

# ENROLLED

COMMITTEE SUBSTITUTE

FOR

## Senate Bill No. 235

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

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[Passed March 10, 2011; in effect ninety days from passage.]

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AN ACT to amend and reenact §7-22-3, §7-22-4, §7-22-5, §7-22-7, §7-22-10, §7-22-12, §7-22-14, §7-22-15, §7-22-17 and §7-22-20 of the Code of West Virginia, 1931, as amended, all relating to revising the County Economic Opportunity Development District Act generally; defining the term “remediation”; including remediation of landfills, former coal or other mining sites, solid waste facilities or hazardous waste sites as permissible development expenditures for approved projects; changing standard by which the maximum amounts of reserves that may be established in the financing of a project are measured; reducing the amount of capital investment required for project approval; providing that the Development Office cannot approve a project involving remediation unless all development expenditures proposed within a certain time frame result in more than \$25 million in capital investment in the district; changing “ordinance” to “order”; correcting language by changing “municipality” to “county”; providing that the Development Office may not approve a project involving remediation unless the county commission submits

clear and convincing information that the proposed remediation expenditures to be financed with bonds or notes do not constitute more than twenty-five percent of a project's total development expenditures; allowing for minor modifications of districts without public hearing or approval by the Development Office or the Legislature under certain circumstances; and providing technical and clerical cleanup.

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

That §7-22-3, §7-22-4, §7-22-5, §7-22-7, §7-22-10, §7-22-12, §7-22-14, §7-22-15, §7-22-17 and §7-22-20 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

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

**§7-22-3. Definitions.**

1 For purposes of this article, the term:

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

4 (2) "Development expenditures" means payments for  
5 governmental functions, programs, activities, facility  
6 construction, improvements and other goods and services  
7 which a district board is authorized to perform or provide  
8 under section five of this article;

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

11 (4) "District board" means a district board created pursu-  
12 ant to section ten of this article; and

13 (5) "Eligible property" means any taxable or exempt real  
14 property located in a district established pursuant to this  
15 article.

16 (6) “Remediation” means measures undertaken to bring  
17 about the reconditioning or restoration of property located  
18 within the boundaries of an economic opportunity develop-  
19 ment district that has been affected by exploration, mining,  
20 industrial operations or solid waste disposal and which  
21 measures, when undertaken, will eliminate or ameliorate the  
22 existing state of the property and enable the property to be  
23 commercially developed.

**§7-22-4. Authorization to create economic opportunity develop-  
ment districts.**

1 A county commission may, in accordance with the proce-  
2 dures and subject to the limitations set forth in this article:

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

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

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

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

1 Any county commission 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 county, including, but not limited to, expendi-  
7 tures for the following purposes:

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

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

17 (3) Making payments for principal, interest, issuance costs,  
18 any of the costs described in section twenty of this article  
19 and appropriate reserves for bonds and other instruments  
20 and arrangements issued or entered into by the county  
21 commission for financing the expenditures of the district  
22 described in this section and to otherwise implement the  
23 purposes of this 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 county commis-  
50 sion or district board is authorized to perform and which the  
51 county commission does not also perform to the same extent  
52 on a 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.

**§7-22-7. 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 county commissions  
3 pursuant to section six of this article. Each application must  
4 include:

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

7 (2) The total cost of the project;

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

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

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

29 (8) Identification of any businesses that the county com-  
30 mission expects to relocate their business locations from the  
31 district to another place in the state in connection with the  
32 establishment of the district or from another place in this  
33 state to the district: *Provided*, That for purposes of this  
34 article, any 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 county commission expects to continue  
38 doing 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  
52 funding 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 district excise tax  
84 dollars will leverage or be the catalyst for the effective use of  
85 private, other local government, state or federal funding that  
86 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;

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

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

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

109 (12) Whether the project is economically and fiscally sound  
110 using recognized business standards of finance and account-  
111 ing; and

112 (13) (A) The ability of the county commission and the  
113 project developer or project team to carry out the project:  
114 *Provided*, That no project may be approved by the develop-  
115 ment office unless the amount of all development expendi-  
116 tures proposed to be made in the first twenty-four months  
117 following the creation of the district results in capital  
118 investment of more than \$25 million in the district and the  
119 county submits clear and convincing information, to the  
120 satisfaction of the development office, that the investment  
121 will be made if the development office approves the project  
122 and the Legislature authorizes the county commission to levy  
123 an excise tax on sales of goods and services made within the  
124 economic opportunity district as provided in this article.

