

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Committee Substitute

for

House Bill 4612

(BY DELEGATES E. NELSON, MR. SPEAKER, MR. ARMSTEAD,
GEARHEART, HAMRICK, HOUSEHOLDER, ANDERSON, SHOTT,
STORCH, ESPINOSA, HOWELL AND BOGGS)

[Originating in the Committee on Finance,

February 22, 2016.]

1 A BILL to amend and reenact §7-11B-3, §7-11B-4, §7-11B-14, §7-11B-21 and §7-11B-22 of the
2 Code of West Virginia, 1931, as amended; to amend said code by adding thereto two new
3 sections, designated §7-11B-29 and §7-11B-30; to amend and reenact §7-22-5, §7-22-7,
4 §7-22-8, §7-22-12 and §7-22-14 of said code; to amend said code by adding thereto two
5 new sections, designated §7-22-23 and §7-22-24; to amend and reenact §8-38-5, §8-38-
6 7, §8-38-8, §8-38-12 and §8-38-14 of said code; to amend said code by adding thereto
7 two new sections, designated §8-38-23 and §8-38-24; and to amend and reenact §11-
8 10-11a of said code, all relating generally to tax increment financing; authorizing tax
9 increment financing for the funding road projects in West Virginia; permitting certain
10 agreements between the Division of Highways and counties or municipalities regarding
11 development districts; permitting financing of certain projects by proceeds of tax increment
12 financing obligations; permitting road construction projects be done jointly by counties and
13 municipalities under certain circumstances; establishing procedures and requirements for
14 applications and the management of projects and districts; providing that projects are
15 public improvements and subject to certain requirements; permitting the Division of
16 Highways to propose certain projects; establishing procedures for the West Virginia
17 Development Office and the Tax Commissioner regarding applications and their review;
18 permitting audits in certain circumstances; establishing a procedure for adding or
19 removing property from an economic opportunity development district; requiring
20 procedures relating to taxpayers; providing for confidentiality; providing that roads to be
21 part of the state road system; requiring legislative rulemaking; permitting a fee to be
22 assessed; making findings; establishing an effective date; and defining terms.

Be it enacted by the Legislature of West Virginia:

1 That §7-11B-3, §7-11B-4, §7-11b-14, §7-11B-21 and §7-11B-22 of the Code of West
2 Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding
3 thereto two new sections, designated §7-11B-29 and §7-11B-30; that §7-22-5, §7-22-7, §7-22-8,

4 §7-22-12 and §7-22-14 of said code be amended and reenacted; that said code be amended by
5 adding thereto two new sections, designated §7-22-23 and §7-22-24; that §8-38-5, §8-38-7, §8-
6 38-8, §8-38-12 and §8-38-14 of said code be amended and reenacted; that said code be amended
7 by adding thereto two new sections, designated §8-38-23 and §8-38-24; and that §11-10-11a of
8 said code be amended and reenacted, all to read as follows:

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 11B. WEST VIRGINIA TAX INCREMENT FINANCING ACT.

§7-11B-3. Definitions.

1 (a) *General.* — When used in this article, words and phrases defined in this section have
2 the meanings ascribed to them in this section unless a different meaning is clearly required either
3 by the context in which the word or phrase is used or by specific definition in this article.

4 (b) *Words and phrases defined.* —

5 (4) “Agency” includes a municipality, a county or municipal development agency
6 established pursuant to authority granted in section one, article twelve of this chapter, a port
7 authority, an airport authority or any other entity created by this state or an agency or
8 instrumentality of this state that engages in economic development activity or the Division of
9 Highways.

10 (2) “Base assessed value” means the taxable assessed value of all real and tangible
11 personal property, excluding personal motor vehicles, having a tax situs within a development or
12 redevelopment district as shown upon the landbooks and personal property books of the assessor
13 on July 1 of the calendar year preceding the effective date of the order or ordinance creating and
14 establishing the development or redevelopment district: *Provided*, That for any development or
15 redevelopment district approved after the effective date of the amendments to this section
16 enacted during the regular session of the Legislature in 2014, personal trailers, personal boats,
17 personal campers, personal motor homes, personal ATVs and personal motorcycles having a tax
18 situs within a development or redevelopment district are excluded from the base assessed value.

19 ~~(3)~~ “Blighted area” means an area within the boundaries of a development or
20 redevelopment district located within the territorial limits of a municipality or county in which the
21 structures, buildings or improvements, by reason of dilapidation, deterioration, age or
22 obsolescence, inadequate provision for access, ventilation, light, air, sanitation, open spaces,
23 high density of population and overcrowding or the existence of conditions which endanger life or
24 property, are detrimental to the public health, safety, morals or welfare. “Blighted area” includes
25 any area which, by reason of the presence of a substantial number of substandard, slum,
26 deteriorated or deteriorating structures, predominance of defective or inadequate street layout,
27 faulty lot layout in relation to size, adequacy, accessibility or usefulness, unsanitary or unsafe
28 conditions, deterioration of site or other improvements, diversity of ownership, defective or
29 unusual conditions of title or the existence of conditions which endanger life or property by fire
30 and other causes, or any combination of such factors, substantially impairs or arrests the sound
31 growth of a municipality, retards the provision of housing accommodations or constitutes an
32 economic or social liability and is a menace to the public health, safety, morals or welfare in its
33 present condition and use, or any area which is predominantly open and which because of lack
34 of accessibility, obsolete platting, diversity of ownership, deterioration of structures or of site
35 improvements, or otherwise, substantially impairs or arrests the sound growth of the community.

