



1 creation; and making other technical corrections.

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

3 That §7-22-7 of the Code of West Virginia, 1931, as amended,  
4 be amended and reenacted; and that §8-38-7 of said code be amended  
5 and reenacted, all to read as follows:

6 **CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.**

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

8 **§7-22-7. Application to Development Office for approval of an**  
9 **economic opportunity development district project.**

10 (a) *General.* -- The Development Office shall receive and act  
11 on applications filed with it by county commissions pursuant to  
12 section six of this article. Each application must include:

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

15 (2) The total cost of the project;

16 (3) A reasonable estimate of the number of months needed to  
17 complete the project;

18 (4) A general description of the capital improvements,  
19 additional or extended services and other proposed development  
20 expenditures to be made in the district as part of the project;

21 (5) A description of the proposed method of financing the  
22 development expenditures, together with a description of the

1 reserves to be established for financing ongoing development  
2 expenditures necessary to permanently maintain the optimum economic  
3 viability of the district following its inception: *Provided*, That  
4 the amounts of the reserves may not exceed the amounts that would  
5 be required by prevailing commercial capital market considerations;

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

11 (7) A description of the financial contribution of the county  
12 commission to the funding of development expenditures;

13 (8) Identification of any businesses that the county  
14 commission expects to relocate their business locations from the  
15 district to another place in the state in connection with the  
16 establishment of the district or from another place in this state  
17 to the district: *Provided*, That for purposes of this article, any  
18 entities shall be designated "relocated entities";

19 (9) Identification of any businesses currently conducting  
20 business in the proposed economic opportunity development district  
21 that the county commission expects to continue doing business there  
22 after the district is created;

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

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

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

15           (13) The Tax Commissioner's certification of: (i) The amount  
16 of consumers sales and service taxes collected from businesses  
17 located in the economic opportunity district during the twelve  
18 calendar months preceding the calendar quarter during which the  
19 application will be submitted to the Development Office; (ii) the  
20 estimated amount of economic opportunity district excise tax that  
21 will be collected during the first twelve months after the month in  
22 which the Tax Commissioner would first begin to collect that tax;

1 and (iii) the estimated amount of economic opportunity district  
2 excise tax that will be collected during the first thirty-six  
3 months after the month in which the Tax Commissioner would first  
4 begin to collect that tax; and

5 (14) Any additional information the Development Office may  
6 require.

7 (b) *Review of applications.* -- The Development Office shall  
8 review all project proposals for conformance to statutory and  
9 regulatory requirements, the reasonableness of the project's budget  
10 and timetable for completion and the following criteria:

11 (1) The quality of the proposed project and how it addresses  
12 economic problems in the area in which the project will be located;

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

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

20 (4) Whether the economic opportunity district excise tax  
21 dollars will leverage or be the catalyst for the effective use of  
22 private, other local government, state or federal funding that is

1 available;

2       (5) Whether there is substantial and credible evidence that  
3 the project is likely to be started and completed in a timely  
4 fashion;

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

9       (7) Whether the project will, directly or indirectly, assist  
10 in the creation of additional long-term employment opportunities in  
11 the area and the quality of jobs created in all phases of the  
12 project, to include, but not be limited to, wages and benefits;

13       (8) Whether the project will fulfill a pressing need for the  
14 area, or part of the area, in which the economic opportunity  
15 district is located;

16       (9) Whether the county commission has a strategy for economic  
17 development in the county and whether the project is consistent  
18 with that strategy;

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

20       (11) Whether the project is consistent with the goals of this  
21 article;

22       (12) Whether the project is economically and fiscally sound

1 using recognized business standards of finance and accounting; and

2       (13) (A) The ability of the county commission and the project  
3 developer or project team to carry out the project: *Provided*, That  
4 no project may be approved by the Development Office unless the  
5 amount of all development expenditures proposed to be made in the  
6 first twenty-four months following the creation of the district  
7 results in capital investment of more than ~~\$25~~ \$75 million in the  
8 district and the county submits clear and convincing information,  
9 to the satisfaction of the Development Office, that the investment  
10 will be made if the Development Office approves the project and the  
11 Legislature authorizes the county commission to levy an excise tax  
12 on sales of goods and services made within the economic opportunity  
13 district as provided in this article.

