

Senate Bill No. 375

(By Senators Cann and Snyder)

[Introduced January 17, 2014; referred to the Committee on Economic Development; and then to the Committee on Finance.]

A BILL to amend and reenact §7-11B-3 of the Code of West Virginia, 1931, as amended, relating to tax increment financing; and adding items to those which are excluded from base assessed value and current assessed value of real and personal property.

Be it enacted by the Legislature of West Virginia:

That §7-11B-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 11B. WEST VIRGINIA TAX INCREMENT FINANCING ACT.

§7-11B-3. Definitions.

- 1 (a) *General.* – When used in this article, words and
- 2 phrases defined in this section shall have the meanings

3 ascribed to them in this section unless a different meaning is
4 clearly required either by the context in which the word or
5 phrase is used or by specific definition in this article.

6 (b) *Words and phrases defined.* –

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

13 (2) “Base assessed value” means the taxable assessed
14 value of all real and tangible personal property, excluding
15 personal motor vehicles, personal trailers, personal boats,
16 personal campers, personal motor homes, personal ATVs and
17 personal motorcycles having a tax situs within a development
18 or redevelopment district as shown upon the landbooks and
19 personal property books of the assessor on July 1 of the
20 calendar year preceding the effective date of the order or

21 ordinance creating and establishing the development or
22 redevelopment district.

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

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

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

59 Dilapidation; obsolescence; deterioration; illegal use of
60 individual structures; presence of structures below
61 minimum code standards; abandonment; excessive
62 vacancies; overcrowding of structures and community
63 facilities; lack of ventilation, light or sanitary facilities;
64 inadequate utilities; excessive land coverage; deleterious
65 land use or layout; depreciation of physical maintenance;
66 and lack of community planning. A conservation area shall
67 meet at least three of the factors provided in this
68 subdivision.

69 (5) “County commission” means the governing body of
70 a county of this state and, for purposes of this article only,
71 includes the governing body of a Class I or II municipality
72 in this state.

73 (6) “Current assessed value” means the annual taxable
74 assessed value of all real and tangible personal property,
75 excluding personal motor vehicles, personal trailers,
76 personal boats, personal campers, personal motor homes,
77 personal ATVs and personal motorcycles having a tax situs

78 within a development or redevelopment district as shown upon
79 the landbook and personal property records of the assessor.

80 (7) "Development office" means the West Virginia
81 Development Office created in section one, article two,
82 chapter five-b of this code.

83 (8) "Development project" or "redevelopment project"
84 means a project undertaken in a development or
85 redevelopment district for eliminating or preventing the
86 development or spread of slums or deteriorated, deteriorating
87 or blighted areas, for discouraging the loss of commerce,
88 industry or employment, for increasing employment or for
89 any combination thereof in accordance with a tax increment
90 financing plan. A development or redevelopment project
91 may include one or more of the following:

92 (A) The acquisition of land and improvements, if any,
93 within the development or redevelopment district and
94 clearance of the land so acquired; or

95 (B) The development, redevelopment, revitalization or
96 conservation of the project area whenever necessary to

97 provide land for needed public facilities, public housing or
98 industrial or commercial development or revitalization, to
99 eliminate unhealthful, unsanitary or unsafe conditions, to
100 lessen density, mitigate or eliminate traffic congestion,
101 reduce traffic hazards, eliminate obsolete or other uses
102 detrimental to public welfare or otherwise remove or prevent
103 the spread of blight or deterioration;

104 (C) The financial or other assistance in the relocation of
105 persons and organizations displaced as a result of carrying
106 out the development or redevelopment project and other
107 improvements necessary for carrying out the project plan,
108 together with those site improvements that are necessary for
109 the preparation of any sites and making any land or
110 improvements acquired in the project area available, by sale
111 or lease, for public housing or for development,
112 redevelopment or rehabilitation by private enterprise for
113 commercial or industrial uses in accordance with the plan;

114 (D) The construction of capital improvements within a
115 development or redevelopment district designed to increase

116 or enhance the development of commerce, industry or
117 housing within the development project area; or

118 (E) Any other projects the county commission or the
119 agency deems appropriate to carry out the purposes of this
120 article.

