

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 234

(By Senators Kessler (Acting President) and Hall,
By Request of the Executive)

[Originating in the Committee on Finance;
reported February 15, 2011.]

A BILL 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 (1) (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 (2) (3) “District” means an economic opportunity develop-
25 ment district created pursuant to this article;

26 (3) (4) “District board” means a district board created
27 pursuant to section ten of this article;

28 (4) (5) “Eligible property” means any taxable or exempt
29 real property located in a district established pursuant to
30 this article;

31 (5) (6) “Municipality” is a word of art and ~~shall mean, for~~
32 ~~the purposes of this article, only~~ means any Class I, ~~and~~ Class
33 II and Class III city or any Class IV town or village as
34 classified in section three, article one of this chapter;

35 (6) (7) “Remediation” means measures undertaken to bring
36 about the reconditioning or restoration of property located
37 within the boundaries of an economic opportunity develop-
38 ment district ~~project~~ that has been affected by exploration,
39 mining, industrial operations or solid waste disposal and
40 which measures, when undertaken, will eliminate or amelio-

41 rate the existing state of the property and enable the prop-
42 erty to be 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 ~~and redevelopment~~
9 expenditures within the 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 ~~such as~~ includ-
9 ing-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 ~~or redevelopment~~ expenditures necessary to permanently
17 maintain the optimum economic viability of the district
18 following its inception: *Provided*, That the amounts of the
19 reserves ~~shall~~ may not exceed the amounts that would be
20 required by ~~ordinary~~ prevailing commercial capital market
21 considerations;

22 (6) A description of the sources and anticipated amounts of
23 all financing, including, but not limited to, proceeds from the
24 issuance of any bonds or other instruments, revenues from

25 the special district excise tax and enhanced revenues from
26 property taxes and fees;

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

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

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

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

47 That for purposes of this article, the aggregate amount is
48 designated as “the base tax revenue amount”;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

117 (13) (A) The ability of the municipality and the project
118 developer or project team to carry out the project: *Provided*,
119 That no project may be approved by the Development Office
120 unless the amount of all development expenditures proposed
121 to be made in the first twenty-four months following the
122 creation of the district results in capital investment of more
123 than ~~\$50 million~~ \$25 million in the district and the munic-
124 ipality submits clear and convincing information, to the
125 satisfaction of the Development Office, that ~~such~~ the invest-
126 ment will be made if the Development Office approves the
127 project and the Legislature authorizes the municipality to
128 levy an excise tax on sales of goods and services made within
129 the economic opportunity development district as provided
130 in this article.

131 (B) Notwithstanding any provision of paragraph (A) of this
132 subdivision to the contrary, no project involving remediation
133 may be approved by the Development Office unless the

134 amount of all development expenditures proposed to be made
135 in the first forty-eight months following the creation of the
136 district results in capital investment of more than ~~\$50 million~~
137 \$25 million in the district. In addition to the remaining
138 provisions of paragraph (A) of this subdivision the Develop-
139 ment Office may not approve a project involving remediation
140 authorized under section five of this article unless the
141 municipality submits clear and convincing information, to
142 the satisfaction of the Development Office, that the proposed
143 remediation expenditures to be financed by the issuance of
144 bonds or notes pursuant to section sixteen of this article do
145 not constitute more than twenty-five percent of the total
146 ~~redevelopment~~ development expenditures associated with
147 the project.

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

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

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

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

178 gross annual district tax revenue amount provided by the
179 municipality pursuant to subsection (a) of this section.

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

187 The certificate shall expressly state a base tax revenue
188 amount, the gross annual district tax revenue amount and
189 the estimated net annual district tax revenue amount which,
190 for purposes of this article, is the difference between the
191 gross annual district tax revenue amount and the base tax
192 revenue amount, all of which the Development Office has
193 determined with respect to the district's application based on
194 any investigation it considers reasonable and necessary,
195 including, but not limited to, any relevant information the
196 Development Office requests from the Tax Commissioner
197 and the Tax Commissioner provides to the Development
198 Office: *Provided, That* in determining the net annual district

199 tax revenue amount, the Development Office may not use a
200 base tax revenue amount less than that amount certified by
201 the Tax Commissioner, but, in lieu of confirmation from the
202 Tax Commissioner of the gross annual district tax revenue
203 amount, the Development Office may use the estimate of the
204 gross annual district tax revenue amount provided by the
205 municipality pursuant to subsection (a) of this section.