36 “Commissioner of Highways” means the Commissioner of the Division of Highways.

37 ~~(4)~~ “Conservation area” means any improved area within the boundaries of a development
38 or redevelopment district located within the territorial limits of a municipality or county in which
39 fifty percent or more of the structures in the area have an age of thirty-five years or more. A
40 conservation area is not yet a blighted area but is detrimental to the public health, safety, morals
41 or welfare and may become a blighted area because of any one or more of the following factors:
42 Dilapidation; obsolescence; deterioration; illegal use of individual structures; presence of
43 structures below minimum code standards; abandonment; excessive vacancies; overcrowding of
44 structures and community facilities; lack of ventilation, light or sanitary facilities; inadequate

45 utilities; excessive land coverage; deleterious land use or layout; depreciation of physical
46 maintenance; and lack of community planning. A conservation area shall meet at least three of
47 the factors provided in this subdivision.

48 ~~(5)~~ "County commission" means the governing body of a county of this state and, for
49 purposes of this article only, includes the governing body of a Class I or II municipality in this
50 state.

51 ~~(6)~~ "Current assessed value" means the annual taxable assessed value of all real and
52 tangible personal property, excluding personal motor vehicles, having a tax situs within a
53 development or redevelopment district as shown upon the landbook and personal property
54 records of the assessor: *Provided*, That for any development or redevelopment district approved
55 after the effective date of the amendments to this section enacted during the regular session of
56 the Legislature in 2014, personal trailers, personal boats, personal campers, personal motor
57 homes, personal ATVs and personal motorcycles having a tax situs within a development or
58 redevelopment district are excluded from the current assessed value.

59 ~~(7)~~ "Development office" means the West Virginia Development Office created in section
60 one, article two, chapter five-b of this code.

61 ~~(8)~~ "Development project" or "redevelopment project" means a project undertaken in a
62 development or redevelopment district for eliminating or preventing the development or spread of
63 slums or deteriorated, deteriorating or blighted areas, for discouraging the loss of commerce,
64 industry or employment, for increasing employment or for any combination thereof in accordance
65 with a tax increment financing plan. A development or redevelopment project may include one or
66 more of the following:

67 (A) The acquisition of land and improvements, if any, within the development or
68 redevelopment district and clearance of the land so acquired; or

69 (B) The development, redevelopment, revitalization or conservation of the project area
70 whenever necessary to provide land for needed public facilities, public housing or industrial or

71 commercial development or revitalization, to eliminate unhealthful, unsanitary or unsafe
72 conditions, to lessen density, mitigate or eliminate traffic congestion, reduce traffic hazards,
73 eliminate obsolete or other uses detrimental to public welfare or otherwise remove or prevent the
74 spread of blight or deterioration;

75 (C) The financial or other assistance in the relocation of persons and organizations
76 displaced as a result of carrying out the development or redevelopment project and other
77 improvements necessary for carrying out the project plan, together with those site improvements
78 that are necessary for the preparation of any sites and making any land or improvements acquired
79 in the project area available, by sale or lease, for public housing or for development,
80 redevelopment or rehabilitation by private enterprise for commercial or industrial uses in
81 accordance with the plan;

82 (D) The construction of capital improvements within a development or redevelopment
83 district designed to increase or enhance the development of commerce, industry or housing within
84 the development project area; or

85 (E) Any other projects the county commission or the agency deems appropriate to carry
86 out the purposes of this article.

87 ~~(9)~~ "Development or redevelopment district" means an area proposed by one or more
88 agencies as a development or redevelopment district which may include one or more counties,
89 one or more municipalities or any combination thereof, that has been approved by the county
90 commission of each county in which the project area is located if the project is located outside the
91 corporate limits of a municipality, or by the governing body of a municipality if the project area is
92 located within a municipality, or by both the county commission and the governing body of the
93 municipality when the development or redevelopment district is located both within and without a
94 municipality.

95 "Division of Highways" means the state Department of Transportation, Division of
96 Highways.

97 ~~(40)~~ “Economic development area” means any area or portion of an area within the
98 boundaries of a development or redevelopment district located within the territorial limits of a
99 municipality or county that ~~does not meet the requirements of subdivisions (3) and (4) of this~~
100 ~~subsection~~ is neither a blighted area nor a conservation area and for which the county commission
101 finds that development or redevelopment will not be solely used for development of commercial
102 businesses that will unfairly compete in the local economy and that development or
103 redevelopment is in the public interest because it will:

104 (A) Discourage commerce, industry or manufacturing from moving their operations to
105 another state;

106 (B) Result in increased employment in the municipality or county, whichever is applicable;
107 or

108 (C) Result in preservation or enhancement of the tax base of the county or municipality.

109 ~~(41)~~ “Governing body of a municipality” means the city council of a Class I or Class II
110 municipality in this state.

111 ~~(42)~~ “Incremental value”, for any development or redevelopment district, means the
112 difference between the base assessed value and the current assessed value. The incremental
113 value will be positive if the current value exceeds the base value and the incremental value will
114 be negative if the current value is less than the base assessed value.

115 ~~(43)~~ “Includes” and “including”, when used in a definition contained in this article, shall not
116 exclude other things otherwise within the meaning of the term being defined.