14       (B) Notwithstanding any provision of paragraph (A) of this  
15 subdivision to the contrary, no project involving remediation may  
16 be approved by the Development Office unless the amount of all  
17 development expenditures proposed to be made in the first  
18 forty-eight months following the creation of the district results  
19 in capital investment of more than ~~\$25~~ \$75 million in the district.  
20 In addition to the remaining provisions of paragraph (A) of this  
21 subdivision the Development Office may not approve a project  
22 involving remediation authorized under section five of this article

1 unless the county commission submits clear and convincing  
2 information, to the satisfaction of the Development Office, that  
3 the proposed remediation expenditures to be financed by the  
4 issuance of bonds or notes pursuant to section sixteen of this  
5 article do not constitute more than twenty-five percent of the  
6 total development expenditures associated with the project.

7 (c) *Additional criteria.* -- The Development Office may  
8 establish other criteria for consideration when approving the  
9 applications.

10 (d) *Action on the application.* -- The Executive Director of  
11 the Development Office shall act to approve or not approve any  
12 application within thirty days following the receipt of the  
13 application or the receipt of any additional information requested  
14 by the Development Office, whichever is the later.

15 (e) *Certification of project.* -- If the Executive Director of  
16 the Development Office approves a county's economic opportunity  
17 district project application, he or she shall issue to the county  
18 commission a written certificate evidencing the approval.

19 The certificate shall expressly state a base tax revenue  
20 amount, the gross annual district tax revenue amount and the  
21 estimated net annual district tax revenue amount which, for  
22 purposes of this article, is the difference between the gross

1 annual district tax revenue amount and the base tax revenue amount,  
2 all of which the Development Office has determined with respect to  
3 the district's application based on any investigation it considers  
4 reasonable and necessary, including, but not limited to, any  
5 relevant information the Development Office requests from the Tax  
6 Commissioner and the Tax Commissioner provides to the Development  
7 Office: *Provided*, That in determining the net annual district tax  
8 revenue amount, the Development Office may not use a base tax  
9 revenue amount less than that amount certified by the Tax  
10 Commissioner but, in lieu of confirmation from the Tax Commissioner  
11 of the gross annual district tax revenue amount, the Development  
12 Office may use the estimate of the gross annual district tax  
13 revenue amount provided by the county commission pursuant to  
14 subsection (a) of this section.

15       (f) *Certification of enlargement of geographic boundaries of*  
16 *previously certified district.* -- If the Executive Director of the  
17 Development Office approves a county's economic opportunity  
18 district project application to expand the geographic boundaries of  
19 a previously certified district, he or she shall issue to the  
20 county commission a written certificate evidencing the approval.

21       The certificate shall expressly state a base tax revenue  
22 amount, the gross annual district tax revenue amount and the

1 estimated net annual district tax revenue amount which, for  
2 purposes of this article, is the difference between the gross  
3 annual district tax revenue amount and the base tax revenue amount,  
4 all of which the Development Office has determined with respect to  
5 the district's application based on any investigation it considers  
6 reasonable and necessary, including, but not limited to, any  
7 relevant information the Development Office requests from the Tax  
8 Commissioner and the Tax Commissioner provides to the Development  
9 Office: *Provided*, That in determining the net annual district tax  
10 revenue amount, the Development Office may not use a base tax  
11 revenue amount less than that amount certified by the Tax  
12 Commissioner but, in lieu of confirmation from the Tax Commissioner  
13 of the gross annual district tax revenue amount, the Development  
14 Office may use the estimate of the gross annual district tax  
15 revenue amount provided by the county commission pursuant to  
16 subsection (a) of this section.

17       (g) *Promulgation of rules.* -- The Executive Director of the  
18 Development Office may promulgate rules to implement the economic  
19 opportunity development district project application approval  
20 process and to describe the criteria and procedures it has  
21 established in connection therewith. These rules are not subject  
22 to the provisions of chapter twenty-nine-a of this code but shall

1 be filed with the Secretary of State.

