

COMMITTEE SUBSTITUTE

FOR

COMMITTEE SUBSTITUTE

FOR

## **Senate Bill No. 272**

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

---

[Originating in the Committee on Finance;  
reported February 22, 2011.]

---

A BILL to amend and reenact §7-11B-3, §7-11B-4, §7-11B-7, §7-11B-8, §7-11B-9, §7-11B-10, §7-11B-17 and §7-11B-22 of the Code of West Virginia, 1931, as amended, all relating to the West Virginia Tax Increment Financing Act; clarifying exclusions to the definition of “base-assessed value”; revising definitions relating to governing bodies of counties and municipalities; adding definition for “municipality”; adding provisions which allow the funding of improvements to terrain, capital improvements and the acquisition and installation of

equipment for ski resorts as an authorized project and project cost; adding remediation of property to definition of “development or redevelopment project”; redefining “project costs” to include remediation costs for landfills, former coal or other mining sites, solid waste facilities or hazardous waste sites; defining “remediation”; requiring the Director of the Development Office to provide the Legislature with an itemized list of applications seeking approval of development and redevelopment districts along with a status explanation of applications on dates certain; clarifying municipalities’ power to utilize tax increment financing and to finance project costs by other means; requiring county commissions and municipalities to send descriptions of development districts and project plans to local levying bodies prior to issuing a notice; clarifying that municipalities are not required to seek approval when amending project plans if the project is not enlarged or the total amount of indebtedness increased; providing that development or redevelopment districts shall not be terminated so long as tax increment financing obligations remain outstanding; clarifying the time when bonds may be refunded or refinanced and when refunding bonds may be issued in principal amounts; and providing technical corrections.

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

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

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

**§7-11B-3. Definitions.**

1 (a) *General.* — When used in this article, words and  
 2 phrases defined in this section shall have the meanings  
 3 ascribed to them in this section unless a different meaning is  
 4 clearly required either by the context in which the word or  
 5 phrase is used or by specific definition in this article.

6 (b) *Words and phrases defined.* —

7 (1) “Agency” includes a municipality, a county or municipi-  
 8 pal development agency established pursuant to authority  
 9 granted in section one, article twelve of this chapter, a port  
 10 authority, an airport authority or ~~any~~ other entity created by  
 11 this state or an agency or instrumentality of this state that  
 12 engages in economic development activity.

13 (2) “Base assessed value” means the taxable assessed value  
 14 of all real and tangible personal property, excluding personal  
 15 motor vehicles, personal trailers, personal boats, personal

16 campers, personal motor homes and personal motorcycles,  
17 having a tax situs within a development or redevelopment  
18 district as shown upon the landbooks and personal property  
19 books of the assessor on July 1 of the calendar year preced-  
20 ing the effective date of the order or ordinance creating and  
21 establishing the development or redevelopment district.

22 (3) "Blighted area" means an area within the boundaries of  
23 a redevelopment district located within the territorial limits  
24 of a municipality or county in which the structures, buildings  
25 or improvements, by reason of dilapidation, deterioration,  
26 age or obsolescence, inadequate provision for access, ventila-  
27 tion, light, air, sanitation, open spaces, high density of  
28 population and overcrowding or the existence of conditions  
29 which endanger life or property, are detrimental to the  
30 public health, safety, morals or welfare. "Blighted area"  
31 includes any area which, by reason of the presence of a  
32 substantial number of substandard, slum, deteriorated or  
33 deteriorating structures, predominance of defective or  
34 inadequate street layout, faulty lot layout in relation to size,  
35 adequacy, accessibility or usefulness, unsanitary or unsafe  
36 conditions, deterioration of site or other improvements,  
37 diversity of ownership, defective or unusual conditions of

38 title or the existence of conditions which endanger life or  
39 property by fire and other causes, or any combination of such  
40 factors, substantially impairs or arrests the sound growth of  
41 a municipality, retards the provision of housing accommoda-  
42 tions or constitutes an economic or social liability and is a  
43 menace to the public health, safety, morals or welfare in its  
44 present condition and use, or any area which is predomi-  
45 nantly open and which because of lack of accessibility,  
46 obsolete platting, diversity of ownership, deterioration of  
47 structures or of site improvements, or otherwise, substan-  
48 tially impairs or arrests the sound growth of the community.

49 (4) "Conservation area" means any improved area within  
50 the boundaries of a development or redevelopment district  
51 located within the territorial limits of a municipality or  
52 county in which fifty percent or more of the structures in the  
53 area have an age of thirty-five years or more. A conservation  
54 area is not yet a blighted area but is detrimental to the  
55 public health, safety, morals or welfare and may become a  
56 blighted area because of any one or more of the following  
57 factors: Dilapidation, obsolescence, deterioration, illegal use  
58 of individual structures, presence of structures below  
59 minimum code standards, abandonment, excessive vacancies,

60 overcrowding of structures and community facilities, lack of  
61 ventilation, light or sanitary facilities, inadequate utilities,  
62 excessive land coverage, deleterious land use or layout,  
63 depreciation of physical maintenance and lack of community  
64 planning. A conservation area shall meet at least three of the  
65 factors provided in this subdivision.