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

141 (c) *Additional criteria.* — The development office may  
142 establish other criteria for consideration when approving the  
143 applications.

144 (d) *Action on the application.* — The executive director of  
145 the development office shall act to approve or not approve  
146 any application within thirty days following the receipt of  
147 the application or the receipt of any additional information  
148 requested by the development office, whichever is the later.

149 (e) *Certification of project.* — If the executive director of  
150 the development office approves a county's economic  
151 opportunity district project application, he or she shall issue  
152 to the county commission a written certificate evidencing the  
153 approval.

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

173 (f) *Certification of enlargement of geographic boundaries of*  
174 *previously certified district.* — If the executive director of  
175 the development office approves a county's economic  
176 opportunity district project application to expand the  
177 geographic boundaries of a previously certified district, he or  
178 she shall issue to the county commission a written certificate  
179 evidencing the approval.

180 The certificate shall expressly state a base tax revenue  
181 amount, the gross annual district tax revenue amount and  
182 the estimated net annual district tax revenue amount which,  
183 for purposes of this article, is the difference between the  
184 gross annual district tax revenue amount and the base tax  
185 revenue amount, all of which the development office has  
186 determined with respect to the district's application based on  
187 any investigation it considers reasonable and necessary,  
188 including, but not limited to, any relevant information the  
189 development office requests from the tax commissioner and  
190 the tax commissioner provides to the development office:  
191 *Provided*, That in determining the net annual district tax  
192 revenue amount, the development office may not use a base  
193 tax revenue amount less than that amount certified by the  
194 tax commissioner but, in lieu of confirmation from the Tax  
195 Commissioner of the gross annual district tax revenue  
196 amount, the development office may use the estimate of the  
197 gross annual district tax revenue amount provided by the  
198 county commission pursuant to subsection (a) of this section.

199 (g) *Promulgation of rules.* — The executive director of the  
200 development office may promulgate rules to implement the  
201 economic opportunity development district project applica-  
202 tion approval process and to describe the criteria and  
203 procedures it has established in connection therewith. These  
204 rules are not subject to the provisions of chapter  
205 twenty-nine-a of this code but shall be filed with the  
206 Secretary of State.

**§7-22-10. Ordinance Order to create district as approved by  
Development Office and authorized by the Legisla-  
ture.**

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 district  
4 excise tax for the district has been authorized by the Legis-  
5 lature, all in accordance with this article, the county com-  
6 mission may create the district by order entered of record as  
7 provided in article one of this chapter: *Provided*, That the

8 county commission may not amend, alter or change in any  
9 manner the boundaries of the economic opportunity develop-  
10 ment district authorized by the Legislature. In addition to  
11 all other requirements, the order 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 development expenditures  
77 and that moneys or funds of the district are necessary  
78 therefor, to borrow money and execute and deliver the  
79 district's negotiable notes and other evidences of indebted-  
80 ness therefor, on the terms as the district shall determine,  
81 and give security therefor as is requisite, including, without  
82 limitation, a pledge of the district's rights in its subaccount  
83 of the economic opportunity development district fund;

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

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

97 (b) *Additional contents of order.* — The county commis-  
98 sion's order shall also state the general intention of the  
99 county commission to develop and increase services and to  
100 make capital improvements within the district.

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

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

1 (a) *General.* — The county commission of a county,  
2 authorized by the Legislature to levy a special district excise

3 tax for the benefit of an economic opportunity development  
4 district, may, by order entered of record, impose that tax on  
5 the privilege of selling tangible personal property and  
6 rendering select services in the district in accordance with  
7 this section.

