

COMMITTEE SUBSTITUTE

FOR

H. B. 2562

(BY MR. SPEAKER, (MR. ARMSTEAD)

AND DELEGATE MILEY)

[BY REQUEST OF THE EXECUTIVE]

(Originating in the Committee on Finance)

[February 18, 2015]

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 the 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 the base tax revenue amount; specifying that the recalculated base tax revenue amount shall be used to determine the 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 dollars; 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, shall change the base tax revenue amount as recalculated; providing for the 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 the base tax revenue amount attributable to that month, that such deficit shall be carried forward to subsequent months until the 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.

1 (a) Recalculation of base tax revenue amount. —

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

16 (2) Limitation — If the base tax revenue amount determined
17 under section seven of this article exceeds the amount deter-
18 mined under subdivision (1) of this subsection by more than \$1
19 million, then the recalculated base tax revenue amount for
20 purposes of this article is the base tax revenue amount previously
21 determined under section seven of this article minus \$1 million.

22 (3) Effective date. —

23 (A) The recalculated base tax revenue amount determined
24 under this section shall be the amount used to determine the net
25 annual district tax revenue amount for the district beginning on
26 July 1, 2015. For purposes of this article, “net annual district tax
27 revenue amount” means the gross annual district tax revenue
28 amount minus the base tax revenue amount. For purposes of this
29 article, “gross annual district tax revenue amount” means the
30 amount of special district excise tax, net of refunds and adjust-
31 ments, collected from the district before subtraction of the base
32 tax revenue amount.

33 (B) The recalculated base tax revenue amount shall only be
34 applicable to determine the net annual district tax revenue
35 amount for periods beginning on and after July 1, 2015. The

36 recalculated base tax revenue amount determined pursuant to
 37 this section is prospective in operation, and no adjustment,
 38 refund, payment or repayment of special district excise tax, or
 39 consumers sales and service tax and use tax, or net annual
 40 district tax revenue amount, or accrual thereof, attributable to
 41 periods prior to July 1, 2015, shall affect recalculation of the
 42 base tax revenue amount.

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

45 (1) Notwithstanding any provision of section twelve of this
 46 article to the contrary, and notwithstanding the provisions of
 47 section eleven-a, article ten, chapter eleven of this code, if the
 48 amount of special district excise tax due and owing and collected
 49 in a calendar month is less than one-twelfth of the base tax
 50 revenue amount, the State Treasurer shall deposit the full amount
 51 of special district excise tax collections for that month into the
 52 General Revenue Fund of this state. In order to account for
 53 deficient special district excise tax collections in prior months
 54 for an economic opportunity development district, the State
 55 Treasurer shall deposit the full amount of special district excise

56 tax collections into the General Revenue Fund in subsequent
57 months during the fiscal year in which the deficiencies occurred,
58 in amounts that may exceed one-twelfth of the base tax revenue
59 amount, until past monthly deficiencies for that fiscal year are
60 satisfied in full. Upon payment in full of past monthly deficien-
61 cies for such fiscal year, only one-twelfth of the base tax revenue
62 amount shall be transferred to the General Revenue Fund for
63 each month. Any monthly deficiencies shall be carried forward
64 and accounted for in subsequent months only during the fiscal
65 year in which such deficiencies occurred. On the first day of
66 each fiscal year, any monthly deficiencies for an economic
67 opportunity development district remaining from the prior fiscal
68 year shall be discharged and shall not be taken into consideration
69 by the State Treasurer when the monthly deposits are made to
70 the General Revenue Fund pursuant to this section. For purposes
71 of this section, fiscal year refers to the July 1 to June 30 fiscal
72 year for the State of West Virginia.

73 (2) Notwithstanding the provisions of subdivisions (2) and
74 (3), subsection (d) section eleven-a, article ten, chapter eleven of
75 this code, the provisions of this subsection apply to, and are

76 limited to, the circumstance where the amount of special district
77 excise tax due and owing and collected in a calendar month is
78 less than one-twelfth of the base tax revenue amount. All other
79 corrections of, or relating to, any erroneous distribution, transfer,
80 allocation, overpayment or underpayment of moneys or any
81 adjustments otherwise necessary with relation to erroneous
82 distributions, transfers, allocations, overpayments or underpay-
83 ments of moneys, deposits, collections, or payments of special
84 district excise tax shall be made in accordance with the provi-
85 sions of section twenty-six, article ten, chapter eleven of this
86 code.

