### ENROLLED

### H. B. 2508

(BY DELEGATE(S) MR. SPEAKER, (MR. THOMPSON)

AND ARMSTEAD)

[BY REQUEST OF THE EXECUTIVE]

[Passed April 12, 2013; in effect July 1, 2013.]

\_\_\_\_

AN ACT to amend and reenact §7-22-7 of the Code of West Virginia, 1931, as amended; and to amend and reenact §8-38-7 of said code, all relating to the amount of capital investment required as a prerequisite to approval of an economic opportunity development district project; increasing the capital investment threshold amount from more than \$25 million to more than \$75 million for development expenditures proposed to be made in county economic opportunity development districts and in municipal economic opportunity development districts in the first twenty-four months following their creation; and increasing the capital investment threshold amount from more than \$25 million to more than \$75 million for development expenditures in a project involving remediation to be made in county economic opportunity development districts and in municipal economic opportunity development districts in the first forty-eight months following their creation.

Be it enacted by the Legislature of West Virginia:

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

#### CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

## ARTICLE 22. COUNTY ECONOMIC OPPORTUNITY DEVELOPMENT DISTRICTS.

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

- 1 (a) General. The Development Office shall receive and
- 2 act on applications filed with it by county commissions 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 development
- 11 expenditures to be made in the district as part of the project;
- 12 (5) A description of the proposed method of financing the
- 13 development expenditures, together with a description of the
- 14 reserves to be established for financing ongoing development
- 15 expenditures necessary to permanently maintain the optimum
- 16 economic viability of the district following its inception:
- 17 *Provided*, That the amounts of the reserves may not exceed the
- 18 amounts that would be required by prevailing commercial capital
- 19 market considerations:

- 20 (6) A description of the sources and anticipated amounts of 21 all financing, including, but not limited to, proceeds from the 22 issuance of any bonds or other instruments, revenues from the 23 special district excise tax and enhanced revenues from property 24 taxes and fees:
- 25 (7) A description of the financial contribution of the county 26 commission to the funding of development expenditures;
- 27 (8) Identification of any businesses that the county commis-28 sion expects to relocate their business locations from the district 29 to another place in the state in connection with the establishment 30 of the district or from another place in this state to the district: 31 *Provided*, That for purposes of this article, any entities shall be 32 designated "relocated entities";
- 33 (9) Identification of any businesses currently conducting 34 business in the proposed economic opportunity development 35 district that the county commission expects to continue doing 36 business there after the district is created:

38

39

40 41

42

43

44

45

- (10) A good faith estimate of the aggregate amount of consumers sales and service tax that was actually remitted to the Tax Commissioner by all business locations identified as provided in subdivisions (8) and (9) of this subsection with respect to their sales made and services rendered from their then current business locations that will be relocated from, or to, or remain in the district, for the twelve full calendar months next preceding the date of the application: *Provided*, That for purposes of this article, the aggregate amount is designated as "the base tax revenue amount";
- 47 (11) A good faith estimate of the gross annual district tax 48 revenue amount;
- 49 (12) The proposed application of any surplus from all 50 funding sources to further the objectives of this article;

66

- 51 (13) The Tax Commissioner's certification of: (i) The 52 amount of consumers sales and service taxes collected from businesses located in the economic opportunity district during 53 the twelve calendar months preceding the calendar quarter 54 during which the application will be submitted to the Develop-55 ment Office; (ii) the estimated amount of economic opportunity 56 57 district excise tax that will be collected during the first twelve 58 months after the month in which the Tax Commissioner would 59 first begin to collect that tax; and (iii) the estimated amount of 60 economic opportunity district excise tax that will be collected 61 during the first thirty-six months after the month in which the Tax Commissioner would first begin to collect that tax; and 62
- 63 (14) Any additional information the Development Office 64 may require.
  - (b) *Review of applications*. The Development Office shall review all project proposals for conformance to statutory and regulatory requirements, the reasonableness of the project's budget and timetable for completion and the following criteria:
- 69 (1) The quality of the proposed project and how it addresses 70 economic problems in the area in which the project will be 71 located;
- 72 (2) The merits of the project determined by a cost-benefit 73 analysis that incorporates all costs and benefits, both public and 74 private;
- 75 (3) Whether the project is supported by significant private sector investment and substantial credible evidence that, but for the existence of sales tax increment financing, the project would not be feasible;
- 79 (4) Whether the economic opportunity district excise tax 80 dollars will leverage or be the catalyst for the effective use of 81 private, other local government, state or federal funding that is 82 available;