117 “Intergovernmental agreement” means any written agreement that may be entered into by
118 and between two or more county commissions, or between two or more municipalities, or between
119 a county commission and a municipality, in the singular and the plural, or between two or more
120 government entities and the Commissioner of Highways: *Provided*, That any intergovernmental
121 agreement shall not be subject to provisions governing intergovernmental agreements set forth

122 in other provisions of this code, including, but not limited to, article twenty-three, chapter eight of
123 this code, but shall be subject to the provisions of this article.

124 (14) "Local levying body" means the county board of education and the county commission
125 and includes the governing body of a municipality when the development or redevelopment district
126 is located, in whole or in part, within the boundaries of the municipality.

127 (15) "Obligations" or "tax increment financing obligations" means bonds, loans,
128 debentures, notes, special certificates or other evidences of indebtedness issued by a county
129 commission or municipality pursuant to this article to carry out a development or redevelopment
130 project or to refund outstanding obligations under this article.

131 (16) "Order" means an order of the county commission adopted in conformity with the
132 provisions of this article and as provided in this chapter.

133 (17) "Ordinance" means a law adopted by the governing body of a municipality in
134 conformity with the provisions of this article and as provided in chapter eight of this code.

135 (18) "Payment in lieu of taxes" means those estimated revenues from real property and
136 tangible personal property having a tax situs in the area selected for a development or
137 redevelopment project which revenues, according to the development or redevelopment project
138 or plan, are to be used for a private use, which levying bodies would have received had a county
139 or municipality not adopted one or more tax increment financing plans and which would result
140 from levies made after the date of adoption of a tax increment financing plan during the time the
141 current assessed value of all taxable real and tangible personal property in the area selected for
142 the development or redevelopment project exceeds the total base assessed value of all taxable
143 real and tangible personal property in the development or redevelopment district until the
144 designation is terminated as provided in this article.

145 (19) "Person" means any natural person, and any corporation, association, partnership,
146 limited partnership, limited liability company or other entity, regardless of its form, structure or
147 nature, other than a government agency or instrumentality.

148 ~~(20)~~ “Private project” means any project that is subject to ad valorem property taxation in
149 this state or to a payment in lieu of tax agreement that is undertaken by a project developer in
150 accordance with a tax increment financing plan in a development or redevelopment district.

151 ~~(21)~~ “Project” means any capital improvement, facility or both, as specifically set forth and
152 defined in the project plan, requiring an investment of capital including, but not limited to,
153 extensions, additions or improvements to existing facilities, including water or wastewater
154 facilities, and the remediation of contaminated property as provided for in article twenty-two,
155 chapter twenty-two of this code, but does not include performance of any governmental service
156 by a county or municipal government.

157 ~~(22)~~ “Project area” means an area within the boundaries of a development or
158 redevelopment district in which a development or redevelopment project is undertaken as
159 specifically set forth and defined in the project plan.

160 ~~(23)~~ “Project costs” means expenditures made in preparation of the development or
161 redevelopment project plan and made, or estimated to be made, or monetary obligations incurred,
162 or estimated to be incurred, by the county commission which are listed in the project plan as
163 capital improvements within a development or redevelopment district, plus any costs incidental
164 thereto. “Project costs” include, but are not limited to:

165 (A) Capital costs, including, but not limited to, the actual costs of the construction of public
166 works or improvements, capital improvements and facilities, new buildings, structures and
167 fixtures, the demolition, alteration, remodeling, repair or reconstruction of existing buildings,
168 structures and fixtures, environmental remediation, parking and landscaping, the acquisition of
169 equipment and site clearing, grading and preparation;

170 (B) Financing costs, including, but not limited to, an interest paid to holders of evidences
171 of indebtedness issued to pay for project costs, all costs of issuance and any redemption
172 premiums, credit enhancement or other related costs;

173 (C) Real property assembly costs, meaning any deficit incurred resulting from the sale or
174 lease as lessor by the county commission of real or personal property having a tax situs within a
175 development or redevelopment district for consideration that is less than its cost to the county
176 commission;

177 (D) Professional service costs including, but not limited to, those costs incurred for
178 architectural planning, engineering and legal advice and services;

179 (E) Imputed administrative costs including, but not limited to, reasonable charges for time
180 spent by county employees or municipal employees in connection with the implementation of a
181 project plan;

182 (F) Relocation costs including, but not limited to, those relocation payments made
183 following condemnation and job training and retraining;

184 (G) Organizational costs including, but not limited to, the costs of conducting
185 environmental impact and other studies and the costs of informing the public with respect to the
186 creation of a development or redevelopment district and the implementation of project plans;

187 (H) Payments made, in the discretion of the county commission or the governing body of
188 a municipality, which are found to be necessary or convenient to creation of development or
189 redevelopment districts or the implementation of project plans; and

190 (I) That portion of costs related to the construction of environmental protection devices,
191 storm or sanitary sewer lines, water lines, amenities or streets or the rebuilding or expansion of
192 streets, or the construction, alteration, rebuilding or expansion of which is necessitated by the
193 project plan for a development or redevelopment district, whether or not the construction,
194 alteration, rebuilding or expansion is within the area or on land contiguous thereto.

195 ~~(24)~~ "Project developer" means any person who engages in the development of projects
196 in the state.

