

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Committee Substitute

for

Senate Bill 246

BY SENATORS ROMANO, SNYDER AND GAUNCH

[Originating in the Committee on Government
Organization; and then to the Committee on Finance;
reported on February 5, 2016.]

1 A BILL to amend and reenact §7-11B-7, §7-11B-10 and §7-11B-22 of the Code of West Virginia,
2 1931, as amended, all relating generally to tax increment financing districts; authorizing
3 county commission or municipality to modify termination time of certain districts; extending
4 length of certain districts; providing for the discharge of any tax increment financing
5 obligations outstanding on termination date of a district; and extending maturation of tax
6 increment financing obligations.

Be it enacted by the Legislature of West Virginia:

1 That §7-11B-7, §7-11B-10 and §7-11B-22 of the Code of West Virginia, 1931, as
2 amended, be amended and reenacted, all to read as follows:

ARTICLE 11B. WEST VIRGINIA TAX INCREMENT FINANCING ACT

'7-11B-7. Creation of a development or redevelopment or district.

3 (a) County commissions and the governing bodies of Class I and II municipalities, upon
4 their own initiative or upon application of an agency or a developer, may propose creation of a
5 development or redevelopment district and designate the boundaries of the district: *Provided,*
6 That a district may not include noncontiguous land.

7 (b) The county commission or municipality proposing creation of a development or
8 redevelopment district shall then hold a public hearing at which interested parties are afforded a
9 reasonable opportunity to express their views on the proposed creation of a development or
10 redevelopment district and its proposed boundaries.

11 (1) Notice of the hearing shall be published as a Class II legal advertisement in accordance
12 with section two, article three, chapter fifty-nine of this code.

13 (2) The notice shall include the time, place and purpose of the public hearing, describe in
14 sufficient detail the tax increment financing plan, the proposed boundaries of the development or
15 redevelopment district and, when a development or redevelopment project plan is being
16 proposed, the proposed tax increment financing obligations to be issued to finance the

17 development or redevelopment project costs.

18 (3) Prior to the first day of publication, a copy of the notice shall be sent by first-class mail
19 to the director of the Development Office and to the chief executive officer of all other local levying
20 bodies having the power to levy taxes on real and tangible personal property located within the
21 proposed development or redevelopment district.

22 (4) All parties who appear at the hearing shall be afforded an opportunity to express their
23 views on the proposal to create the development or redevelopment district and, if applicable, the
24 development or redevelopment project plan and proposed tax increment financing obligations.

25 (c) After the public hearing, the county commission, or the governing body of the
26 municipality, shall finalize the boundaries of the development or redevelopment district, the
27 development or redevelopment project plan, or both, and submit the same to the director of the
28 Development Office for his or her review and approval. The director, within sixty days after receipt
29 of the application, shall approve the application as submitted, reject the application or return the
30 application to the county commission or governing body of the municipality for further
31 development or review in accordance with instructions of the director of the Development Office.
32 A development or redevelopment district or development or redevelopment project plan may not
33 be adopted by the county commission or the governing body of a municipality until after it has
34 been approved by the executive director of the Development Office.

35 (d) Upon approval of the application by the Development Office, the county commission
36 may enter an order and the governing body of the municipality proposing the district or
37 development or redevelopment project plan may adopt an ordinance, that:

38 (1) Describes the boundaries of a development or redevelopment district sufficiently to
39 identify with ordinary and reasonable certainty the territory included in the district, which
40 boundaries shall create a contiguous district;

41 (2) Creates the development or redevelopment district as of a date provided in the order
42 or ordinance;

43 (3) Assigns a name to the development or redevelopment district for identification
44 purposes.

45 (A) The name may include a geographic or other designation, shall identify the county or
46 municipality authorizing the district and shall be assigned a number, beginning with the number
47 one.