- 83 (5) Whether there is substantial and credible evidence that 84 the project is likely to be started and completed in a timely 85 fashion;
- 86 (6) Whether the project will, directly or indirectly, improve 87 the opportunities in the area where the project will be located for 88 the successful establishment or expansion of other industrial or 89 commercial businesses;
- 90 (7) Whether the project will, directly or indirectly, assist in 91 the creation of additional long-term employment opportunities 92 in the area and the quality of jobs created in all phases of the 93 project, to include, but not be limited to, wages and benefits;
- 94 (8) Whether the project will fulfill a pressing need for the 95 area, or part of the area, in which the economic opportunity 96 district is located;
- 97 (9) Whether the county commission has a strategy for 98 economic development in the county and whether the project is 99 consistent with that strategy;
- 100 (10) Whether the project helps to diversify the local econ-101 omy;
- 102 (11) Whether the project is consistent with the goals of this article;
- 104 (12) Whether the project is economically and fiscally sound 105 using recognized business standards of finance and accounting; 106 and
- 107 (13) (A) The ability of the county commission and the 108 project developer or project team to carry out the project: 109 *Provided*, That no project may be approved by the Development 110 Office unless the amount of all development expenditures 111 proposed to be made in the first twenty-four months following 112 the creation of the district results in capital investment of more

- than \$75 million in the district and the county submits clear and convincing information, to the satisfaction of the Development Office, that the investment will be made if the Development Office approves the project and the Legislature authorizes the county commission to levy an excise tax on sales of goods and
- services made within the economic opportunity district as provided in this article.
- 120 (B) Notwithstandin

139

140

141

- (B) Notwithstanding any provision of paragraph (A) of this subdivision to the contrary, no project involving remediation 121 may be approved by the Development Office unless the amount 122 123 of all development expenditures proposed to be made in the first forty-eight months following the creation of the district results 124 125 in capital investment of more than \$75 million in the district. In 126 addition to the remaining provisions of paragraph (A) of this 127 subdivision the Development Office may not approve a project 128 involving remediation authorized under section five of this article unless the county commission submits clear and convinc-129 130 ing information, to the satisfaction of the Development Office, that the proposed remediation expenditures to be financed by the 131 132 issuance of bonds or notes pursuant to section sixteen of this 133 article do not constitute more than twenty-five percent of the 134 total development expenditures associated with the project.
- 135 (c) *Additional criteria*. The Development Office may 136 establish other criteria for consideration when approving the 137 applications.
  - (d) Action on the application. The Executive Director of the Development Office shall act to approve or not approve any application within thirty days following the receipt of the application or the receipt of any additional information requested by the Development Office, whichever is the later.
- 143 (e) *Certification of project*. If the Executive Director of 144 the Development Office approves a county's economic opportu-145 nity district project application, he or she shall issue to the 146 county commission a written certificate evidencing the approval.

The certificate shall expressly state a base tax revenue amount, the gross annual district tax revenue amount and the estimated net annual district tax revenue amount which, for purposes of this article, is the difference between the gross annual district tax revenue amount and the base tax revenue amount, all of which the Development Office has determined with respect to the district's application based on any investiga-tion it considers reasonable and necessary, including, but not limited to, any relevant information the Development Office requests from the Tax Commissioner and the Tax Commissioner provides to the Development Office: Provided, That in determin-ing the net annual district tax revenue amount, the Development Office may not use a base tax revenue amount less than that amount certified by the Tax Commissioner but, in lieu of confirmation from the Tax Commissioner of the gross annual district tax revenue amount, the Development Office may use the estimate of the gross annual district tax revenue amount provided by the county commission pursuant to subsection (a) of this section.