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

88 Except pursuant to a lawful recalculation of the base tax
89 revenue amount under this section, or a lawful modification of
90 geographical area included in a district under this article, the
91 base tax revenue amount may not be modified, increased or
92 decreased by reason of any change in law or fact relating to the
93 consumers sales and service tax and use tax or to the base tax
94 revenue amount determined under this article. No current,
95 retrospective or prospective tax reporting anomaly, permutation

96 of tax filing configuration, failure of tax payment, failure of tax
97 filing, tax adjustment, claim for a tax refund, issuance of a tax
98 refund, entitlement to a tax refund, claim for a tax credit,
99 issuance of a tax credit, or entitlement to a tax credit, relating to,
100 or affecting, consumers sales and service tax or use tax paid or
101 payable in the district or special district excise tax paid or
102 payable in the district, either prior to the date upon which the
103 base tax revenue amount was determined under this article or
104 subsequent to the date upon which the base tax revenue amount
105 was determined under this article, changes in any way the base
106 tax revenue amount.

107 (d) *Sharing of District Information.*

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

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

115 (B) The trustee may share the information so obtained with
 116 the county commission that established the economic opportu-
 117 nity development district that issued the bonds pursuant to this
 118 article, with financial advisors registered or licensed with the
 119 appropriate oversight agency to act in such capacity and with
 120 underwriters and placement agents registered or licensed with
 121 the appropriate oversight agency to act in such capacity, that
 122 have been engaged by the county commission, and with the
 123 bondholders and with bond counsel for bonds issued pursuant to
 124 this article. The Tax Commissioner and the trustee may enter
 125 into a written agreement in order to accomplish exchange of the
 126 information.

127 (C) If bonds are not outstanding pursuant to this article, the
 128 Tax Commissioner shall provide on a monthly basis to the
 129 county commission that has established the economic opportu-
 130 nity development district pursuant to this article, information on
 131 or derived from special district excise tax returns submitted
 132 pursuant to this article; and

133 (D) The county commission may share the information so
 134 obtained with legal counsel for the county commission and with

135 financial advisors registered or licensed with the appropriate
136 oversight agency to act in such capacity and with underwriters
137 and placement agents registered or licensed with the appropriate
138 oversight agency to act in such capacity, that have been engaged
139 by the county commission. The Tax Commissioner and the
140 county commission may enter into a written agreement in order
141 to accomplish exchange of the information.

142 (2) Any confidential information provided pursuant to this
143 subsection shall be used solely for the protection and enforce-
144 ment of the rights and remedies of the bondholders of bonds
145 issued pursuant to this article, or, if there be none such, then, the
146 district board of the district, or, if there be none such, then, the
147 county commission that established the economic opportunity
148 development district pursuant to this article. Any person or entity
149 that is in possession of information disclosed by the Tax
150 Commissioner, including but not limited to, the trustee and the
151 county commission, and any person or entity that is in posses-
152 sion of information disclosed by or shared by the trustee
153 pursuant to this subdivision, or disclosed by or shared by the
154 county commission pursuant to this subdivision, is subject to the

155 provisions of section five-d, article ten, chapter eleven of this
 156 code with relation to further disclosure of such information, as
 157 if the person or entity that is in possession of the tax information
 158 is an officer, employee, agent or representative of this state or of
 159 a local or municipal governmental entity or other governmental
 160 subdivision. This section does not prohibit the publication or
 161 release of statistics so classified as to prevent the identification
 162 of particular returns and the items thereof and the identity of
 163 specific taxpayers. For purposes of this article the term “confi-
 164 dential information” means information subject to the confiden-
 165 tiality restrictions of section five-d, article ten, chapter eleven of
 166 this code.