66 (5) "County commission" means the governing body of a  
67 county of this state and, for purposes of this article only,  
68 includes the governing body of a ~~Class I or Class II~~ munici-  
69 pality in this state.

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

75 (7) "Development office" means the West Virginia Devel-  
76 opment Office created in section one, article two, chapter  
77 five-b of this code.

78 (8) "Development project" or "redevelopment project"  
79 means a project undertaken in a development or redevelop-  
80 ment district for eliminating or preventing the development  
81 or spread of slums or deteriorated, deteriorating or blighted

82 areas, for discouraging the loss of commerce, industry or  
83 employment, for increasing employment, for remediation of  
84 property or for any combination thereof in accordance with  
85 a tax increment financing plan. A development or redevelop-  
86 ment project may include one or more of the following:

87 (A) The acquisition of land and improvements, if any,  
88 within the development or redevelopment district and  
89 clearance or remediation, or both, of the land so acquired; or

90 (B) The development, redevelopment, revitalization or  
91 conservation of the project area whenever necessary to  
92 provide land for needed public facilities, public housing, or  
93 industrial or commercial development or revitalization, to  
94 eliminate unhealthful, unsanitary or unsafe conditions, to  
95 lessen density, mitigate or eliminate traffic congestion,  
96 reduce traffic hazards, eliminate obsolete or other uses  
97 detrimental to public welfare or otherwise remove or prevent  
98 the spread of blight or deterioration;

99 (C) The financial or other assistance in the relocation of  
100 persons and organizations displaced as a result of carrying  
101 out the development or redevelopment project and other  
102 improvements necessary for carrying out the project plan,  
103 together with those site improvements that are necessary for

104 the preparation of any sites and making any land or im-  
105 provements acquired in the project area available, by sale or  
106 lease, for public housing or for development, redevelopment  
107 or rehabilitation by private enterprise for commercial or  
108 industrial uses in accordance with the plan;

109 (D) The construction of capital improvements within a  
110 development or redevelopment district designed to increase  
111 or enhance the development of commerce, industry or  
112 housing within the development project area, including any  
113 improvements to mountain terrain or the construction of  
114 amenities for an existing or new ski resort; or

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

118 (9) "Development or redevelopment district" means an  
119 area proposed by one or more agencies as a development or  
120 redevelopment district, which may include one or more  
121 counties, one or more municipalities or any combination,  
122 ~~thereof~~, that has been approved by the county commission of  
123 each county in which the project area is located if the project  
124 is located outside the corporate limits of a municipality, or  
125 by the governing body of a municipality if the project area is



126 located within a municipality, or by both the county commis-  
127 sion and the governing body of the municipality when the  
128 development or redevelopment district is located both within  
129 and without a municipality.

130 (10) “Economic development area” means any area or  
131 portion of an area within the boundaries of a development or  
132 redevelopment district located within the territorial limits of  
133 a municipality or county that does not meet the requirements  
134 of subdivisions (3) and (4) of this subsection and for which  
135 the county commission finds that development or redevelop-  
136 ment will not be solely used for development of commercial  
137 businesses that will unfairly compete in the local economy  
138 and that development or redevelopment is in the public  
139 interest because it will:

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

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

144 (C) Result in preservation or enhancement of the tax base  
145 of the county or municipality.

146 (11) “Governing body of a municipality” means the city  
147 council of a ~~Class I or Class H~~ municipality in this state.

148 (12) “Incremental value” for ~~any~~ a development or redevelop-  
149 opment district means the difference between the base  
150 assessed value and the current assessed value. The incremen-  
151 tal value will be positive if the current value exceeds the  
152 base value and the incremental value will be negative if the  
153 current value is less than the base assessed value.

154 (13) “Includes” and “including” when used in a definition  
155 contained in this article ~~shall not be deemed to~~ does not  
156 exclude other things otherwise within the meaning of the  
157 term being defined.

158 (14) “Local levying body” means the county board of  
159 education and the county commission and includes the  
160 governing body of a municipality when the development or  
161 redevelopment district is located, in whole or in part, within  
162 the boundaries of the municipality.

163 (15) “Municipality” means any Class I, Class II and Class  
164 III city and any Class IV town or village heretofore or  
165 hereafter incorporated as a municipal corporation under the  
166 laws of this state.

167 ~~(15)~~ (16) “Obligations” or “tax increment financing  
168 obligations” means bonds, loans, debentures, notes, special  
169 certificates or other evidences of indebtedness issued by a

170 county commission or municipality pursuant to this article  
171 to carry out a development or redevelopment project or to  
172 refund outstanding obligations under this article.

173 ~~(16)~~ (17) “Order” means an order of the county commission  
174 adopted in conformity with the provisions of this article and  
175 as provided in this chapter.

176 ~~(17)~~ (18) “Ordinance” means a law adopted by the govern-  
177 ing body of a municipality in conformity with the provisions  
178 of this article and as provided in chapter eight of this code.

