

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 439

(By Senators Fitzsimmons, Kessler (Mr. President),
Beach, Edgell and Yost)

[Originating in the Committee on Finance;
reported February 21, 2014.]

A BILL to amend and reenact §7-22-9 and §7-22-15 of the Code of West Virginia, 1931, as amended, all relating to permitting the Ohio county commission to levy a special district excise tax; increasing the Fort Henry economic opportunity development project district from three hundred to five hundred contiguous acres of land; specifying that the Fort Henry Economic Opportunity Development District shall not be abolished until the year 2044, unless sooner abolished by the county commission after notice of public hearing; specifying that any district for which legislative authorization of the county

commission to levy special district excise taxes was enacted after December 31, 2013, shall cease to exist and be abolished by operation of law on December 31 of the thirtieth calendar year subsequent to the year of enactment of such legislative authorization to levy special district excise taxes in the district; specifying that any district for which legislative authorization of the county commission to levy special district excise taxes was enacted prior to December 31, 2013, shall cease to exist and be abolished by operation of law on December 31 of the thirtieth calendar year subsequent to the initial year of enactment of such legislative authorization to levy special district excise taxes in the district, if an amendment to the district boundary, size or acreage is authorized, or other amendment relating to the district is authorized, after December 31, 2013; specifying that special district excise tax may not be levied, imposed or collected in or from an abolished district or from or on any business located therein or on any transaction occurring therein after the cessation and abolishment of the district; specifying that nothing in this code shall not be interpreted to abrogate or hinder the authority of the Tax Commissioner to collect, receive, process or

administer any special district excise tax accrued, due or payable for any tax period prior to the cessation and abolishment of the district, or to audit and issue assessments of tax, interest, additions to tax and penalties for the collection, remittance and enforcement thereof; specifying that upon cessation and abolishment of a district, the consumers sales and service tax and use tax and municipal consumers sales and service tax and use tax, if applicable, shall be imposed, collected, levied and remitted, as provided by law for sales and uses in the previously authorized district; and providing definitions.

Be it enacted by the Legislature of West Virginia:

That §7-22-9 and §7-22-15 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

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

§7-22-9. Authorization to levy special district excise tax.

- 1 (a) *General.* – County commissions have no inherent
- 2 authority to levy taxes and have only that authority expressly
- 3 granted to them by the Legislature. The Legislature is

4 specifically extended, and intends by this article, to exercise
5 certain relevant powers expressed in section six-a, article X
6 of the Constitution of this state as follows: (1) The
7 Legislature may appropriate state funds for use in matching
8 or maximizing grants-in-aid for public purposes from the
9 United States or any department, bureau, commission or
10 agency thereof, or any other source, to any county,
11 municipality or other political subdivision of the state, under
12 such circumstances and subject to such terms, conditions and
13 restrictions as the Legislature may prescribe by law; and (2)
14 the Legislature may impose a state tax or taxes or dedicate a
15 state tax or taxes or any portion thereof for the benefit of and
16 use by counties, municipalities or other political subdivisions
17 of the state for public purposes, the proceeds of any such
18 imposed or dedicated tax or taxes or portion thereof to be
19 distributed to such counties, municipalities or other political
20 subdivisions of the state under such circumstances and
21 subject to such terms, conditions and restrictions as the
22 Legislature may prescribe.

23 Because a special district excise tax would have the effect
24 of diverting, for a specified period of years, tax dollars which
25 to the extent, if any, are not essentially incremental to tax
26 dollars currently paid into the General Revenue Fund of the
27 state, the Legislature finds that in order to substantially
28 ensure that such special district excise taxes will not
29 adversely impact the current level of the General Revenue
30 Fund of the state, it is necessary for the Legislature to
31 separately consider and act upon each and every economic
32 development district which is proposed, including the unique
33 characteristics of location, current condition and activity of
34 and within the area included in such proposed economic
35 opportunity development district and that for such reasons a
36 statute more general in ultimate application is not feasible for
37 accomplishment of the intention and purpose of the
38 Legislature in enacting this article. Therefore, no economic
39 opportunity development district excise tax may be levied by
40 a county commission until after the Legislature expressly
41 authorizes the county commission to levy a special district

42 excise tax on sales of tangible personal property and services
43 made within district boundaries approved by the Legislature.

44 (b) *Authorizations.* – The Legislature authorizes the
45 following county commissions to levy special district excise
46 taxes on sales of tangible personal property and services
47 made from business locations in the following economic
48 opportunity development districts:

49 (1) The Ohio County Commission may levy a special
50 district excise tax for the benefit of the Fort Henry Economic
51 Opportunity Development ~~project~~ District which comprises
52 ~~three~~ five hundred contiguous acres of land. Notwithstanding
53 the time limitations provisions of subdivision two, subsection
54 (a), section fifteen of this article, the Fort Henry Economic
55 Opportunity Development District shall not be abolished
56 under subdivision two, subsection (a), section fifteen of this
57 article until the year 2044, unless sooner abolished and
58 terminated in accordance with the provisions of subdivision
59 one, subsection (a), section fifteen of this article or any other
60 provision of this code, or sooner abolished for any other

61 reason: *Provided*, That on December 31, 2044, the provisions
62 of subdivision two, subsection (a), section fifteen of this
63 article shall apply to abolish the Fort Henry Economic
64 Opportunity Development District if the district has not been
65 abolished prior to that date.