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

The certificate shall expressly state a base tax revenue amount, the gross annual district tax revenue amount and the estimated net annual district tax revenue amount which, for purposes of this article, is the difference between the gross annual district tax revenue amount and the base tax revenue amount, all of which the Development Office has determined with respect to the district's application based on any investigation it considers reasonable and necessary, including, but not limited to, any relevant information the Development Office requests from the Tax Commissioner and the Tax Commissioner

- provides to the Development Office: *Provided*, That in determin-
- ing the net annual district tax revenue amount, the Development
- 184 Office may not use a base tax revenue amount less than that
- 185 amount certified by the Tax Commissioner but, in lieu of
- 186 confirmation from the Tax Commissioner of the gross annual
- 187 district tax revenue amount, the Development Office may use the
- 188 estimate of the gross annual district tax revenue amount provided
- 189 by the county commission pursuant to subsection (a) of this
- 190 section.
- 191 (g) Promulgation of rules. The Executive Director of the
- 192 Development Office may promulgate rules to implement the
- 193 economic opportunity development district project application
- 194 approval process and to describe the criteria and procedures it
- 195 has established in connection therewith. These rules are not
- 196 subject to the provisions of chapter twenty-nine-a of this code
- 197 but shall be filed with the Secretary of State.

#### CHAPTER 8. MUNICIPAL CORPORATIONS.

## ARTICLE 38. MUNICIPAL ECONOMIC OPPORTUNITY DEVELOPMENT DISTRICTS.

# §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 to
- 3 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 development 11 expenditures to be made in the district as part of the project;
- 12 (5) A description of the proposed method of financing the development expenditures, together with a description of the 13 reserves to be established for financing ongoing development 14 15 expenditures necessary to permanently maintain the optimum economic viability of the district following its inception: 16 Provided, That the amounts of the reserves may not exceed the 17 amounts that would be required by prevailing commercial capital 18 19 market considerations:
- 20 (6) A description of the sources and anticipated amounts of 21 all financing, including, but not limited to, proceeds from the 22 issuance of any bonds or other instruments, revenues from the 23 special district excise tax and enhanced revenues from property 24 taxes and fees;
- 25 (7) A description of the financial contribution of the municipality to the funding of development expenditures;
- 27 (8) Identification of any businesses that the municipality 28 expects to relocate their business locations from the district to 29 another place in the state in connection with the establishment of 30 the district or from another place in this state to the district: 31 *Provided*, That for purposes of this article, any entities shall be 32 designated "relocated entities";
- 33 (9) Identification of any businesses currently conducting 34 business in the proposed economic opportunity development 35 district that the municipality expects to continue doing business 36 there after the district is created;
- 37 (10) A good faith estimate of the aggregate amount of 38 consumers sales and service tax that was actually remitted to the 39 Tax Commissioner by all business locations identified as 40 provided in subdivisions (8) and (9) of this subsection with

- 41 respect to their sales made and services rendered from their then
- 42. current business locations that will be relocated from, or to, or
- remain in the district for the twelve full calendar months next 43
- preceding the date of the application: Provided, That for 44
- purposes of this article, the aggregate amount is designated as 45
- "the base tax revenue amount": 46
- 47 (11) A good faith estimate of the gross annual district tax
- 48 revenue amount:
- (12) The proposed application of any surplus from all 49
- 50 funding sources to further the objectives of this article;
- 51 (13) The Tax Commissioner's certification of: (i) The
- 52 amount of consumers sales and service taxes collected from
- businesses located in the economic opportunity district during 53
- 54 the twelve calendar months preceding the calendar quarter
- 55 during which the application will be submitted to the Develop-
- 56 ment Office; (ii) the estimated amount of economic opportunity
- 57 district excise tax that will be collected during the first twelve
- 58 months after the month in which the Tax Commissioner would
- 59 first begin to collect that tax; and (iii) the estimated amount of
- 60
- economic opportunity district excise tax that will be collected
- during the first thirty-six months after the month in which the 61
- Tax Commissioner would first begin to collect that tax; and 62
- 63 (14) Any additional information the Development Office
- 64 may require.
- (b) Review of applications. The Development Office shall 65
- review all project proposals for conformance to statutory and 66
- regulatory requirements, the reasonableness of the project's 67
- budget and timetable for completion and the following criteria: 68
- 69 (1) The quality of the proposed project and how it addresses
- 70 economic problems in the area in which the project will be
- 71 located;

- 72 (2) The merits of the project determined by a cost-benefit 73 analysis that incorporates all costs and benefits, both public and 74 private;
- 75 (3) Whether the project is supported by significant private sector investment and substantial credible evidence that, but for the existence of sales tax increment financing, the project would not be feasible;
- 79 (4) Whether the economic opportunity development district 80 excise tax dollars will leverage or be the catalyst for the effective 81 use of private, other local government, state or federal funding 82 that is available;
- 83 (5) Whether there is substantial and credible evidence that 84 the project is likely to be started and completed in a timely 85 fashion;