179 ~~(18)~~ (19) “Payment in lieu of taxes” means those estimated  
180 revenues from real property and tangible personal property  
181 having a tax situs in the area selected for a development or  
182 redevelopment project which revenues, according to the  
183 development or redevelopment project or plan, are to be used  
184 for a private use and which levying bodies would have  
185 received had a county or municipality not adopted one or  
186 more tax increment financing plans and which would result  
187 from levies made after the date of adoption of a tax incre-  
188 ment financing plan during the time the current assessed  
189 value of all taxable real and tangible personal property in  
190 the area selected for the development or redevelopment  
191 project exceeds the total base assessed value of all taxable

192 real and tangible personal property in the development or  
193 redevelopment district until the designation is terminated as  
194 provided in this article.

195 ~~(19)~~ (20) “Person” means ~~any~~ a natural person and ~~any~~ a  
196 corporation, association, partnership, limited partnership,  
197 limited liability company or other entity, regardless of its  
198 form, structure or nature, other than a government agency or  
199 instrumentality.

200 ~~(20)~~ (21) “Private project” means any project that is subject  
201 to ad valorem property taxation in this state or to a payment  
202 in lieu of tax agreement that is undertaken by a project  
203 developer in accordance with a tax increment financing plan  
204 in a development or redevelopment district.

205 ~~(21)~~ (22) “Project” means any capital improvement, facility  
206 or both, as specifically set forth and defined in the project  
207 plan, requiring an investment of capital, including, but not  
208 limited to, extensions, additions or improvements to existing  
209 facilities, including water or wastewater facilities, ~~and~~ the  
210 remediation of ~~contaminated property as provided for in~~  
211 ~~article twenty-two, chapter twenty-two of this code~~ property  
212 located within the development or redevelopment district as  
213 provided herein and improvements to mountain terrain for

214 the purposes of improving or creating ski slopes but does not  
215 include performance of any governmental service by a  
216 county or municipal government.

217 ~~(22)~~ (23) “Project area” means an area within the bound-  
218 aries of a development or redevelopment district in which a  
219 development or redevelopment project is undertaken as  
220 specifically set forth and defined in the project plan.

221 ~~(23)~~ (24) “Project costs” means expenditures made in  
222 preparation of the development or redevelopment project  
223 plan and made, or estimated to be made, or monetary  
224 obligations incurred, or estimated to be incurred, by the  
225 county commission which are listed in the project plan as  
226 capital improvements within a development or redevelo-  
227 ment district, plus any costs incidental thereto. “Project  
228 costs” include, but are not limited to:

229 (A) Capital costs, including, but not limited to, the actual  
230 costs of the construction of public works or improvements,  
231 capital improvements and facilities, new buildings, struc-  
232 tures and fixtures, the demolition, alteration, remodeling,  
233 repair or reconstruction of existing buildings, structures and  
234 fixtures, ~~environmental remediation~~, parking and landscap-  
235 ing, the acquisition of equipment, the acquisition and

236 installation of equipment, structures or fixtures necessary for  
237 the maintenance and operation of a ski area as defined in  
238 section two, article three-a, chapter twenty of this code and  
239 for the transportation of passengers for such ski area,  
240 improving mountain terrain for the purposes of skiing, and  
241 site clearing, grading and preparation;

242 (B) Costs of remediation of publicly or privately owned  
243 landfills, former coal or other mining sites, solid waste  
244 facilities or hazardous waste sites to facilitate commercial  
245 development which would not otherwise be economically  
246 feasible;

247 ~~(B)~~ (C) Financing costs, including, but not limited to, an  
248 interest paid to holders of evidences of indebtedness issued  
249 to pay for project costs, all costs of issuance and any redemp-  
250 tion premiums, credit enhancement or other related costs;

251 ~~(C)~~ (D) Real property assembly costs, meaning any deficit  
252 incurred resulting from the sale or lease as lessor by the  
253 county commission of real or personal property having a tax  
254 situs within a development or redevelopment district for  
255 consideration that is less than its cost to the county commis-  
256 sion;

257    ~~(D)~~ (E) Professional service costs, including, but not limited  
258 to, ~~those~~ costs incurred for architectural planning, engineer-  
259 ing and legal advice and services;

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

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

267    ~~(G)~~ (H) Organizational costs, including, but not limited to,  
268 the costs of conducting environmental impact and other  
269 studies and the costs of informing the public with respect to  
270 the creation of a development or redevelopment district and  
271 the implementation of project plans;

272    ~~(H)~~ (I) Payments made, in the discretion of the county  
273 commission or the governing body of a municipality, which  
274 are found to be necessary or convenient to creation of  
275 development or redevelopment districts or the implementa-  
276 tion of project plans; and

277    ~~(I)~~ (J) That portion of costs related to the construction of  
278 environmental protection devices, storm or sanitary sewer

279 lines, water lines, amenities or streets or the rebuilding or  
280 expansion of streets, or the construction, alteration, rebuild-  
281 ing or expansion of which is necessitated by the project plan  
282 for a development or redevelopment district whether or not  
283 the construction, alteration, rebuilding or expansion is  
284 within the area or on land contiguous thereto.