66 (2) The Harrison County commission may levy a special
67 district excise tax for the benefit of the Charles Pointe
68 Economic Opportunity Development District which
69 comprises four hundred thirty-seven acres of land; and

70 (3) The Monongalia County commission may levy a
71 special district excise tax for the benefit of the University
72 Town Centre Economic Opportunity District which
73 comprises approximately one thousand four hundred fifty
74 contiguous acres of land.

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

1 (a) *General.* – (1) Except upon the express written
2 consent of the Executive Director of the Development Office
3 and of all the holders or obligees of any indebtedness or other

4 instruments the proceeds of which were applied to any
5 development expenditures or any indebtedness the payment
6 of which is secured by revenues payable into the fund
7 provided under section eight of this article or by any public
8 property, a district may only be abolished by the county
9 commission when there is no outstanding indebtedness, the
10 proceeds of which were applied to any development
11 expenditures or the payment of which is secured by revenues
12 payable into the fund provided under section eight of this
13 article, or by any public property, and following a public
14 hearing upon the proposed abolishment.

15 (2) *Thirty-year limitations.* –

16 (A) *Thirty-year limitation on new districts.* –

17 Notwithstanding subdivision (1) of this subsection, and
18 notwithstanding any other provision of this code to the
19 contrary, any district for which the date of initial enactment
20 was after December 31, 2013, shall cease to exist and shall be
21 abolished by operation of law, at 11:59 P.M., United States
22 eastern time zone, on December 31 of the thirtieth calendar

23 year subsequent to the initial year of enactment. Special
24 district excise tax may not be levied, imposed or collected in
25 or from the district so abolished or from or on any business
26 located therein or any transaction occurring therein after the
27 cessation and abolishment of the district.

28 (B) *Thirty-year limitation on preexisting districts*
29 *receiving authorization for boundary changes or other*
30 *changes after December 31, 2013. – Notwithstanding*
31 *subdivision (1) of this subsection, notwithstanding any other*
32 *provision of this code to the contrary and notwithstanding a*
33 *date of initial enactment for a district that is prior to*
34 *December 31, 2013, if legislative authorization is enacted*
35 *after December 31, 2013, to expand or amend the previously*
36 *authorized boundary, size or acreage of the district, or make*
37 *any other amendment or change relating to the district, such*
38 *district shall cease to exist and shall be abolished by*
39 *operation of law, at 11:59 P.M., United States eastern time*
40 *zone, on December 31 of the thirtieth calendar year*
41 *subsequent to the initial year of enactment. Special district*

42 excise tax may not be levied, imposed or collected in or from
43 the district so abolished or from or on any business located
44 therein or any transaction occurring therein after the
45 cessation and abolishment of the district.

46 (C) Definitions. – For purposes of this subdivision:

47 (i) The term “date of initial enactment” means the date of
48 passage of legislation whereby legislative authorization was
49 first enacted for the county commission to levy special
50 district excise taxes for a district, and prior to enactment of
51 any legislative authorization to expand or amend the
52 authorized boundary, size or acreage of the district, or make
53 any other amendment or change relating to the district as
54 originally authorized.

55 (ii) The term “initial year of enactment” means the
56 calendar year during which the date of initial enactment
57 occurred.

58 (D) This section shall not be interpreted to abrogate or
59 hinder the authority of the Tax Commissioner to collect,
60 receive, process or administer any special district excise tax

61 accrued, due or payable for any tax period prior to the
62 cessation and abolishment of the district, or to audit and issue
63 assessments of tax, interest, additions to tax and penalties for
64 the collection, remittance and enforcement thereof.

65 (E) Upon cessation and abolishment of a district under
66 this section or any provision of this code, or any cessation or
67 abolishment of a district for any reason, the consumers sales
68 and service tax and use tax and municipal consumers sales
69 and service tax and use tax, if applicable, shall be imposed,
70 collected, levied and remitted, as provided by law for sales
71 and uses in the previously authorized district.

72 (b) *Notice of public hearing.* – Notice of the public
73 hearing required by subsection (a) of this section shall be
74 provided by first-class mail to all owners of real property
75 within the district and shall be published as a Class I-0 legal
76 advertisement in compliance with article three, chapter fifty-
77 nine of this code at least twenty days prior to the public
78 hearing.

79 (c) *Transfer of district assets and funds.* – Upon the
80 abolishment of any economic opportunity development
81 district, any funds or other assets, contractual rights or
82 obligations, claims against holders of indebtedness or other
83 financial benefits, liabilities or obligations existing after full
84 payment has been made on all existing contracts, bonds,
85 notes or other obligations of the district are transferred to and
86 assumed by the county commission. Any funds or other
87 assets transferred shall be used for the benefit of the area
88 included in the district being abolished.

89 (d) *Reinstatement of district.* – Following abolishment of
90 a district pursuant to this section, its reinstatement requires
91 compliance with all requirements and procedures set forth in
92 this article for the initial development, approval,
93 establishment and creation of an economic opportunity
94 development district.