2 **CHAPTER 8. MUNICIPAL CORPORATIONS.**

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

4 **§8-38-7. Application to Development Office for approval of an**  
5 **economic opportunity development district project.**

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

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

11 (2) The total cost of the project;

12 (3) A reasonable estimate of the number of months needed to  
13 complete the project;

14 (4) A general description of the capital improvements,  
15 additional or extended services and other proposed development  
16 expenditures to be made in the district as part of the project;

17 (5) A description of the proposed method of financing the  
18 development expenditures, together with a description of the  
19 reserves to be established for financing ongoing development  
20 expenditures necessary to permanently maintain the optimum economic  
21 viability of the district following its inception: *Provided, That*  
22 the amounts of the reserves may not exceed the amounts that would

1 be required by prevailing commercial capital market considerations;

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

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

9       (8) Identification of any businesses that the municipality  
10 expects to relocate their business locations from the district to  
11 another place in the state in connection with the establishment of  
12 the district or from another place in this state to the district:  
13 *Provided*, That for purposes of this article, any entities shall be  
14 designated "relocated entities";

15       (9) Identification of any businesses currently conducting  
16 business in the proposed economic opportunity development district  
17 that the municipality expects to continue doing business there  
18 after the district is created;

19       (10) A good faith estimate of the aggregate amount of  
20 consumers sales and service tax that was actually remitted to the  
21 Tax Commissioner by all business locations identified as provided  
22 in subdivisions (8) and (9) of this subsection with respect to

1 their sales made and services rendered from their then current  
2 business locations that will be relocated from, or to, or remain in  
3 the district for the twelve full calendar months next preceding the  
4 date of the application: *Provided*, That for purposes of this  
5 article, the aggregate amount is designated as "the base tax  
6 revenue amount";

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

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

11 (13) The Tax Commissioner's certification of: (i) The amount  
12 of consumers sales and service taxes collected from businesses  
13 located in the economic opportunity district during the twelve  
14 calendar months preceding the calendar quarter during which the  
15 application will be submitted to the Development Office; (ii) the  
16 estimated amount of economic opportunity district excise tax that  
17 will be collected during the first twelve months after the month in  
18 which the Tax Commissioner would first begin to collect that tax;  
19 and (iii) the estimated amount of economic opportunity district  
20 excise tax that will be collected during the first thirty-six  
21 months after the month in which the Tax Commissioner would first  
22 begin to collect that tax; and

1           (14) Any additional information the Development Office may  
2 require.

3           (b) *Review of applications.* -- The Development Office shall  
4 review all project proposals for conformance to statutory and  
5 regulatory requirements, the reasonableness of the project's budget  
6 and timetable for completion and the following criteria:

7           (1) The quality of the proposed project and how it addresses  
8 economic problems in the area in which the project will be located;

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

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

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

20           (5) Whether there is substantial and credible evidence that  
21 the project is likely to be started and completed in a timely  
22 fashion;

1           (6) Whether the project will, directly or indirectly, improve  
2 the opportunities in the area where the project will be located for  
3 the successful establishment or expansion of other industrial or  
4 commercial businesses;

5           (7) Whether the project will, directly or indirectly, assist  
6 in the creation of additional long-term employment opportunities in  
7 the area and the quality of jobs created in all phases of the  
8 project, to include, but not be limited to, wages and benefits;

9           (8) Whether the project will fulfill a pressing need for the  
10 area, or part of the area, in which the economic opportunity  
11 district is located: *Provided*, That the Development Office should  
12 consider whether the economic development project is large enough  
13 to require that it contain a mixed use development provision  
14 consisting of a housing component with at least ten percent of  
15 housing units in the district allocated for affordable housing;

16           (9) Whether the municipality has a strategy for economic  
17 development in the municipality and whether the project is  
18 consistent with that strategy;

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

20           (11) Whether the project is consistent with the goals of this  
21 article;

22           (12) Whether the project is economically and fiscally sound

1 using recognized business standards of finance and accounting; and

2       (13) (A) The ability of the municipality and the project  
3 developer or project team to carry out the project: *Provided*, That  
4 no project may be approved by the Development Office unless the  
5 amount of all development expenditures proposed to be made in the  
6 first twenty-four months following the creation of the district  
7 results in capital investment of more than ~~\$25~~ \$75 million in the  
8 district and the municipality submits clear and convincing  
9 information, to the satisfaction of the Development Office, that  
10 the investment will be made if the Development Office approves the  
11 project and the Legislature authorizes the municipality to levy an  
12 excise tax on sales of goods and services made within the economic  
13 opportunity development district as provided in this article.