197 ~~(25)~~ "Project plan" means the plan for a development or redevelopment project that is
198 adopted by a county commission or governing body of a municipality in conformity with the
199 requirements of this article and this chapter or chapter eight of this code.

200 ~~(26)~~ “Real property” means all lands, including improvements and fixtures on them and
201 property of any nature appurtenant to them or used in connection with them and every estate,
202 interest and right, legal or equitable, in them, including terms of years and liens by way of
203 judgment, mortgage or otherwise, and indebtedness secured by the liens.

204 ~~(27)~~ “Redevelopment area” means an area designated by a county commission or the
205 governing body of a municipality in respect to which the commission or governing body has made
206 a finding that there exist conditions which cause the area to be classified as a blighted area, a
207 conservation area, an economic development area or a combination thereof, which area includes
208 only those parcels of real property directly and substantially benefitted by the proposed
209 redevelopment project located within the development or redevelopment district or land
210 contiguous thereto.

211 ~~(28)~~ “Redevelopment plan” means the comprehensive program under this article of a
212 county or municipality for redevelopment intended by the payment of redevelopment costs to
213 reduce or eliminate those conditions, the existence of which qualified the redevelopment area as
214 a blighted area, conservation area, economic development area or combination thereof, and to
215 thereby enhance the tax bases of the levying bodies which extend into the redevelopment area.
216 Each redevelopment plan shall conform to the requirements of this article.

217 ~~(29)~~ “Tax increment” means the amount of regular levy property taxes attributable to the
218 amount by which the current assessed value of real and tangible personal property having a tax
219 situs in a development or redevelopment district exceeds the base assessed value of the property.

220 ~~(30)~~ “Tax increment financing fund” means a separate fund for a development or
221 redevelopment district established by the county commission or governing body of the
222 municipality into which all tax increment revenues and other pledged revenues are deposited and
223 from which projected project costs, debt service and other expenditures authorized by this article
224 are paid.

225 ~~(34)~~ “This code” means the Code of West Virginia, 1931, as amended by the Legislature.

226 ~~(32)~~ “Total ad valorem property tax regular levy rate” means the aggregate levy rate of all
227 levying bodies on all taxable property having a tax situs within a development or redevelopment
228 district in a tax year but does not include excess levies, levies for general obligation bonded
229 indebtedness or any other levies that are not regular levies.

§7-11B-4. Powers generally.

1 In addition to any other powers conferred by law, a county commission or governing body
2 of a Class I or II municipality may exercise any powers necessary and convenient to carry out the
3 purpose of this article, including the power to:

4 (1) Create development and redevelopment areas or districts and to define the boundaries
5 of those areas or districts;

6 (2) Cause project plans to be prepared, to approve the project plans, and to implement
7 the provisions and effectuate the purposes of the project plans;

8 (3) Establish tax increment financing funds for each development or redevelopment
9 district;

10 (4) Issue tax increment financing obligations and pledge tax increments and other
11 revenues for repayment of the obligations;

12 (5) Deposit moneys into the tax increment financing fund for any development or
13 redevelopment district;

14 (6) Enter into any contracts or agreements, including, but not limited to, agreements with
15 project developers, consultants, professionals, financing institutions, trustees and bondholders
16 determined by the county commission to be necessary or convenient to implement the provisions
17 and effectuate the purposes of project plans;

18 (7) Receive from the federal government or the state loans and grants for, or in aid of, a
19 development or redevelopment project and to receive contributions from any other source to
20 defray project costs;

21 (8) Exercise the right of eminent domain to condemn property for the purposes of
22 implementing the project plan. The rules and procedures set forth in chapter fifty-four of this code
23 shall govern all condemnation proceedings authorized in this article;

24 (9) Make relocation payments to those persons, businesses, or organizations that are
25 displaced as a result of carrying out the development or redevelopment project;

26 (10) Clear and improve property acquired by the county commission pursuant to the
27 project plan and construct public facilities on it or contract for the construction, development,
28 redevelopment, rehabilitation, remodeling, alteration or repair of the property;

29 (11) Cause parks, playgrounds or water, sewer or drainage facilities or any other public
30 improvements, including, but not limited to, fire stations, community centers and other public
31 buildings, which the county commission is otherwise authorized to undertake to be laid out,
32 constructed or furnished in connection with the development or redevelopment project. When the
33 public improvement of the county commission is to be located, in whole or in part, within the
34 corporate limits of a municipality, the county commission shall consult with the mayor and the
35 governing body of the municipality regarding the public improvement and shall pay for the cost of
36 the public improvement from the tax increment financing fund;

37 (12) Lay out and construct, alter, relocate, change the grade of, make specific repairs upon
38 or discontinue public ways and construct sidewalks in, or adjacent to, the project area: *Provided,*
39 That when the public way or sidewalk is located within a municipality, the governing body of the
40 municipality shall consent to the same and if the public way is a state road, the consent of the
41 commissioner of highways shall be necessary;

42 (13) Cause private ways, sidewalks, ways for vehicular travel, playgrounds or water, sewer
43 or drainage facilities and similar improvements to be constructed within the project area for the
44 particular use of the development or redevelopment district or those dwelling or working in it;

45 (14) Construct, or cause to be constructed, any capital improvements of a public nature;

46 (15) Construct capital improvements to be leased or sold to private entities in connection
47 with the goals of the development or redevelopment project;