285 ~~(24)~~ (25) “Project developer” means any person who  
286 engages in the development of projects in the state.

287 ~~(25)~~ (26) “Project plan” means the plan for a development  
288 or redevelopment project that is adopted by a county  
289 commission or governing body of a municipality in confor-  
290 mity with the requirements of this article and this chapter or  
291 chapter eight of this code.

292 ~~(26)~~ (27) “Real property” means all lands, including  
293 improvements and fixtures on them and property of any  
294 nature appurtenant to them or used in connection with them  
295 and every estate, interest and right, legal or equitable, in  
296 them, including terms of years and liens by way of judgment,  
297 mortgage or otherwise, and indebtedness secured by the  
298 liens.

299 ~~(27)~~ (28) “Redevelopment area” means an area designated  
300 by a county commission or the governing body of a munici-



301 pality in respect to which the commission or governing body  
302 has made a finding that there exist conditions which cause  
303 the area to be classified as a blighted area, a conservation  
304 area, an economic development area or a combination  
305 thereof, which area includes only those parcels of real  
306 property directly and substantially benefitted by the pro-  
307 posed redevelopment project located within the development  
308 or redevelopment district or ~~land contiguous thereto.~~  
309 contiguous land.

310 (29) "Remediation" means measures undertaken to bring  
311 about the reconditioning or restoration of property located  
312 within the boundaries of a development or redevelopment  
313 district that has been affected by exploration, mining,  
314 industrial operations or solid waste disposal and which  
315 measures, when undertaken, will eliminate or ameliorate the  
316 existing state of the property and enable the property to be  
317 commercially developed.

318 ~~(28)~~ (30) "Redevelopment plan" means the comprehensive  
319 program under this article of a county or municipality for  
320 redevelopment intended by the payment of redevelopment  
321 costs to reduce or eliminate those conditions, the existence  
322 of which qualified the redevelopment area as a blighted area,

323 conservation area, economic development area or combina-  
324 tion thereof and to thereby enhance the tax bases of the  
325 levying bodies which extend into the redevelopment area.  
326 Each redevelopment plan shall conform to the requirements  
327 of this article.

328 ~~(29)~~ (31) “Tax increment” means the amount of regular  
329 levy property taxes attributable to the amount by which the  
330 current assessed value of real and tangible personal property  
331 having a tax situs in a development or redevelopment district  
332 exceeds the base assessed value of the property.

333 ~~(30)~~ (32) “Tax increment financing fund” means a separate  
334 fund for a development or redevelopment district established  
335 by the county commission or governing body of the munici-  
336 pality into which all tax increment revenues and other  
337 pledged revenues are deposited and from which projected  
338 project costs, debt service and other expenditures authorized  
339 by this article are paid.

340 ~~(31)~~ (33) “This code” means the Code of West Virginia,  
341 1931, as amended by the Legislature.

342 ~~(32)~~ (34) “Total ad valorem property tax regular levy rate”  
343 means the aggregate levy rate of all levying bodies on all  
344 taxable property having a tax situs within a development or

345 redevelopment district in a tax year but does not include  
346 excess levies, levies for general obligation bonded indebted-  
347 ness or any other levies that are not regular levies.

**§7-11B-4. Powers generally.**

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

6 (1) Create development and redevelopment areas or  
7 districts and to define the boundaries of those areas or  
8 districts;

9 (2) Cause project plans to be prepared, to approve the  
10 project plans and to implement the provisions and effectuate  
11 the purposes of the project plans;

12 (3) Establish tax increment financing funds for each  
13 development or redevelopment district;

14 (4) Issue tax increment financing obligations and pledge  
15 tax increments and other revenues for repayment of the  
16 obligations;

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

19 (6) Enter into any contracts or agreements, including, but  
20 not limited to, agreements with project developers, consul-  
21 tants, professionals, financing institutions, trustees and  
22 bondholders determined by the county commission to be  
23 necessary or convenient to implement the provisions and  
24 effectuate the purposes of project plans which may include  
25 provisions for reimbursement of project costs expended by  
26 such entities from tax increment or the proceeds of tax  
27 increment financing obligations;

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

32 (8) Exercise the right of eminent domain to condemn  
33 property for the purposes of implementing the project plan  
34 with the rules and procedures set forth in chapter fifty-four  
35 of this code ~~shall govern~~ governing all condemnation  
36 proceedings authorized in this article;

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

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

45 (11) Cause parks, playgrounds or water, sewer or drainage  
46 facilities or any other public improvements, including, but  
47 not limited to, fire stations, community centers and other  
48 public buildings which the county commission is otherwise  
49 authorized to undertake to be laid out, constructed or  
50 furnished in connection with the development or redevelop-  
51 ment project. When the public improvement of the county  
52 commission is to be located, in whole or in part, within the  
53 corporate limits of a municipality, the county commission  
54 shall consult with the mayor and the governing body of the  
55 municipality regarding the public improvement and shall  
56 pay for the cost of the public improvement from the tax  
57 increment financing fund;