87

88 89

90

91

92 93

94

95 96

97 98

99 100

- (6) Whether the project will, directly or indirectly, improve the opportunities in the area where the project will be located for the successful establishment or expansion of other industrial or commercial businesses;
- (7) Whether the project will, directly or indirectly, assist in the creation of additional long-term employment opportunities in the area and the quality of jobs created in all phases of the project, to include, but not be limited to, wages and benefits;
- (8) Whether the project will fulfill a pressing need for the area, or part of the area, in which the economic opportunity district is located: *Provided*, That the Development Office should consider whether the economic development project is large enough to require that it contain a mixed use development provision consisting of a housing component with at least ten percent of housing units in the district allocated for affordable housing;

126

127

128

129 130

131132

- 102 (9) Whether the municipality has a strategy for economic 103 development in the municipality and whether the project is 104 consistent with that strategy;
- 105 (10) Whether the project helps to diversify the local econ-106 omy;
- 107 (11) Whether the project is consistent with the goals of this article;
- 109 (12) Whether the project is economically and fiscally sound 110 using recognized business standards of finance and accounting; 111 and
- 112 (13) (A) The ability of the municipality and the project 113 developer or project team to carry out the project: *Provided*, That 114 no project may be approved by the Development Office unless 115 the amount of all development expenditures proposed to be made in the first twenty-four months following the creation of the 116 117 district results in capital investment of more than \$25 \$75 118 million in the district and the municipality submits clear and 119 convincing information, to the satisfaction of the Development Office, that the investment will be made if the Development 120 Office approves the project and the Legislature authorizes the 121 122 municipality to levy an excise tax on sales of goods and services 123 made within the economic opportunity development district as 124 provided in this article.
  - (B) Notwithstanding any provision of paragraph (A) of this subdivision to the contrary, no project involving remediation may be approved by the Development Office unless the amount of all development expenditures proposed to be made in the first forty-eight months following the creation of the district results in capital investment of more than \$75 million in the district. In addition to the remaining provisions of paragraph (A) of this subdivision the Development Office may not approve a project involving remediation authorized under section five of this

- article unless the municipality submits clear and convincing information, to the satisfaction of the Development Office, that the proposed remediation expenditures to be financed by the issuance of bonds or notes pursuant to section sixteen of this article do not constitute more than twenty-five percent of the total development expenditures associated with the project.
- 140 (c) *Additional criteria*. The Development Office may 141 establish other criteria for consideration when approving the 142 applications.
- (d) *Action on the application.* The Executive Director of the Development Office shall act to approve or not approve any application within thirty days following the receipt of the application or the receipt of any additional information requested by the Development Office, whichever is the later.
- 148 (e) *Certification of project*. If the Executive Director of the Development Office approves a municipality's economic opportunity district project application, he or she shall issue to the municipality a written certificate evidencing the approval.

152 The certificate shall expressly state a base tax revenue 153 amount, the gross annual district tax revenue amount and the 154 estimated net annual district tax revenue amount which, for purposes of this article, is the difference between the gross 155 156 annual district tax revenue amount and the base tax revenue 157 amount, all of which the Development Office has determined 158 with respect to the district's application based on any investiga-159 tion it considers reasonable and necessary, including, but not 160 limited to, any relevant information the Development Office 161 requests from the Tax Commissioner and the Tax Commissioner 162 provides to the Development Office: Provided, That in determin-163 ing the net annual district tax revenue amount, the Development 164 Office may not use a base tax revenue amount less than that 165 amount certified by the Tax Commissioner but, in lieu of 166 confirmation from the Tax Commissioner of the gross annual

171

172173

174

175

176

177

178

179 180

181

182 183

184

185

186

187 188

189

190 191

192

193

194

195

196 197

198

199

200

district tax revenue amount, the Development Office may use the estimate of the gross annual district tax revenue amount provided by the municipality pursuant to subsection (a) of this section.

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

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

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

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

Chairman, House	e Committee
	Chairman, Senate Committee
Originating in the Hous	se.
In effect July 1, 2013.	
Clerk of the House	of Delegates
Cl	lerk of the Senate
S <sub>F</sub>	peaker of the House of Delegates
	President of the Senate
The within	this the
day of	, 2013.
	Governor