206 (g) *Promulgation of rules.* — The Executive Director of the
207 Development Office may promulgate rules to implement the
208 economic opportunity development district project applica-
209 tion approval process and to describe the criteria and
210 procedures it has established in connection therewith. These
211 rules are not subject to the provisions of chapter
212 twenty-nine-a of this code but shall be filed with the
213 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 other
11 requirements, the ordinance shall contain the following:

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

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

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

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

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

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

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

41 (D) To amend or supplement any contracts or leases or to
42 enter into new, additional or further contracts or leases upon
43 the terms and conditions for consideration and for any term
44 of duration, with or without option of renewal, as agreed
45 upon by the district board and any person, agency, govern-
46 ment entity, agency or instrumentality, firm, partnership,
47 limited partnership, limited liability company or corpora-
48 tion;

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

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

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

66 (H) To acquire real property by gift, purchase or construc-
67 tion or in any other lawful manner and hold title thereto in
68 its own name and to sell, lease or otherwise dispose of all or
69 part of any real property which it may own, either by

70 contract or at public auction, upon the approval by the
71 district board;

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

75 (J) Pursuant to a determination by the district board that
76 there exists a continuing need for ~~redevelopment~~ develop-
77 ment expenditures and that moneys or funds of the district
78 are necessary therefor, to borrow money and execute and
79 deliver the district's negotiable notes and other evidences of
80 indebtedness therefor, on the terms as the district shall
81 determine, and give security therefor as is requisite, includ-
82 ing, without limitation, a pledge of the district's rights in its
83 subaccount of the Economic Opportunity Development
84 District Fund;

85 (K) To acquire (either directly or on behalf of the munic-
86 ipality) 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 by
2 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 ~~said~~ article
16 fifteen, chapter eleven, all exemptions and exceptions from
17 the consumers sales and service tax ~~shall~~ also apply to the
18 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 ~~promulgated~~ adopted or proposed pursu-
38 ant to article three, chapter twenty-nine-a of this code,
39 administrative notices, and forms and instructions, the
40 procedures and criteria to be followed to electronically file
41 ~~such~~ those returns and to electronically pay the special
42 district excise tax imposed 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 ~~county commis-~~
66 ~~sion~~ municipality that established the economic opportunity
67 development district that issued the bonds pursuant to this
68 article and with the bondholders and with bond counsel for

69 bonds issued pursuant to this article. The Tax Commissioner
70 and the trustee may enter into a written agreement in order
71 to accomplish ~~such~~ 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
80 ~~such~~ the person or entity that is in possession of ~~such~~ the tax
81 information is an officer, employee, agent or representative
82 of this state or of a local or municipal governmental entity or
83 other 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 ~~shall be~~ are
141 effective on the first day of the calendar month that begins
142 at least sixty days after the date of enactment of the ordi-
143 nance imposing the tax or at any later date expressly
144 designated in the ordinance that begins on the first day of a
145 calendar month.

146 (g) *Copies of ordinance.* — Upon enactment of an ordinance
147 levying a special district excise tax, a certified copy of the
148 ordinance shall be mailed to the State Auditor, as ex officio
149 the chief inspector and supervisor of public offices, the State
150 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 ~~or redevelopment~~ expenditures or any indebtedness,

6 the payment of which is secured by revenues payable into the
7 fund provided under section eight of this article or by any
8 public property, a district may only be abolished by the
9 municipality when there is no outstanding indebtedness the
10 proceeds of which were applied to any development ~~or~~
11 ~~redevelopment~~ expenditures or the payment of which is
12 secured by revenues payable into the fund provided under
13 section eight of this article, or by any public property, and
14 following a public hearing upon the proposed abolishment.