58 (12) Lay out and construct, alter, relocate, change the  
59 grade of, make specific repairs upon or discontinue public  
60 ways and construct sidewalks in, or adjacent to, the project  
61 area. ~~Provided, That~~ When the public way or sidewalk is

62 located within a municipality, the governing body of the  
63 municipality shall consent ~~to the same~~ and if the public way  
64 is a state road, the consent of the commissioner of highways  
65 ~~shall be~~ is necessary;

66 (13) Cause private ways, sidewalks, ways for vehicular  
67 travel, playgrounds or water, sewer or drainage facilities and  
68 similar improvements to be constructed within the project  
69 area for the particular use of the development or redevelop-  
70 ment district or those dwelling or working in it;

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

73 (15) Construct capital improvements to be leased or sold to  
74 private entities in connection with the goals of the develop-  
75 ment or redevelopment project;

76 (16) Cause capital improvements owned by one or more  
77 private entities to be constructed within the development or  
78 redevelopment district, including improvements to mountain  
79 terrain for the purposes of skiing;

80 (17) Designate one or more official or employee of the  
81 county commission to make decisions and handle the affairs  
82 of development and redevelopment project areas or ~~districts~~

83 district created by the county commission pursuant to this  
84 article;

85 (18) Adopt orders, ordinances or bylaws or repeal or  
86 modify such ordinances or bylaws or establish exceptions to  
87 existing ordinances and bylaws regulating the design,  
88 construction and use of buildings within the development or  
89 redevelopment district created by a county commission or  
90 governing body of a municipality under this article;

91 ~~(19) Enter orders, adopt bylaws or repeal or modify such~~  
92 ~~orders or bylaws or establish exceptions to existing orders~~  
93 ~~and bylaws regulating the design, construction and use of~~  
94 ~~buildings within the development or redevelopment district~~  
95 ~~created by a county commission or governing body of a~~  
96 ~~municipality under this article;~~

97 ~~(20)~~ (19) Sell, mortgage, lease, transfer or dispose of any  
98 property or interest therein, by contract or auction, acquired  
99 by ~~it~~ the county commission or governing body of the  
100 municipality pursuant to the project plan for development,  
101 redevelopment or rehabilitation in accordance with the  
102 project plan;

103 ~~(21)~~ (20) Expend project revenues as provided in this  
104 article; ~~and~~

105     (21) Temporarily finance any project costs through the  
106 issuance of bonds, loans, debentures, notes, special certifi-  
107 cates or other evidences of indebtedness or the expenditure  
108 of the general funds of a county commission or municipality:  
109 Provided, That any temporary financing may be paid from  
110 tax increments or the proceeds of any tax increment financ-  
111 ing obligations and any expenditure of general funds for  
112 such costs may be reimbursed from tax increment or the  
113 proceeds of any tax increment financing obligations; and  
114     (22) Do all things necessary or convenient to carry out the  
115 powers granted in this article.

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

- 1     (a) County commissions and the governing bodies of ~~Class~~  
2 ~~I and H~~ municipalities, upon their own initiative or upon  
3 application of an agency or a developer, may propose  
4 creation of a development or redevelopment district and  
5 designate the boundaries of the district ~~Provided, That a~~  
6 ~~district may not include noncontiguous land. which must be~~  
7 comprised of contiguous land.
- 8     (b) The county commission or municipality proposing  
9 creation of a development or redevelopment district shall  
10 then hold a public hearing at which interested parties are



11 afforded a reasonable opportunity to express their views on  
12 the proposed creation of a development or redevelopment  
13 district and its proposed boundaries.

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

17 (2) The notice shall include the time, place and purpose of  
18 the public hearing, describe in sufficient detail the tax  
19 increment financing plan, the proposed boundaries of the  
20 development or redevelopment district and, when a develop-  
21 ment or redevelopment project plan is being proposed, the  
22 proposed tax increment financing obligations to be issued to  
23 finance the development or redevelopment project costs.

24 (3) Prior to the first day of publication, a copy of the notice  
25 shall be sent by first-class mail to the director of the Devel-  
26 opment Office and to the chief executive officer of all other  
27 local levying bodies having the power to levy taxes on real  
28 and tangible personal property located within the proposed  
29 development or redevelopment district.

30 (4) All parties who appear at the hearing shall be afforded  
31 an opportunity to express their views on the proposal to  
32 create the development or redevelopment district and, if

33 applicable, the development or redevelopment project plan  
34 and proposed tax increment financing obligations.

35 (c) After the public hearing, the county commission or the  
36 governing body of the municipality, shall finalize the  
37 boundaries of the development or redevelopment district, the  
38 development or redevelopment project plan, or both, and  
39 submit the same to the director of the Development Office  
40 for his or her review and approval. The director, within sixty  
41 days after receipt of the application, shall approve the  
42 application as submitted, reject the application or return the  
43 application to the county commission or governing body of  
44 the municipality for further development or review in  
45 accordance with instructions of the director of the Develop-  
46 ment Office. A development or redevelopment district or  
47 development or redevelopment project plan may not be  
48 adopted by the county commission or the governing body of  
49 a municipality until ~~after~~ it has been approved by the  
50 ~~executive~~ director of the Development Office. On February  
51 1 and August 1 of each year, the director of the Development  
52 Office shall deliver to the Legislature of this state an item-  
53 ized list of all applications seeking approval of: (i) the  
54 boundaries of a development or redevelopment district and:

55 (ii) a development or redevelopment project plan, or both,  
56 that have not been approved, rejected or returned to the  
57 county commission or governing body of the municipality as  
58 required herein. Such itemized list shall include a detailed  
59 explanation of the reasons why such applications, if any,  
60 have not been approved, rejected or returned to the county  
61 commission or governing body of the municipality within the  
62 time frame provided herein.