121 (9) “Development or redevelopment district” means an
122 area proposed by one or more agencies as a development or
123 redevelopment district which may include one or more
124 counties, one or more municipalities or any combination
125 thereof, that has been approved by the county commission of
126 each county in which the project area is located if the project
127 is located outside the corporate limits of a municipality, or by
128 the governing body of a municipality if the project area is
129 located within a municipality, or by both the county
130 commission and the governing body of the municipality
131 when the development or redevelopment district is located
132 both within and without a municipality.

133 (10) “Economic development area” means any area or
134 portion of an area within the boundaries of a development or

135 redevelopment district located within the territorial limits of
136 a municipality or county that does not meet the requirements
137 of subdivisions (3) and (4) of this subsection and for which
138 the county commission finds that development or
139 redevelopment will not be solely used for development of
140 commercial businesses that will unfairly compete in the local
141 economy and that development or redevelopment is in the
142 public interest because it will:

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

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

147 (C) Result in preservation or enhancement of the tax base
148 of the county or municipality.

149 (11) "Governing body of a municipality" means the city
150 council of a Class I or Class II municipality in this state.

151 (12) "Incremental value", for any development or
152 redevelopment district, means the difference between the
153 base assessed value and the current assessed value. The

154 incremental value will be positive if the current value
155 exceeds the base value and the incremental value will be
156 negative if the current value is less than the base assessed
157 value.

158 (13) “Includes” and “including”, when used in a
159 definition contained in this article, shall not ~~be deemed to~~
160 exclude other things otherwise within the meaning of the
161 term being defined.

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

167 (15) “Obligations” or “tax increment financing
168 obligations” means bonds, loans, debentures, notes, special
169 certificates or other evidences of indebtedness issued by a
170 county commission or municipality pursuant to this article to
171 carry out a development or redevelopment project or to
172 refund outstanding obligations under this article.

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

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

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

192 property in the development or redevelopment district until
193 the designation is terminated as provided in this article.

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

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

204 (21) "Project" means any capital improvement, facility or
205 both, as specifically set forth and defined in the project plan,
206 requiring an investment of capital including, but not limited
207 to, extensions, additions or improvements to existing
208 facilities, including water or wastewater facilities, and the
209 remediation of contaminated property as provided for in
210 article twenty-two, chapter twenty-two of this code, but does

211 not include performance of any governmental service by a
212 county or municipal government.

213 (22) "Project area" means an area within the boundaries
214 of a development or redevelopment district in which a
215 development or redevelopment project is undertaken as
216 specifically set forth and defined in the project plan.

217 (23) "Project costs" means expenditures made in
218 preparation of the development or redevelopment project
219 plan and made, or estimated to be made, or monetary
220 obligations incurred, or estimated to be incurred, by the
221 county commission which are listed in the project plan as
222 capital improvements within a development or
223 redevelopment district, plus any costs incidental thereto.

224 "Project costs" include, but are not limited to:

225 (A) Capital costs, including, but not limited to, the actual
226 costs of the construction of public works or improvements,
227 capital improvements and facilities, new buildings, structures
228 and fixtures, the demolition, alteration, remodeling, repair or
229 reconstruction of existing buildings, structures and fixtures,

230 environmental remediation, parking and landscaping, the
231 acquisition of equipment and site clearing, grading and
232 preparation;

233 (B) Financing costs, including, but not limited to, an
234 interest paid to holders of evidences of indebtedness issued
235 to pay for project costs, all costs of issuance and any
236 redemption premiums, credit enhancement or other related
237 costs;

238 (C) Real property assembly costs, meaning any deficit
239 incurred resulting from the sale or lease as lessor by the
240 county commission of real or personal property having a tax
241 situs within a development or redevelopment district for
242 consideration that is less than its cost to the county
243 commission;