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

19 (c) *Tax rate.* — The rate or rates of a special district excise  
20 tax levied pursuant to this section shall be identical to the  
21 rate or rates of the consumer sales and service tax imposed  
22 pursuant to article fifteen, chapter eleven of this code on  
23 sales made and services rendered within the boundaries of  
24 the district authorized by this section.

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

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

39 to electronically file those returns and to electronically pay  
40 the special district excise tax imposed pursuant to this  
41 section.

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

45 (A) Acceptable indicia of timely payment;

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

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

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

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

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

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

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

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

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

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

101 (f) *Effective date of special district excise tax.* — Any taxes  
102 imposed pursuant to the authority of this section are effec-  
103 tive on the first day of the calendar month that begins sixty  
104 days after the date of adoption of an order entered of record  
105 imposing the tax or the first day of any later calendar month  
106 expressly designated in the order.

107 (g) *Copies of order.* — Upon entry of an order levying a  
108 special district excise tax, a certified copy of the order shall  
109 be mailed to the State Auditor, as ex officio the chief  
110 inspector and supervisor of public offices, the State Treas-  
111 urer and the Tax Commissioner.

**§7-22-14. Modification of Included area; notice; hearing.**

1 (a) *General.* — The order creating an economic opportu-  
2 nity development district may not be amended to include  
3 additional contiguous property until after the amendment is  
4 approved by the executive director of the Development  
5 Office in the same manner as an application to approve the  
6 establishment of the district is acted upon under section  
7 seven of this article and the amendment is authorized by the  
8 Legislature.

9 (b) *Limitations.* — Additional property may not be  
10 included in the district unless it is situated within the  
11 boundaries of the county and is contiguous to the then  
12 current boundaries of the district.

13 (c) *Public hearing required.* —

14 (1) The county commission of any county desiring to amend  
15 its order shall designate a time and place for a public hearing  
16 upon the proposal to include additional property. The notice  
17 shall meet the requirements set forth in section six of this  
18 article.

19 (2) At the time and place set forth in the notice, the county  
20 commission shall afford the opportunity to be heard to any  
21 owners of real property either currently included in or  
22 proposed to be added to the existing district and to any other  
23 residents of the county.

24 (d) *Application to West Virginia Development Office.* —  
25 Following the hearing, the county commission may, by  
26 resolution, apply to the Development Office to approve  
27 inclusion of the additional property in the district.

28 (e) *Consideration by the Executive Director of the Develop-*  
29 *ment Office.* — Before the executive director of the Develop-  
30 ment Office approves inclusion of the additional property in  
31 the district, the Development Office shall determine the  
32 amount of taxes levied by article fifteen, chapter eleven of  
33 this code that were collected by businesses located in the  
34 area the county commission proposes to add to the district in  
35 the same manner as the base amount of tax was determined  
36 when the district was first created. The State Treasurer shall  
37 also deposit one twelfth of this additional tax base amount  
38 into the General Revenue Fund each month, as provided in  
39 section twelve of this article.

40 (f) *Legislative action required.* — After the Executive  
41 Director of the Development Office approves amending the  
42 boundaries of the district, the Legislature must amend  
43 section nine of this article to allow levy of the special district  
44 excise tax on business located in geographic area to be  
45 included in the district. After the Legislature amends said  
46 section, the county commission may then amend its order:  
47 *Provided*, That the order may not be effective any earlier  
48 than the first day of the calendar month that begins sixty  
49 days after the effective date of the act of the Legislature  
50 authorizing the levy on the special district excise tax on  
51 businesses located in the geographic area to be added to the  
52 boundaries of the district for which the tax is levied or a  
53 later date as set forth in the order of the county commission.

54 (g) *Collection of special district excise tax.* — All busi-  
55 nesses included in a district because of the boundary amend-  
56 ment shall on the effective date of the order, determined as  
57 provided in subsection (f) of this section, collect the special  
58 district excise tax on all sales on tangible property or  
59 services made from locations in the district on or after the  
60 effective date of the county commission's order or a later  
61 date as set forth in the order.