63 (d) Upon approval of the application by the Development  
64 Office, the county commission may enter an order and the  
65 governing body of the municipality proposing the district or  
66 development or redevelopment project plan may adopt an  
67 ordinance that:

68 (1) Describes the boundaries of a development or redevel-  
69 opment district sufficiently to identify with ordinary and  
70 reasonable certainty the territory included in the district,  
71 which boundaries shall create a contiguous district;

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

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

76 (A) ~~The name~~ May include a geographic or other designa-  
77 tion;

78 (B) Shall identify the county or municipality authorizing  
79 the district; and

80 (C) Shall be assigned a number, beginning with the number  
81 one ~~(B) Each subsequently~~ and each subsequently created  
82 district in the county or municipality shall be assigned the  
83 next consecutive number;

84 (4) Contains findings that the real property within the  
85 development or redevelopment district will be benefitted by  
86 eliminating or preventing the development or spread of  
87 slums or blighted, deteriorated or deteriorating areas,  
88 discouraging the loss of commerce, industry or employment,  
89 increasing employment or any combination thereof;

90 (5) Approves the development or redevelopment project  
91 plan, if applicable;

92 (6) Establishes a tax increment financing fund as a sepa-  
93 rate fund into which all tax increment revenues and other  
94 revenues designated by the county commission or governing  
95 body of the municipality for the benefit of the development  
96 or redevelopment district shall be deposited and from which

97 all project costs shall be paid, which may be assigned to and  
98 held by a trustee for the benefit of bondholders if tax  
99 increment financing obligations are issued by the county  
100 commission or the governing body of the municipality; and

101 (7) Provides that ad valorem property taxes on real and  
102 tangible personal property having a tax situs in the develop-  
103 ment or redevelopment district shall be assessed, collected  
104 and allocated in the following manner, commencing upon the  
105 date of adoption of such order or ordinance and continuing  
106 for so long as any tax increment financing obligations ~~are~~  
107 payable from the tax increment financing fund, hereinafter  
108 authorized, are outstanding and unpaid:

109 (A) For each tax year, the county assessor shall record in  
110 the land and personal property books both the base assessed  
111 value and the current assessed value of the real and tangible  
112 personal property having a tax situs in the development or  
113 redevelopment district;

114 (B) Ad valorem taxes collected from regular levies upon  
115 real and tangible personal property having a tax situs in the  
116 district that are attributable to the lower of the base assessed  
117 value or the current assessed value of real and tangible  
118 personal property located in the development project shall be

119 allocated to the levying bodies in the same manner as  
120 applicable to the tax year in which the development or  
121 redevelopment project plan is adopted by order of the county  
122 commission or by ordinance adopted by the governing body  
123 of the municipality;

124 (C) The tax increment with respect to real and tangible  
125 personal property in the development or redevelopment  
126 district shall be allocated and paid into the tax increment  
127 financing fund and shall be used to pay the principal of and  
128 interest on tax increment financing obligations issued to  
129 finance the costs of the development or redevelopment  
130 projects in the development or redevelopment district. Any  
131 levying body having a development or redevelopment district  
132 within its taxing jurisdiction shall not receive any portion of  
133 the annual tax increment except as otherwise provided in  
134 this article; and

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

140 (e) Proceeds from tax increment financing obligations  
141 issued under this article may only be used to pay for costs of  
142 development or redevelopment projects to foster economic  
143 development in the development or redevelopment district or  
144 ~~land contiguous thereto.~~ contiguous land.

145 (f) Notwithstanding subsection ~~(e)~~ (d) of this section, a  
146 county commission may not enter an order approving a  
147 development or redevelopment project plan unless the  
148 county commission expressly finds and states in the order  
149 that the development or redevelopment project is not  
150 reasonably expected to occur without the use of tax incre-  
151 ment financing.

152 (g) Notwithstanding subsection ~~(e)~~ (d) of this section, the  
153 governing body of a municipality may not adopt an ordi-  
154 nance approving a development or redevelopment project  
155 plan unless the governing body expressly finds and states in  
156 the ordinance that the development or redevelopment project  
157 is not reasonably expected to occur without the use of tax  
158 increment financing.

159 (h) No county commission shall establish a development or  
160 redevelopment district any portion of which is within the

161 boundaries of a ~~Class I or Class H~~ municipality without the  
162 formal consent of the governing body of such municipality.

163 (i) A tax increment financing plan that has been approved  
164 by a county commission or the governing body of a munici-  
165 pality may be amended by following the procedures set forth  
166 in this article for adoption of a new development or redevelop-  
167 opment project plan.