244 (D) Professional service costs including, but not limited
245 to, those costs incurred for architectural planning,
246 engineering and legal advice and services;

247 (E) Imputed administrative costs including, but not
248 limited to, reasonable charges for time spent by county

249 employees or municipal employees in connection with the
250 implementation of a project plan;

251 (F) Relocation costs including, but not limited to, those
252 relocation payments made following condemnation and job
253 training and retraining;

254 (G) Organizational costs including, but not limited to, the
255 costs of conducting environmental impact and other studies
256 and the costs of informing the public with respect to the
257 creation of a development or redevelopment district and the
258 implementation of project plans;

259 (H) Payments made, in the discretion of the county
260 commission or the governing body of a municipality, which
261 are found to be necessary or convenient to creation of
262 development or redevelopment districts or the
263 implementation of project plans; and

264 (I) That portion of costs related to the construction of
265 environmental protection devices, storm or sanitary sewer
266 lines, water lines, amenities or streets or the rebuilding or
267 expansion of streets, or the construction, alteration,

268 rebuilding or expansion of which is necessitated by the
269 project plan for a development or redevelopment district,
270 whether or not the construction, alteration, rebuilding or
271 expansion is within the area or on land contiguous thereto.

272 (24) “Project developer” means any person who engages
273 in the development of projects in the state.

274 (25) “Project plan” means the plan for a development or
275 redevelopment project that is adopted by a county
276 commission or governing body of a municipality in
277 conformity with the requirements of this article and this
278 chapter or chapter eight of this code.

279 (26) “Real property” means all lands, including
280 improvements and fixtures on them and property of any nature
281 appurtenant to them or used in connection with them and every
282 estate, interest and right, legal or equitable, in them, including
283 terms of years and liens by way of judgment, mortgage or
284 otherwise, and indebtedness secured by the liens.

285 (27) “Redevelopment area” means an area designated
286 by a county commission or the governing body of a

287 municipality in respect to which the commission or
288 governing body has made a finding that there exist
289 conditions which cause the area to be classified as a
290 blighted area, a conservation area, an economic
291 development area or a combination thereof, which area
292 includes only those parcels of real property directly and
293 substantially benefitted by the proposed redevelopment
294 project located within the development or redevelopment
295 district or land contiguous thereto.

296 (28) "Redevelopment plan" means the comprehensive
297 program under this article of a county or municipality for
298 redevelopment intended by the payment of redevelopment
299 costs to reduce or eliminate those conditions, the existence
300 of which qualified the redevelopment area as a blighted
301 area, conservation area, economic development area or
302 combination thereof, and to thereby enhance the tax bases
303 of the levying bodies which extend into the redevelopment
304 area. Each redevelopment plan shall conform to the
305 requirements of this article.

306 (29) “Tax increment” means the amount of regular levy
307 property taxes attributable to the amount by which the
308 current assessed value of real and tangible personal
309 property having a tax situs in a development or
310 redevelopment district exceeds the base assessed value of
311 the property.

312 (30) “Tax increment financing fund” means a separate
313 fund for a development or redevelopment district
314 established by the county commission or governing body
315 of the municipality into which all tax increment revenues
316 and other pledged revenues are deposited and from which
317 projected project costs, debt service and other expenditures
318 authorized by this article are paid.

319 (31) “This code” means the Code of West Virginia,
320 1931, as amended by the Legislature.

321 (32) “Total ad valorem property tax regular levy rate”
322 means the aggregate levy rate of all levying bodies on all
323 taxable property having a tax situs within a development or
324 redevelopment district in a tax year but does not include

325 excess levies, levies for general obligation bonded
326 indebtedness or any other levies that are not regular levies.

(NOTE: The purpose of this bill is to add items to those which are excluded from base assessed value and current assessed value of real and personal property in the tax increment financing article.

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