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

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

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

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

10 (c) *Term of obligations.* — No municipality may issue notes,
11 bonds or other instruments for funding district projects or

12 improvements that exceed a repayment schedule of thirty
13 years: ~~Provided, That the maximum repayment schedule of~~
14 ~~bonds issued to finance remediation authorized under~~
15 ~~section five of this article may not exceed twenty years.~~

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

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

34 the bonds or notes previously issued or remitted to the
35 General Fund of this state.

36 (f) *Debt not general obligation of municipality.* — Neither
37 the notes or bonds and any interest coupons issued under the
38 authority of this article shall ever constitute an indebtedness
39 of the municipality issuing the notes or bonds within the
40 meaning of any Constitutional provision or statutory limita-
41 tion and ~~shall never~~ do not constitute or give rise to a
42 pecuniary liability of the municipality issuing the notes or
43 bonds.

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

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

50 (1) Bonds or notes allowed under this section may be
51 executed, issued and delivered at any time and, from time to
52 time, may be in a form and denomination, may be of a tenor,
53 must be negotiable but may be registered as to the principal
54 thereof or as to the principal and interest thereof, may be
55 payable in any amounts and at any time or times, may be

56 payable at any place or places, may bear interest at any rate
57 or rates payable at any place or places and evidenced in any
58 manner and may contain any provisions therein not inconsis-
59 tent herewith, all as provided in the ordinance of the munici-
60 pality whereunder the bonds or notes are authorized to be
61 issued.

62 (2) The bonds may be sold by the municipality at public or
63 private sale at, above or below par as the municipality
64 authorizes.

65 (3) Bonds and notes issued pursuant to this article shall be
66 signed by the authorized representative of the municipality
67 and attested by the municipal clerk or recorder and be under
68 the seal of the municipality.

69 (4) Any coupons attached to the bonds shall bear the
70 facsimile signature of the authorized representative of the
71 municipality. ~~In case~~ If any of the officials whose signatures
72 appear on the bonds, notes or coupons cease to be officers
73 before the delivery of the bonds or notes, their signatures
74 ~~shall, nevertheless, be~~ are valid and sufficient for all pur-
75 poses to the same extent as if they had remained in office
76 until the delivery.

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

§8-38-17. Security for bonds.

1 (a) *General.* — Unless the municipality ~~shall~~ otherwise
2 ~~determine~~ determines in the ~~resolution~~ ordinance authoriz-
3 ing the issuance of the bonds or notes under the authority of
4 this article, there is hereby created a statutory lien upon the
5 subaccount created pursuant to section eight of this article
6 and all special district excise tax revenues collected for the

7 benefit of the district pursuant to section eleven-a, article
8 ten, chapter eleven of this code for the purpose of securing
9 the principal of the 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 ~~resolution~~
16 ordinance adopted by the municipality authorizing the
17 issuance of the 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 ~~resolution~~ ordinance authorizing the bonds or notes
25 and fixing the details thereof may provide that the trust
26 indenture may contain provisions for the protection and
27 enforcing the rights and remedies of the bondholders as are
28 reasonable and proper, not in violation of law, including

29 covenants setting forth the duties of the municipality in
30 relation to the construction, acquisition or financing of an
31 economic opportunity development district project, or part
32 thereof or an addition thereto, and the improvement, repair,
33 maintenance and insurance thereof and for the custody,
34 safeguarding and application of all moneys and may provide
35 that the economic opportunity development district project
36 shall be constructed and paid for under the supervision and
37 approval of the consulting engineers or architects employed
38 and designated by the municipality or, if directed by the
39 municipality in the ~~resolution~~ ordinance, by the district
40 board, and satisfactory to the purchasers of the bonds or
41 notes, their successors, assigns or nominees who may require
42 the security given by any contractor or any depository of the
43 proceeds of the bonds or notes or the revenues received from
44 the district project be satisfactory to the purchasers, their
45 successors, assigns or 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 for 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 ~~shall~~ may impose any

137 pecuniary liability upon a municipality or any charge upon
138 its 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 ~~and~~
14 ~~redevelopment costs~~ expenditures described in section five
15 of this article and may also include, but not be limited to, the
16 following:

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

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

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

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

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

(NOTE: Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.)