168 (j) The county commission may modify the boundaries of  
169 the development or redevelopment district, from time to  
170 time, by entry of an order modifying the order creating the  
171 development or redevelopment district.

172 (k) The governing body of a municipality may modify the  
173 boundaries of the development or redevelopment district,  
174 from time to time, by amending the ordinance establishing  
175 the boundaries of the district.

176 (l) Before a county commission or the governing body of a  
177 municipality may amend such an order or ordinance, the  
178 county commission or municipality shall give the public  
179 notice, hold a public hearing and obtain the approval of the  
180 director of the Development Office, following the procedures  
181 for establishing a new development or redevelopment  
182 district. In the event any tax increment financing obligations



183 are outstanding with respect to the development or redevelop-  
184 opment district, any change in the boundaries shall not  
185 reduce the amount of tax increment available to secure the  
186 outstanding tax increment financing obligations.

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

1 (a) The county commission or municipality creating the  
2 district shall cause the preparation of a project plan for each  
3 development or redevelopment district and the project plan  
4 shall be adopted by order of the county commission or  
5 ordinance adopted by the governing body of the municipality  
6 after it is approved by the executive director of the Develop-  
7 ment Office. This process shall conform to the procedures set  
8 forth in this section.

9 (b) Each project plan shall include:

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

13 (2) A cost-benefit analysis showing the economic impact of  
14 the plan on each levying body that is at least partially within  
15 the boundaries of the development or redevelopment district.

16 This analysis shall show the impact on the economy if the  
17 project is not built and is built pursuant to the development

18 or redevelopment plan under consideration. The cost-benefit  
19 analysis shall include a fiscal impact study on every affected  
20 levying body and sufficient information from the developer  
21 for the agency, if any are proposing the plan, to enable the  
22 county commission ~~be asked~~ to approve the project and the  
23 Development Office to evaluate whether the project as  
24 proposed is financially feasible;

25 (3) An economic feasibility study;

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

27 (5) A description of the methods of financing all estimated  
28 project costs including the issuance of tax increment obliga-  
29 tions and the time when the costs or ~~monetary obligations~~  
30 ~~related thereto~~ related monetary obligations are to be  
31 incurred;

32 (6) A certification by the county assessor of the base  
33 assessed value of real and tangible personal property having  
34 a tax situs in a development or redevelopment district.  
35 ~~Provided, That~~ If such certification is made during the  
36 months of January or February of each year, the county  
37 assessor may certify an estimated base assessed value of real  
38 and tangible personal property having a tax situs in a  
39 development or redevelopment district ~~Provided, however,~~

40 and that prior to issuance of tax increment obligations, the  
41 county assessor shall certify a final base assessed value for  
42 the estimated base assessed value permitted by this section;

43 (7) The type and amount of any other revenues that are  
44 expected to be deposited to the tax increment financing fund  
45 of the development or redevelopment district;

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

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

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

51 (11) Appropriate cross-references to any master plan, map,  
52 building codes and municipal ordinances or county commis-  
53 sion orders affected by the project plan;

54 (12) A list of estimated nonproject costs;

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

57 (14) A certificate from the executive director of the  
58 Workers' Compensation Commission, the Commissioner of  
59 the Bureau of Employment Programs and the State Tax  
60 Commissioner that the project developer, if any, is in good  
61 standing with the Workers' Compensation Commission, the

62 Bureau of Employment Programs and the State Tax Division;

63 and

64 (15) A certificate from the sheriff of the county or counties

65 in which the development or redevelopment district is

66 located that the project developer, if any, is not delinquent

67 on payment of any real and personal property taxes in such

68 county.

69 (c) If the project plan is to include tax increment financing,

70 the tax increment financing portion of the plan shall set

71 forth:

72 (1) The amount of indebtedness to be incurred pursuant to

73 this article;

74 (2) An estimate of the tax increment to be generated as a

75 result of the project;

76 (3) The method for calculating the tax increment which

77 shall be in conformance with the provisions of this article

78 together with any provision for adjustment of the method of

79 calculation;

80 (4) Any other revenues, such as payment in lieu of tax

81 revenues, to be used to secure the tax increment financing;

82 and

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

86 (d) If less than all of the tax increment is to be used to fund  
87 a development or redevelopment project or to pay project  
88 costs or retire tax increment financing obligations, the  
89 project plan shall set forth the portion of the tax increment  
90 to be deposited in the tax increment financing fund of the  
91 development or redevelopment district and provide for the  
92 distribution of the remaining portion of the tax increment to  
93 the levying bodies in whose jurisdiction the district lies.

94 (e) The county commission or governing body of the  
95 municipality that established the tax increment financing  
96 fund shall hold a public hearing at which interested parties  
97 shall be afforded a reasonable opportunity to express their  
98 views on the proposed project plan being considered by the  
99 county commission or the governing body of the municipal-  
100 ity.