48 (16) Cause capital improvements owned by one or more private entities to be constructed
49 within the development or redevelopment district;

50 (17) Designate one or more official or employee of the county commission to make
51 decisions and handle the affairs of development and redevelopment project areas or districts
52 created by the county commission pursuant to this article;

53 (18) Adopt orders, ordinances or bylaws or repeal or modify such ordinances or bylaws or
54 establish exceptions to existing ordinances and bylaws regulating the design, construction and
55 use of buildings within the development or redevelopment district created by a county commission
56 or governing body of a municipality under this article;

57 (19) Enter orders, adopt bylaws or repeal or modify such orders or bylaws or establish
58 exceptions to existing orders and bylaws regulating the design, construction and use of buildings
59 within the development or redevelopment district created by a county commission or governing
60 body of a municipality under this article;

61 (20) Sell, mortgage, lease, transfer or dispose of any property or interest therein, by
62 contract or auction, acquired by it pursuant to the project plan for development, redevelopment or
63 rehabilitation in accordance with the project plan;

64 (21) Expend project revenues as provided in this article; ~~and~~

65 (22) Enter into one or more intergovernmental agreements or memorandums of
66 understanding with the Commissioner of Highways or with other county commissions or
67 municipalities regarding development or redevelopment districts;

68 (23) Designate one or more officials or employees of the county commission or
69 municipality that created the development or redevelopment district to sign documents, to make
70 decisions and handle the affairs of the development or redevelopment district. When two or more
71 county commissions, or municipalities, or any combination thereof, established the development

72 or redevelopment district, the government entities shall enter into one or more intergovernmental
73 agreements regarding administration of the development or redevelopment district and the
74 handling of its affairs; and

75 ~~(22)~~ (24) Do all things necessary or convenient to carry out the powers granted in this
76 article.

**§7-11B-14. Projects financed by tax increment financing considered to be public
improvements subject to prevailing wage, local labor preference and
competitive bid requirements.**

1 (a) Any project acquired, constructed, or financed, in whole or in part, by a county
2 commission or municipality under this article shall be considered to be a “public improvement”
3 within the meaning of the provisions of articles one-c and ~~five-a~~, chapter twenty-one of this code.

4 (b) The county commission or municipality shall, except as provided in subsection (c) of
5 this section, solicit or require solicitation of competitive bids and require ~~the payment of prevailing~~
6 ~~wage rates as provided in article five-a, chapter twenty-one of this code~~ and compliance with
7 article one-c ~~of said chapter~~ for every project or infrastructure project funded pursuant to this
8 article exceeding \$25,000 in total cost: Provided, That the provisions of article two-d, chapter
9 seventeen of this code may apply where applicable to projects subject to an intergovernmental
10 agreement with the Commissioner of Highways.

11 (c) Following the solicitation of the bids, the construction contract shall be awarded to the
12 lowest qualified responsible bidder, who shall furnish a sufficient performance and payment bond:
13 *Provided, That the county commission, municipality or other person soliciting the bids may reject*
14 *all bids and solicit new bids on the project.*

15 (d) No officer or employee of this state or of any public agency, public authority, public
16 corporation, or other public entity, and no person acting or purporting to act on behalf of such
17 officer or employee or public entity shall require that any performance bond, payment bond, or

18 bid bond required or permitted by this section be obtained from any particular surety company,
19 agent, broker or producer.

20 (e) This section does not:

21 (1) Apply to work performed on construction projects not exceeding a total cost of \$50,000
22 by regular full-time employees of the county commission or the municipality: *Provided*, That no
23 more than \$50,000 shall be expended on an individual project in a single location in a twelve-
24 month period;

25 (2) Prevent students enrolled in vocational educational schools from being used in
26 construction or repair projects when such use is a part of the students' training program;

27 (3) Apply to emergency repairs to building components and systems: *Provided*, That the
28 term "emergency repairs" means repairs that, if not made immediately, will seriously impair the
29 use of the building components and systems or cause danger to those persons using the building
30 components and systems; or

31 (4) Apply to any situation where the county commission or municipality comes to an
32 agreement with volunteers, or a volunteer group, by which the governmental body will provide
33 construction or repair materials, architectural, engineering, technical or any other professional
34 services and the volunteers will provide the necessary labor without charge to, or liability upon,
35 the governmental body: *Provided*, That the total cost of the construction or repair projects does
36 not exceed \$50,000.

37 (f) The provisions of ~~subsection~~ subsections (a) and (b) of this section apply to ~~privately~~
38 ~~owned projects or infrastructure projects constructed on lands not owned by the county~~
39 ~~commission, a municipality or a government agency or instrumentality when the owner or the~~
40 ~~owner's agent or person financing the owner's project receives money from the tax increment~~
41 ~~financing fund for the owner's project~~ any specific project, whether privately or publicly owned or
42 constructed on private or public lands, that are financed or to be financed, in whole or in part, with
43 tax increment or proceeds of tax increment financing obligations: *Provided*, That, the provisions

44 of subsections (a) and (b) of this section do not apply to any project or part of a project that is
45 privately owned and financed without any tax increment or proceeds of tax increment financing
46 obligations.

§7-11B-21. Tax increment financing obligations — authorizing resolution order or ordinance.

1 (a) Issuance of tax increment financing obligations shall be authorized by order of the
2 county commission, or ~~resolution~~ ordinance of the municipality, that created the development or
3 redevelopment district.

