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WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

EIGHTIETH LEGISLATURE

REGULAR SESSION, 2011



ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 234

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

[PASSED MARCH 9, 2011; IN EFFECT NINETY DAYS FROM PASSAGE.]

SB 234

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OFFICE OF THE CLERK
SECRETARY OF STATE

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COMMITTEE SUBSTITUTE

FOR

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(BY SENATORS KESSLER (ACTING PRESIDENT) AND HALL,
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[Passed March 9, 2011; in effect ninety days from passage.]

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

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

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 38. MUNICIPAL ECONOMIC OPPORTUNITY DEVELOPMENT DISTRICTS.

§8-38-3. Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

§8-38-5. Development expenditures.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 (2) The total cost of the project;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

46 (A) Acceptable indicia of timely payment;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§8-38-17. Security for bonds.

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

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

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

18 (c) *Trust indenture.* —

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

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

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

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

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

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

71 (d) *Mortgage or deed of trust.* —

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

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

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

113 (e) *Enforcement of obligations.* —

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

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

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

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

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

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

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

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

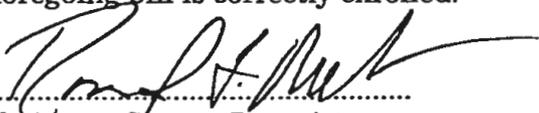
18 (2) The actual cost of the construction of any part of an
19 economic opportunity development district project which
20 may be constructed, including architects', engineers',
21 financial or other consultants' and legal fees;

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

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

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

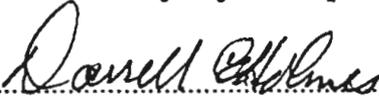
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

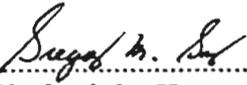

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Chairman Senate Committee

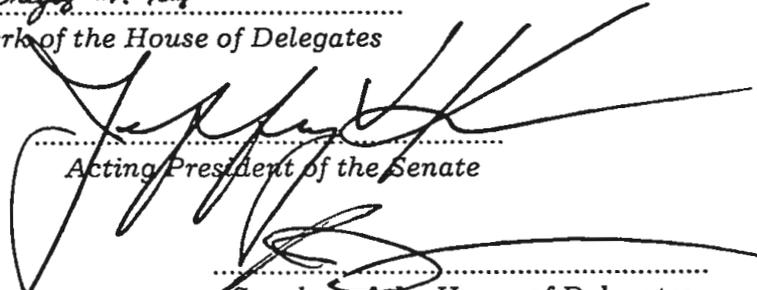

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Chairman House Committee

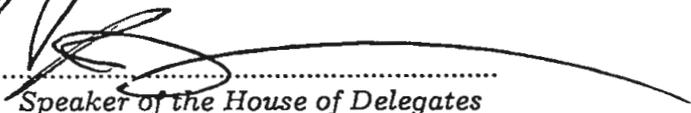
Originated in the Senate.

In effect ninety days from passage.

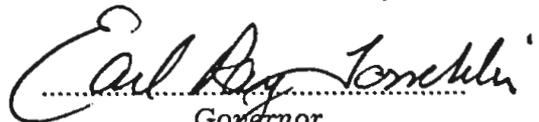

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Clerk of the Senate


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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

The within is approved this the 18th
Day of March, 2011.


.....
Governor

PRESENTED TO THE GOVERNOR

MAR 16 2011

Time 9:45 PM