62 (h) *Minor Modifications.* Notwithstanding any provision  
63 of this article to contrary, a county commission may amend  
64 the order creating an economic opportunity development

65 district to make, and may make, modifications to the bound-  
66 aries of the economic opportunity development district  
67 without holding a public hearing or receiving approval of the  
68 executive director of the West Virginia Development Office  
69 or authorization by the Legislature if the modifications do  
70 not increase the total acreage of the economic opportunity  
71 development district or result in a change to the base tax  
72 revenue amount. The county commission is authorized to  
73 levy special district excise taxes on sales of tangible personal  
74 property and services made from business locations within  
75 the modified boundaries of the economic opportunity  
76 development district.

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

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

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

22 (c) *Transfer of district assets and funds.* — Upon the  
23 abolishment of any economic opportunity development  
24 district, any funds or other assets, contractual rights or  
25 obligations, claims against holders of indebtedness or other  
26 financial benefits, liabilities or obligations existing after full  
27 payment has been made on all existing contracts, bonds,  
28 notes or other obligations of the district are transferred to  
29 and assumed by the county commission. Any funds or other  
30 assets transferred shall be used for the benefit of the area  
31 included in the district being abolished.

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

#### §7-22-17. Security for bonds.

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

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

18 (c) *Trust indenture.* —

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

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

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

53 (4) The county commission may also provide by resolution  
54 and in the trust indenture for the payment of the proceeds of  
55 the sale of the bonds or notes and the revenues from the

56 economic opportunity development district project to any  
57 depository it determines, for the custody and investment  
58 thereof and for the method of distribution thereof, with  
59 safeguards and restrictions it determines to be necessary or  
60 advisable for the protection thereof and upon the filing of a  
61 certified copy of the resolution or of the indenture for record  
62 in the office of the clerk of the county commission of the  
63 county in which the economic opportunity development  
64 project is located, the resolution has the same effect, as to  
65 notice, as the recordation of a deed of trust or other record-  
66 able instrument.

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

73 (d) *Mortgage or deed of trust.* —

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

82 (2) The proceedings under which bonds or notes are  
83 authorized to be issued, when secured by a mortgage or deed  
84 of trust, may contain the same terms, conditions and provi-  
85 sions provided herein when an indenture is entered into  
86 between the county commission and a trustee and any  
87 mortgage or deed of trust may contain any agreements and  
88 provisions customarily contained in instruments securing  
89 bonds or notes, including, without limiting the generality of  
90 the foregoing, provisions respecting the fixing and collection  
91 of revenues from the economic opportunity development

92 district project covered by the proceedings or mortgage, the  
93 terms to be incorporated in any lease, sale or financing  
94 agreement with respect to the economic opportunity devel-  
95 opment district project, the improvement, repair, mainte-  
96 nance and insurance of the economic opportunity district  
97 project, the creation and maintenance of special funds from  
98 the revenues received from the economic opportunity  
99 development district project and the rights and remedies  
100 available in event of default to the bondholders or note  
101 holders, the county commission, or to the trustee under an  
102 agreement, indenture, mortgage or deed of trust, all as the  
103 county commission body considers advisable and shall not be  
104 in conflict with the provisions of this article or any existing  
105 law: *Provided*, That in making any agreements or provisions,  
106 a county commission shall not have the power to incur  
107 original indebtedness by indenture, order, resolution,  
108 mortgage or deed of trust except with respect to the eco-  
109 nomic opportunity development district project and the  
110 application of the revenues therefrom and shall not have the  
111 power to incur a pecuniary liability or a charge upon its  
112 general credit or against its taxing powers unless approved  
113 by the voters in accordance with article one, chapter thirteen  
114 of this code or as otherwise permitted by the Constitution of  
115 this state.

116 (e) *Enforcement of obligations.* —

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

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

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

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

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

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

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

18 (2) The actual cost of the construction of any part of an  
19 economic opportunity development district project which

20 may be constructed, including architects', engineers',  
21 financial or other consultants' and legal fees;

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

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

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

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

.....  
*Chairman Senate Committee*

.....  
*Chairman House Committee*

Originated in the Senate.

In effect ninety days from passage.

.....  
*Clerk of the Senate*

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

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*Acting President of the Senate*

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*Speaker of the House of Delegates*

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

.....  
*Governor*