4 (b) The order, or ~~resolution~~ ordinance, shall state the name of the development or
5 redevelopment district, the amount of tax increment financing obligations authorized, the type of
6 obligation authorized and the interest rate or rates to be borne by the bonds, notes or other tax
7 increment financing obligations.

8 (c) The order or ordinance may prescribe the terms, form and content of the tax increment
9 financing obligations and other particulars or information the county commission, or governing
10 body of the municipality, issuing the obligations deems useful or it may include by reference the
11 terms and conditions set forth in a trust indenture or other document securing the development
12 or redevelopment project tax increment financing obligations.

§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.

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

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

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

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

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

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

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

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

§7-11B-29. Joint development or redevelopment districts.

1 (a) The Legislature hereby finds and declares that the citizens of the state would benefit
2 from coordinated road construction efforts by county commissions, municipalities and the division
3 of highways.

4 (b) Notwithstanding any other section of this code to the contrary, any two or more county
5 commissions, any two or more municipalities, or any combination thereof, may: (1) Create a
6 combined development or redevelopment district; (2) propose joint project plans; (3) propose joint
7 amendments to an existing project plan for combined development or redevelopment district; and
8 (4) enter into one or more intergovernmental agreements between themselves and/or the
9 Commissioner of Highways to share: (A) Project expenses; and (B) certain property tax
10 collections, on a pro rata or other basis, to facilitate construction of projects within the combined
11 development or redevelopment district and to jointly take such other actions as are authorized in
12 this article.

13 (c) When a project begins in one county and ends in another county of this state, the
14 county commission of each county included in a multicounty project may, by resolution, adopt a
15 written intergovernmental agreement with each county and/or the Commissioner of Highways
16 regarding the proposed multicounty project. When the project begins or passes through the
17 corporate limits of a municipality, the governing body of that municipality may by resolution adopt
18 a written intergovernmental agreement with the county or counties in which the project is located.

19 (d) No county commission or municipality may withdraw from an intergovernmental
20 agreement as long as tax increment financing obligations remain outstanding for which the
21 proceeds were used by any party to the intergovernmental agreement to finance construction of
22 the project for which the written intergovernmental agreement was executed.

23 (e) No withdrawing county commission or municipality shall be entitled to the return of any
24 money or property advanced to the project.

25 (f) Notwithstanding any provision of this code to the contrary, any county commission or
26 municipality that creates a development or redevelopment district may enter into one or more
27 intergovernmental agreements with one or more other counties or municipalities that also create
28 a development or redevelopment district to finance, in whole or in part, one or more projects, to

29 pool tax increment and other revenues to finance, in whole or in part, contiguous projects on a
30 cash basis or to pay debt service on tax increment financing obligations.

31 (g) The obligations of the parties under any intergovernmental agreement executed
32 pursuant to this article are not debt within the meaning of sections six or eight, article X of the
33 Constitution of West Virginia.

34 (h) Any intergovernmental agreement must be approved by resolution adopted by a
35 majority vote of the county commission of each county participating in the agreement, by a
36 majority vote of the governing body of each municipality participating in the agreement and by the
37 Commissioner of Highways.

38 (i) The Commissioner of Highways is authorized to enter into intergovernmental
39 agreements with county commissions and municipalities of this state, or with the federal
40 government or any agency thereof, respecting the financing, planning, and construction of state
41 roads and bridges, including related infrastructure if any, constructed, in whole or in part, pursuant
42 to this article.

§7-11B-30. Application by Division of Highways.

1 (a) The Commissioner of Highways may propose creation by a county commission or
2 municipality of development or redevelopment areas or districts and project plans, or propose
3 amendments to an existing project plans. This plan may include related infrastructure that is
4 necessary or convenient to economic development adjacent to the proposed project.

5 (b) Project plans proposed by the Commissioner of Highways are limited to those related
6 to the construction, reconstruction, improvement or modernization of state roads, as defined in
7 article four, chapter seventeen of this code, that are part of the state road system, as defined in
8 that article or that will become part of the state road system upon completion of the construction.
9 All construction, reconstruction, improvement or modernization and maintenance of state roads
10 shall be done by or under the supervision of the Commissioner of Highways.

11 (c) All road projects that are accepted as part of the state road system, and all real property
12 interests and appurtenances, is under the exclusive jurisdiction and control of the Commissioner
13 of Highways, who may exercise the same rights and authority as he or she has over other
14 transportation facilities in the state road system.

15 (d) Except as provided in an intergovernmental agreement executed by one or more
16 county commissions, municipalities and/or the Commissioner of Highways and as provided in this
17 article, a county commission or municipality may not be required to pay for the cost of
18 constructing, reconstructing, improving, maintaining a road that is part of the state road system
19 as defined in article four, chapter seventeen of this code or to pay any other expense fairly related
20 to that road.

21 (e) The powers conferred by this article on the Commissioner of Highways or the Division
22 of Highways are in addition and supplemental to the powers conferred upon the Commissioner of
23 Highways, the Division of Highways, and the Department of Transportation by the Legislature
24 elsewhere in this code.

ARTICLE 22. COUNTY ECONOMIC OPPORTUNITY DEVELOPMENT DISTRICTS.

§7-22-5. Development expenditures.

