred in connection with the authoriza-  
26 tion, sale and issuance of the bonds to finance the acquisition  
27 and the interest on the bonds for a reasonable time prior to  
28 construction during construction and for not exceeding  
29 twelve months after completion of construction; and

30 (5) Any other costs and expenses reasonably necessary in  
31 the establishment and acquisition of an economic opportu-  
32 nity development district project and the financing thereof.

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

.....  
*Chairman Senate Committee*

.....  
*Chairman House Committee*

Originated in the Senate.

In effect ninety days from passage.

.....  
*Clerk of the Senate*

.....  
*Clerk of the House of Delegates*

.....  
*Acting President of the Senate*

.....  
*Speaker of the House of Delegates*

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The within ..... this the .....  
Day of ....., 2011.

.....  
*Governor*