14       (B) Notwithstanding any provision of paragraph (A) of this  
15 subdivision to the contrary, no project involving remediation may  
16 be approved by the Development Office unless the amount of all  
17 development expenditures proposed to be made in the first  
18 forty-eight months following the creation of the district results  
19 in capital investment of more than ~~\$25~~ \$75 million in the district.  
20 In addition to the remaining provisions of paragraph (A) of this  
21 subdivision the Development Office may not approve a project  
22 involving remediation authorized under section five of this article

1 unless the municipality submits clear and convincing information,  
2 to the satisfaction of the Development Office, that the proposed  
3 remediation expenditures to be financed by the issuance of bonds or  
4 notes pursuant to section sixteen of this article do not constitute  
5 more than twenty-five percent of the total development expenditures  
6 associated with the project.

7       (c) *Additional criteria.* -- The Development Office may  
8 establish other criteria for consideration when approving the  
9 applications.

10       (d) *Action on the application.* -- The Executive Director of  
11 the Development Office shall act to approve or not approve any  
12 application within thirty days following the receipt of the  
13 application or the receipt of any additional information requested  
14 by the Development Office, whichever is the later.

15       (e) *Certification of project.* -- If the Executive Director of  
16 the Development Office approves a municipality's economic  
17 opportunity district project application, he or she shall issue to  
18 the municipality a written certificate evidencing the approval.

19       The certificate shall expressly state a base tax revenue  
20 amount, the gross annual district tax revenue amount and the  
21 estimated net annual district tax revenue amount which, for  
22 purposes of this article, is the difference between the gross

1 annual district tax revenue amount and the base tax revenue amount,  
2 all of which the Development Office has determined with respect to  
3 the district's application based on any investigation it considers  
4 reasonable and necessary, including, but not limited to, any  
5 relevant information the Development Office requests from the Tax  
6 Commissioner and the Tax Commissioner provides to the Development  
7 Office: *Provided*, That in determining the net annual district tax  
8 revenue amount, the Development Office may not use a base tax  
9 revenue amount less than that amount certified by the Tax  
10 Commissioner but, in lieu of confirmation from the Tax Commissioner  
11 of the gross annual district tax revenue amount, the Development  
12 Office may use the estimate of the gross annual district tax  
13 revenue amount provided by the municipality pursuant to subsection  
14 (a) of this section.

15       (f) *Certification of enlargement of geographic boundaries of*  
16 *previously certified district.* -- If the Executive Director of the  
17 Development Office approves a municipality's economic opportunity  
18 district project application to expand the geographic boundaries of  
19 a previously certified district, he or she shall issue to the  
20 municipality a written certificate evidencing the approval.

21       The certificate shall expressly state a base tax revenue  
22 amount, the gross annual district tax revenue amount and the

1 estimated net annual district tax revenue amount which, for  
2 purposes of this article, is the difference between the gross  
3 annual district tax revenue amount and the base tax revenue amount,  
4 all of which the Development Office has determined with respect to  
5 the district's application based on any investigation it considers  
6 reasonable and necessary, including, but not limited to, any  
7 relevant information the Development Office requests from the Tax  
8 Commissioner and the Tax Commissioner provides to the Development  
9 Office: *Provided*, That in determining the net annual district tax  
10 revenue amount, the Development Office may not use a base tax  
11 revenue amount less than that amount certified by the Tax  
12 Commissioner, but, in lieu of confirmation from the Tax  
13 Commissioner of the gross annual district tax revenue amount, the  
14 Development Office may use the estimate of the gross annual  
15 district tax revenue amount provided by the municipality pursuant  
16 to subsection (a) of this section.

17 (g) *Promulgation of rules.* -- The Executive Director of the  
18 Development Office may promulgate rules to implement the economic  
19 opportunity development district project application approval  
20 process and to describe the criteria and procedures it has  
21 established in connection therewith. These rules are not subject  
22 to the provisions of chapter twenty-nine-a of this code but shall

1 be filed with the Secretary of State.

NOTE: The purpose of this bill is to increase the minimum capital investment threshold from more than \$25 million to more than \$75 million for sales tax increment financing in county and municipal economic opportunity development districts.

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