

**Senate Bill No. 367**

(By Senators Cole (Mr. President) and Kessler,

By Request of the Executive)

[Introduced January 29, 2015; referred to the Committee on Finance.]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §7-22-7a, relating to sales tax increment financing; authorizing recalculation of base tax revenue amount, subject to specified limitations; specifying that, upon written request of the county commission, filed not later than April 30, 2015, with the Development Office, base tax revenue amounts greater than \$1 million for a given district may be recalculated; specifying limitations on changes to base tax revenue amount; specifying that recalculated base tax revenue amount shall be used to determine net annual district tax revenue amount for the district beginning on July 1, 2015; specifying that decrease to base tax revenue amount upon recalculation is limited to \$1 million; specifying that no adjustment, refund, payment or repayment of special district excise tax, or consumers sales and service tax and use tax, or net annual district tax revenue amount, or accrual thereof, attributable to periods prior to July 1, 2015, is authorized; providing for sharing of certain information respecting the district; defining terms; specifying that, if tax revenues in a sales

tax increment financing district are deficient, such that the amount withheld in any month is insufficient to fully recover base tax revenue amount attributable to that month, that such deficit shall be carried forward to subsequent months until base tax revenue amount deficit is paid; and specifying that any unpaid deficit carried forward shall be discharged and set at zero on the first day of each fiscal year.

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

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §7-22-7a, to read as follows:

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

**§7-22-7a. Base tax revenue amount.**

(a) *Recalculation of base tax revenue amount.* --

(1) If the base tax revenue amount determined under section seven of this article is greater than \$1 million for a given district, then, upon written request of the county commission that has established the economic opportunity development district pursuant to this article, filed with the Executive Director of the Development Office not later than April 30, 2015, the base tax revenue amount for that district shall be recalculated by the Tax Commissioner as the aggregate annual amount of special district excise tax due and owing and remitted to the Tax Commissioner by all business locations located in the district with respect to sales made and services rendered from business locations in the district, for the twelve full calendar months next succeeding the date the special district excise tax was first collected in the district.

(2) *Limitation* -- If the base tax revenue amount determined under section seven of this article

1 exceeds the amount determined under subdivision (1) of this subsection by more than \$1 million,  
2 then the recalculated base tax revenue amount for purposes of this article is the base tax revenue  
3 amount previously determined under section seven of this article minus \$1 million.

4       (3) *Effective date.* –

5       (A) The recalculated base tax revenue amount determined under this section shall be the  
6 amount used to determine the net annual district tax revenue amount for the district beginning on  
7 July 1, 2015. For purposes of this article, “net annual district tax revenue amount” means the gross  
8 annual district tax revenue amount minus the base tax revenue amount. For purposes of this article,  
9 “gross annual district tax revenue amount” means the amount of special district excise tax, net of  
10 refunds and adjustments, collected from the district before subtraction of the base tax revenue  
11 amount.

12       (B) The recalculated base tax revenue amount shall only be applicable to determine the net  
13 annual district tax revenue amount for periods beginning on and after July 1, 2015. The recalculated  
14 base tax revenue amount determined pursuant to this section is prospective in operation, and no  
15 adjustment, refund, payment or repayment of special district excise tax, or consumers sales and  
16 service tax and use tax, or net annual district tax revenue amount, or accrual thereof, attributable to  
17 periods prior to July 1, 2015, shall affect recalculation of the base tax revenue amount.

18       (b) *Base tax revenue amount carry forward, recovery, recovery limitation.*

19       (1) Notwithstanding any provision of section twelve of this article to the contrary, and  
20 notwithstanding the provisions of section eleven-a, article ten, chapter eleven of this code, if the  
21 amount of special district excise tax due and owing and collected in a calendar month is less than

1 one-twelfth of the base tax revenue amount, the State Treasurer shall deposit the full amount of  
2 special district excise tax collections for that month into the General Revenue Fund of this state. In  
3 order to account for deficient special district excise tax collections in prior months for an economic  
4 opportunity development district, the State Treasurer shall deposit the full amount of special district  
5 excise tax collections into the General Revenue Fund in subsequent months during the fiscal year  
6 in which the deficiencies occurred, in amounts that may exceed one-twelfth of the base tax revenue  
7 amount, until past monthly deficiencies for that fiscal year are satisfied in full. Upon payment in full  
8 of past monthly deficiencies for such fiscal year, only one-twelfth of the base tax revenue amount  
9 shall be transferred to the General Revenue Fund for each month. Any monthly deficiencies shall  
10 be carried forward and accounted for in subsequent months only during the fiscal year in which such  
11 deficiencies occurred. On the first day of each fiscal year, any monthly deficiencies for an economic  
12 opportunity development district remaining from the prior fiscal year shall be discharged and shall  
13 not be taken into consideration by the State Treasurer when the monthly deposits are made to the  
14 General Revenue Fund pursuant to this section. For purposes of this section, fiscal year refers to the  
15 July 1 to June 30 fiscal year for the State of West Virginia.