48 (B) Each subsequently created district in the county or municipality shall be assigned the
49 next consecutive number;

50 (4) Contains findings that the real property within the development or redevelopment
51 district will be benefitted by eliminating or preventing the development or spread of slums or
52 blighted, deteriorated or deteriorating areas, discouraging the loss of commerce, industry or
53 employment, increasing employment or any combination thereof;

54 (5) Approves the development or redevelopment project plan, if applicable;

55 (6) Establishes a tax increment financing fund as a separate fund into which all tax
56 increment revenues and other revenues designated by the county commission, or governing body
57 of the municipality, for the benefit of the development or redevelopment district shall be deposited,
58 and from which all project costs shall be paid, which may be assigned to and held by a trustee for
59 the benefit of bondholders if tax increment financing obligations are issued by the county
60 commission or the governing body of the municipality; and

61 (7) Provides that ad valorem property taxes on real and tangible personal property having
62 a tax situs in the development or redevelopment district shall be assessed, collected and allocated
63 in the following manner, commencing upon the date of adoption of such order or ordinance and
64 continuing for so long as any tax increment financing obligations are payable from the tax
65 increment financing fund, hereinafter authorized, are outstanding and unpaid:

66 (A) For each tax year, the county assessor shall record in the land and personal property
67 books both the base assessed value and the current assessed value of the real and tangible
68 personal property having a tax situs in the development or redevelopment district;

69 (B) Ad valorem taxes collected from regular levies upon real and tangible personal
70 property having a tax situs in the district that are attributable to the lower of the base assessed
71 value or the current assessed value of real and tangible personal property located in the
72 development project area shall be allocated to the levying bodies in the same manner as
73 applicable to the tax year in which the development or redevelopment project plan is adopted by
74 order of the county commission or by ordinance adopted by the governing body of the
75 municipality;

76 (C) The tax increment with respect to real and tangible personal property in the
77 development or redevelopment district shall be allocated and paid into the tax increment financing
78 fund and shall be used to pay the principal of and interest on tax increment financing obligations
79 issued to finance the costs of the development or redevelopment projects in the development or
80 redevelopment district. Any levying body having a development or redevelopment district within
81 its taxing jurisdiction shall not receive any portion of the annual tax increment except as otherwise
82 provided in this article; and

83 (D) In no event shall the tax increment include any taxes collected from excess levies,
84 levies for general obligation bonded indebtedness or any levies other than the regular levies
85 provided for in article eight, chapter eleven of this code.

86 (e) Proceeds from tax increment financing obligations issued under this article may only
87 be used to pay for costs of development and redevelopment projects to foster economic
88 development in the development or redevelopment district or land contiguous thereto.

89 (f) Notwithstanding subsection (e) of this section, a county commission may not enter an
90 order approving a development or redevelopment project plan unless the county commission
91 expressly finds and states in the order that the development or redevelopment project is not
92 reasonably expected to occur without the use of tax increment financing.

93 (g) Notwithstanding subsection (e) of this section, the governing body of a municipality
94 may not adopt an ordinance approving a development or redevelopment project plan unless the

95 governing body expressly finds and states in the ordinance that the development or
96 redevelopment project is not reasonably expected to occur without the use of tax increment
97 financing.

98 (h) No county commission shall establish a development or redevelopment district any
99 portion of which is within the boundaries of a Class I, II, III or IV municipality without the formal
100 consent of the governing body of such municipality.

101 (i) A tax increment financing plan that has been approved by a county commission or the
102 governing body of a municipality may be amended by following the procedures set forth in this
103 article for adoption of a new development or redevelopment project plan.

104 (j) The county commission may modify the boundaries of the development or
105 redevelopment district, from time to time, or extend the length of existence of development or
106 redevelopment districts as set forth in section ten of this article, by entry of an order modifying the
107 order creating the development or redevelopment district.

108 (k) The governing body of a municipality may modify the boundaries of the development
109 or redevelopment district, from time to time, or extend the length of existence of development or
110 redevelopment districts as set forth in section ten of this article, by amending the ordinance
111 establishing the boundaries of the district.

112 (l) Before a county commission or the governing body of a municipality may amend such
113 an order or ordinance, the county commission or municipality shall give the public notice, hold a
114 public hearing and obtain the approval of the director of the Development Office, following the
115 procedures for establishing a new development or redevelopment district. In the event any tax
116 increment financing obligations are outstanding with respect to the development or
117 redevelopment district, any change in the boundaries shall not reduce the amount of tax increment
118 available to secure the outstanding tax increment financing obligations.