1 Any county commission that has established an economic opportunity development
2 district under this article may make, or authorize to be made by a district board and other public
3 or private parties, development expenditures as will promote the economic vitality of the district
4 and the general welfare of the county, including, but not limited to, expenditures for the following
5 purposes:

6 (1) Beautification of the district by means including landscaping and construction and
7 erection of fountains, shelters, benches, sculptures, signs, lighting, decorations and similar
8 amenities;

9 (2) Provision of special or additional public services such as sanitation, security for
10 persons and property and the construction and maintenance of public facilities, including, but not
11 limited to, sidewalks, parking lots, parking garages and other public areas;

12 (3) Making payments for principal, interest, issuance costs, any of the costs described in
13 section twenty of this article and appropriate reserves for bonds and other instruments and
14 arrangements issued or entered into by the county commission for financing the expenditures of
15 the district described in this section and to otherwise implement the purposes of this article;

16 (4) Providing financial support for public transportation and vehicle parking facilities open
17 to the general public, whether physically situate within the district's boundaries or on adjacent
18 land;

19 (5) Acquiring, building, demolishing, razing, constructing, repairing, reconstructing,
20 refurbishing, renovating, rehabilitating, expanding, altering, otherwise developing, operating and
21 maintaining real property generally, parking facilities, commercial structures and other capital
22 improvements to real property, fixtures and tangible personal property, whether or not physically
23 situate within the district's boundaries, including, but not limited to, state road improvements
24 pursuant to an intergovernmental agreement with the Commissioner of Highways: *Provided*, That
25 the expenditure directly benefits the district;

26 (6) Developing plans for the architectural design of the district and portions thereof and
27 developing plans and programs for the future development of the district;

28 (7) Developing, promoting and supporting community events and activities open to the
29 general public that benefit the district;

30 (8) Providing the administrative costs for a district management program;

31 (9) Providing for the usual and customary maintenance and upkeep of all improvements
32 and amenities in the district as are commercially reasonable and necessary to sustain its
33 economic viability on a permanent basis;

34 (10) Providing any other services that the county commission or district board is authorized
35 to perform and which the county commission does not also perform to the same extent on a
36 countywide basis;

37 (11) Making grants to the owners or tenants of economic opportunity development district
38 for the purposes described in this section;

39 (12) Making grants to the Division of Highways for road projects benefitting an economic
40 opportunity development district;

41 ~~(12)~~ (13) Acquiring an interest in any entity or entities that own any portion of the real
42 property situate in the district and contributing capital to any entity or entities;

43 ~~(13)~~ (14) Remediation of publicly or privately owned landfills, former coal or other mining
44 sites, solid waste facilities or hazardous waste sites to facilitate commercial development which
45 would not otherwise be economically feasible; and

46 ~~(14)~~ (15) To do any and all things necessary, desirable or appropriate to carry out and
47 accomplish the purposes of this article notwithstanding any provision of this code to the contrary.

**§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 act on applications filed with it
2 by county commissions pursuant to section six of this article. Each application must include:

3 (1) A true copy of the notice described in section six of this article;

4 (2) The total cost of the project;

5 (3) A reasonable estimate of the number of months needed to complete the project;

6 (4) A general description of the capital improvements, additional or extended services and
7 other proposed development expenditures to be made in the district as part of the project;

8 (5) A description of the proposed method of financing the development expenditures,
9 together with a description of the reserves to be established for financing ongoing development
10 expenditures necessary to permanently maintain the optimum economic viability of the district

11 following its inception: *Provided*, That the amounts of the reserves may not exceed the amounts
12 that would be required by prevailing commercial capital market considerations;

13 (6) A description of the sources and anticipated amounts of all financing, including, but not
14 limited to, proceeds from the issuance of any bonds or other instruments, revenues from the
15 special district excise tax and enhanced revenues from property taxes and fees;

16 (7) A description of the financial contribution of the county commission to the funding of
17 development expenditures;

18 (8) Identification of any businesses that the county commission expects to relocate their
19 business locations from the district to another place in the state in connection with the
20 establishment of the district or from another place in this state to the district: *Provided*, That for
21 purposes of this article, any entities shall be designated “relocated entities”;

22 (9) Identification of any businesses currently conducting business in the proposed
23 economic opportunity development district that the county commission expects to continue doing
24 business there after the district is created;

25 (10) A good faith estimate of the aggregate amount of consumers sales and service tax
26 that was actually remitted to the Tax Commissioner by all business locations identified as provided
27 in subdivisions (8) and (9) of this subsection with respect to their sales made and services
28 rendered from their then current business locations that will be relocated from, or to, or remain in
29 the district, for the twelve full calendar months next preceding the date of the application:
30 *Provided*, That for purposes of this article, the aggregate amount is designated as “the base tax
31 revenue amount”;

32 (11) A good faith estimate of the gross annual district tax revenue amount;

33 (12) The proposed application of any surplus from all funding sources to further the
34 objectives of this article; and

35 ~~(13) The Tax Commissioner’s certification of: (i) The amount of consumers sales and~~
36 ~~service taxes collected from businesses located in the economic opportunity district during the~~

37 ~~twelve calendar months preceding the calendar quarter during which the application will be~~
38 ~~submitted to the Development Office; (ii) the estimated amount of economic opportunity district~~
39 ~~excise tax that will be collected during the first twelve months after the month in which the Tax~~
40 ~~Commissioner would first begin to collect that tax; and (iii) the estimated amount of economic~~
41 ~~opportunity district excise tax that will be collected during the first thirty-six months after the month~~
42 ~~in which the Tax Commissioner would first begin to collect that tax; and~~

43 ~~(14)~~ (13) Any additional information the Development Office may require.