16 (2) Notwithstanding the provisions of subdivisions (2) and (3), subsection (d) section eleven-  
17 a, article ten, chapter eleven of this code, the provisions of this subsection apply to, and are limited  
18 to, the circumstance where the amount of special district excise tax due and owing and collected in  
19 a calendar month is less than one-twelfth of the base tax revenue amount. All other corrections of,  
20 or relating to, any erroneous distribution, transfer, allocation, overpayment or underpayment of  
21 moneys or any adjustments otherwise necessary with relation to erroneous distributions, transfers,

1 allocations, overpayments or underpayments of moneys, deposits, collections, or payments of special  
2 district excise tax shall be made in accordance with the provisions of section twenty-six, article ten,  
3 chapter eleven of this code.

4 (c) *Limitation on changes to base tax revenue amount.*

5 Except pursuant to a lawful recalculation of the base tax revenue amount under this section,  
6 or a lawful modification of geographical area included in a district under this article, the base tax  
7 revenue amount may not be modified, increased or decreased by reason of any change in law or fact  
8 relating to the consumers sales and service tax and use tax or to the base tax revenue amount  
9 determined under this article. No current, retrospective or prospective: tax reporting anomaly,  
10 permutation of tax filing configuration, failure of tax payment, failure of tax filing, tax adjustment,  
11 claim for a tax refund, issuance of a tax refund, entitlement to a tax refund, claim for a tax credit,  
12 issuance of a tax credit, or entitlement to a tax credit, relating to, or affecting, consumers sales and  
13 service tax or use tax paid or payable in the district or special district excise tax paid or payable in  
14 the district, either prior to the date upon which the base tax revenue amount was determined under  
15 this article or subsequent to the date upon which the base tax revenue amount was determined under  
16 this article, changes in any way the base tax revenue amount.

17 (d) *Sharing of District Information.*

18 (1) Notwithstanding the provisions of section five-d, article ten, chapter eleven of this code:

19 (A) So long as bonds are outstanding pursuant to this article, the Tax Commissioner shall  
20 provide on a monthly basis to the trustee for bonds issued pursuant to this article information on or  
21 derived from special district excise tax returns submitted pursuant to this article; and

1 (B) The trustee may share the information so obtained with the county commission that  
2 established the economic opportunity development district that issued the bonds pursuant to this  
3 article and with the bondholders and with bond counsel for bonds issued pursuant to this article. The  
4 Tax Commissioner and the trustee may enter into a written agreement in order to accomplish  
5 exchange of the information.

6 (C) If bonds are not outstanding pursuant to this article, the Tax Commissioner shall provide  
7 on a monthly basis to the county commission that has established the economic opportunity  
8 development district pursuant to this article, information on or derived from special district excise  
9 tax returns submitted pursuant to this article; and

10 (D) The county commission may share the information so obtained with legal counsel for the  
11 county commission and with financial advisors registered or licensed with the appropriate oversight  
12 agency to act in such capacity and with underwriters registered or licensed with the appropriate  
13 oversight agency to act in such capacity, that have been engaged by the county commission. The Tax  
14 Commissioner and the county commission may enter into a written agreement in order to accomplish  
15 exchange of the information.

16 (2) Any confidential information provided pursuant to this subsection shall be used solely  
17 for the protection and enforcement of the rights and remedies of the bondholders of bonds issued  
18 pursuant to this article, or, if there be none such, then, the district board of the district, or, if there  
19 be none such, then, the county commission that established the economic opportunity development  
20 district pursuant to this article. Any person or entity that is in possession of information disclosed  
21 by the Tax Commissioner, including but not limited to, the trustee and the county commission, and

1 any person or entity that is in possession of information disclosed by or shared by the trustee  
2 pursuant to this subdivision, or disclosed by or shared by the county commission pursuant to this  
3 subdivision, is subject to the provisions of section five-d, article ten, chapter eleven of this code with  
4 relation to further disclosure of such information, as if the person or entity that is in possession of  
5 the tax information is an officer, employee, agent or representative of this state or of a local or  
6 municipal governmental entity or other governmental subdivision. This section does not prohibit the  
7 publication or release of statistics so classified as to prevent the identification of particular returns  
8 and the items thereof and the identity of specific taxpayers. For purposes of this article the term  
9 “confidential information” means information subject to the confidentiality restrictions of section  
10 five-d, article ten, chapter eleven of this code.

NOTE: The purpose of this bill is to authorize recalculation of the base tax revenue amount, subject to specified limitations, for sales tax increment financing districts, and to specify that, if sales tax increment financing district monthly revenue is insufficient to recover the base tax revenue amount attributable to that month, the deficit carries forward to subsequent months until paid, but will be discharged on the first day of the next fiscal year.

§7-22-7a is new; therefore, strike-throughs and underscoring have been omitted.