§7-11B-10. Termination of development or redevelopment district.

1 (a) No development or redevelopment district may be in existence for a period longer than

2 thirty years and no tax increment financing obligations may have a final maturity date later than
3 the termination date of the area or district: Provided, That for any existing development or
4 redevelopment district for which tax increment financing obligations have been issued by a county
5 commission, or the governing body of a municipality, prior to December 31, 2008, that existing
6 development or redevelopment district may be in existence for a period of forty years.

7 (b) The county commission or governing body of the municipality creating the development
8 or redevelopment district may set a shorter period for the existence of the district. In this event,
9 no tax increment financing obligations may have a final maturity date later than the termination
10 date of the district.

11 (c) Upon termination of the district, no further ad valorem tax revenues shall be distributed
12 to the tax increment financing fund of the district, and any tax increment financing obligations
13 which remain outstanding following the termination date of the district, together with any interest,
14 premium or other charges associated therewith shall be deemed to be discharged and satisfied,
15 and no longer due and payable.

16 (d) The county commission shall adopt, upon the expiration of the time periods set forth in
17 this section, an order terminating the development or redevelopment district created by the county
18 commission. : ~~Provided, That no district shall be terminated so long as bonds with respect to the~~
19 ~~district remain outstanding.~~

20 (e) The governing body of the county commission shall repeal, upon the expiration of the
21 time periods set forth in this section, the ordinance establishing the development or
22 redevelopment district. : ~~Provided, That no district shall be terminated so long as bonds with~~
23 ~~respect to the district remain outstanding.~~

§7-11B-22. Tax increment financing obligations -- terms, conditions.

1 (a) Tax increment financing obligations may not be issued in an amount exceeding the
2 estimated aggregate project costs, including all costs of issuance of the tax increment financing
3 obligations.

4 (b) Tax increment financing obligations shall not be included in the computation of the
5 Constitutional debt limitation of the county commission or municipality issuing the tax increment
6 financing obligations.

7 ~~(c) Tax increment financing obligations shall mature over a period not exceeding thirty~~
8 ~~years from the date of entry of the county commission=s order, or the effective date of the~~
9 ~~municipal ordinance, creating the development or redevelopment district and approving the~~
10 ~~development or redevelopment plan, or a period terminating with the date of termination of the~~
11 ~~development or redevelopment district, whichever period terminates earlier. Tax increment~~
12 ~~financing obligations shall mature over a period not to exceed the date of termination of the~~
13 ~~development or redevelopment district, which provisions regarding the termination date of the~~
14 ~~district are set forth in section ten of this article.~~

15 (d) Tax increment financing obligations may contain a provision authorizing their
16 redemption, in whole or in part, at stipulated prices, at the option of the county commission or
17 municipality issuing the obligations, and, if so, the obligations shall provide the method of selecting
18 the tax increment financing obligations to be redeemed.

19 (e) The principal and interest on tax increment financing obligations may be payable at
20 any place set forth in the resolution, trust indenture or other document governing the obligations.

21 (f) Bonds or notes shall be issued in registered form.

22 (g) Bonds or notes may be issued in any denomination.

23 (h) Each tax increment financing obligation issued under this article is declared to be a
24 negotiable instrument.

25 (i) The tax increment financing obligations may be sold at public or private sale.

26 (j) Insofar as they are consistent with subsections (a), (b) and (c) of this section, the
27 procedures for issuance, form, contents, execution, negotiation and registration of county and
28 municipal industrial or commercial revenue bonds set forth in article two-c, chapter thirteen of this
29 code are incorporated by reference herein.

30 (k) The bonds may be refunded or refinanced and refunding bonds may be issued in any
31 principal amount. ~~: *Provided*, That the last maturity of the refunding bonds shall not be later than~~
32 ~~the last maturity of the bonds being refunded.~~

NOTE: The purpose of this bill is to provide an option for certain governmental entities to extend the term of a tax increment financing district from a maximum of 30 years to a maximum of 40 years if tax increment financing obligations were issued for that district in the years leading up to the most recent United States economic recession.

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