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

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

109 (f) Approval by the county commission or the governing  
110 body of a municipality of an initial development or redevelop-  
111 opment project plan must be within one year after the date  
112 of the county assessor's certification required by subdivision  
113 (6), subsection (b) of this section. ~~Provided, That~~ Additional  
114 development or redevelopment project plans may be ap-  
115 proved by the county commission or the governing body of a  
116 municipality in subsequent years so long as the development  
117 or redevelopment district continues to exist. The approval  
118 shall be by order of the county commission or ordinance of  
119 the municipality which shall contain a finding that the plan  
120 is economically feasible.

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

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

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

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

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

16 (3) Copies of the proposed plan amendments shall be made  
17 available to the public at the county clerk's office or municipi-  
18 pal clerk's office at least fifteen days prior to the hearing.

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

26 (d) A municipality or county commission is not required to  
27 obtain the approval of the director of the Development Office  
28 prior to amending a project plan if the amendment does not  
29 enlarge the development or redevelopment district or  
30 increase the total amount of indebtedness contained in the  
31 tax increment financing portion of the project plan applica-  
32 tion.

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

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

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

11 (c) Upon termination of the district, no further ad valorem  
12 tax revenues shall be distributed to the tax increment  
13 financing fund of the district.



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

21 (e) The governing body of the county commission shall  
22 repeal, upon the expiration of the time periods set forth in  
23 this section, the ordinance establishing the development or  
24 redevelopment district. ~~Provided, That no district shall No~~  
25 district may be terminated so long as ~~bonds tax increment~~  
26 financing obligations with respect to the district remain  
27 outstanding.

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

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

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

6 (A) The amount of ad valorem property tax revenue that  
7 should be generated by multiplying the assessed value of the

8 property for the then current tax year by the aggregate of  
9 applicable levy rates for the tax year;

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

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

18 (D) The amount of ad valorem property tax revenue that  
19 should be generated by multiplying the assessed value of the  
20 property for the current tax year by the applicable excess  
21 levy rates for the tax year; and

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

25 (2) The sheriff shall determine from the calculations set  
26 forth in subdivision (1) of this subsection the percentage  
27 share of total ad valorem revenue for each levying body  
28 according to paragraphs (B) through (D), inclusive, of said  
29 subdivision by dividing each of such amounts by the total ad

30 valorem revenue figure determined by the calculation in  
31 paragraph (A) of said subdivision; and

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

35 (A) Applying the percentage share determined according to  
36 paragraph (B), subdivision (1) of this subsection to the  
37 revenues received and distributing such share to the levying  
38 bodies entitled to such distribution pursuant to current law;

39 (B) Applying the percentage share determined according to  
40 paragraph (C), subdivision (1) of this subsection to the  
41 revenues received and distributing such share to the levying  
42 bodies entitled to such distribution by reason of having  
43 general obligation bonds outstanding;

44 (C) Applying the percentage share determined according to  
45 paragraph (D), subdivision (1) of this subsection to the  
46 revenues received and distributing such share to the levying  
47 bodies entitled to such distribution by reason of having  
48 excess levies in effect for the tax year; and

49 (D) Applying the percentage share determined according  
50 to paragraph (E), subdivision (1) of this subsection to the  
51 revenues received and distributing such share to the tax

52 increment financing fund of the development or redevelop-  
53 ment district.

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

59 (c) Any additional moneys appropriated to the development  
60 or redevelopment district pursuant to an appropriation by  
61 the county commission that created the district and any  
62 additional moneys dedicated to the fund from other sources  
63 shall be deposited to the tax increment financing fund for the  
64 development or redevelopment district by the sheriff.

65 (d) Any funds deposited into the tax increment financing  
66 fund of the development or redevelopment district may be  
67 used to pay project costs, principal and interest on ~~bonds tax~~  
68 increment financing obligations and the cost of any other  
69 improvements in the development or redevelopment district  
70 deemed proper by the county commission.

71 (e) Unless otherwise directed pursuant to ~~any~~ an agreement  
72 with the holders of tax increment financing obligations,  
73 moneys in the tax increment financing fund may be tempo-

74 rarely invested in the same manner as other funds of the  
75 county commission or the municipality that established the  
76 fund.

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

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

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

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

9 (c) Tax increment financing obligations shall mature over  
10 a period not exceeding thirty years from the date of entry of  
11 the county commission's order, or the effective date of the  
12 municipal ordinance, creating the development or redevelop-

13 ment district and approving the development or redevelop-  
14 ment plan, or a period terminating with the date of termina-  
15 tion of the development or redevelopment district, whichever  
16 period terminates earlier.

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

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

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

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

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

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

33 (j) Insofar as they are consistent with subsections (a), (b)  
34 and (c) of this section, the procedures for issuance, form,

35 contents, execution, negotiation and registration of county  
36 and municipal industrial or commercial revenue bonds set  
37 forth in article two-c, chapter thirteen of this code are  
38 incorporated by reference herein.

39 (k) The bonds may be refunded or refinanced and refund-  
40 ing bonds may be issued in any principal amount: *Provided*,  
41 That the last maturity of the refunding bonds shall not be  
42 later than the ~~last maturity of the bonds being refunded~~  
43 maximum maturity provided in this article.

---

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