44 (b) *Review of applications.* — The Development Office shall review all project proposals
45 for conformance to statutory and regulatory requirements, the reasonableness of the project's
46 budget and timetable for completion and the following criteria:

47 (1) The quality of the proposed project and how it addresses economic problems in the
48 area in which the project will be located;

49 (2) The merits of the project determined by a cost-benefit analysis that incorporates all
50 costs and benefits, both public and private;

51 (3) Whether the project is supported by significant private sector investment and
52 substantial credible evidence that, but for the existence of sales tax increment financing, the
53 project would not be feasible;

54 (4) Whether the economic opportunity district excise tax dollars will leverage or be the
55 catalyst for the effective use of private, other local government, state or federal funding that is
56 available;

57 (5) Whether there is substantial and credible evidence that the project is likely to be started
58 and completed in a timely fashion;

59 (6) Whether the project will, directly or indirectly, improve the opportunities in the area
60 where the project will be located for the successful establishment or expansion of other industrial
61 or commercial businesses;

62 (7) Whether the project will, directly or indirectly, assist in the creation of additional long-
63 term employment opportunities in the area and the quality of jobs created in all phases of the
64 project, to include, but not be limited to, wages and benefits;

65 (8) Whether the project will fulfill a pressing need for the area, or part of the area, in which
66 the economic opportunity district is located;

67 (9) Whether the county commission has a strategy for economic development in the
68 county and whether the project is consistent with that strategy;

69 (10) Whether the project helps to diversify the local economy;

70 (11) Whether the project is consistent with the goals of this article;

71 (12) Whether the project is economically and fiscally sound using recognized business
72 standards of finance and accounting; and

73 (13) (A) The ability of the county commission and the project developer or project team to
74 carry out the project: *Provided*, That no project may be approved by the Development Office
75 unless the amount of all development expenditures proposed to be made in the first twenty-four
76 months following the creation of the district results in capital investment of more than \$75 million
77 in the district and the county submits clear and convincing information, to the satisfaction of the
78 Development Office, that the investment will be made if the Development Office approves the
79 project and the Legislature authorizes the county commission to levy an excise tax on sales of
80 goods and services made within the economic opportunity district as provided in this article:
81 *Provided, however, That such minimum capital investment does not apply to projects proposed*
82 *by the Commissioner of Highways in accordance with section twenty-three, article twenty-two,*
83 *chapter seven of this code.*

84 (B) Notwithstanding any provision of paragraph (A) of this subdivision to the contrary, no
85 project involving remediation may be approved by the Development Office unless the amount of
86 all development expenditures proposed to be made in the first forty-eight months following the
87 creation of the district results in capital investment of more than \$75 million in the district. In

88 addition to the remaining provisions of paragraph (A) of this subdivision the Development Office
89 may not approve a project involving remediation authorized under section five of this article unless
90 the county commission submits clear and convincing information, to the satisfaction of the
91 Development Office, that the proposed remediation expenditures to be financed by the issuance
92 of bonds or notes pursuant to section sixteen of this article do not constitute more than twenty-
93 five percent of the total development expenditures associated with the project.

94 (c) *Additional criteria.* — The Development Office may establish other criteria for
95 consideration when approving the applications.

96 (d) *Action on the application.* — Upon receipt of an application, the Development Office
97 shall promptly request a certification from the Tax Commissioner of the base tax revenue amount
98 and the Tax Commissioner shall provide the certification to the Development Office within thirty
99 days. The Executive Director of the Development Office shall act to approve or not approve any
100 application within thirty days following the receipt of the application and the certification from the
101 Tax Commissioner required by this subsection or the receipt of any additional information
102 requested by the Development Office, whichever is the later.

103 (e) *Certification of project.* — If the Executive Director of the Development Office approves
104 a county's economic opportunity district project application, he or she shall issue to the county
105 commission a written certificate evidencing the approval.

106 The certificate shall expressly state a base tax revenue amount, the gross annual district
107 tax revenue amount and the estimated net annual district tax revenue amount which, for purposes
108 of this article, is the difference between the gross annual district tax revenue amount and the base
109 tax revenue amount, all of which the Development Office has determined with respect to the
110 district's application based on any investigation it considers reasonable and necessary, including,
111 but not limited to, any relevant information the Development Office requests from the Tax
112 Commissioner and the Tax Commissioner provides to the Development Office: *Provided*, That in
113 determining the net annual district tax revenue amount, the Development Office may not use a

114 base tax revenue amount less than that amount certified by the Tax Commissioner but, in lieu of
115 confirmation from the Tax Commissioner of the gross annual district tax revenue amount, the
116 Development Office may use the estimate of the gross annual district tax revenue amount
117 provided by the county commission pursuant to subsection (a) of this section.

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

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

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

§7-22-8. Establishment of the economic opportunity development district fund.

1 (a) *General.* — There is hereby created a special revenue account in the State Treasury
2 designated the “Economic Opportunity Development District Fund” which is an interest-bearing
3 account and shall be invested in the manner described in section nine-c, article six, chapter twelve
4 of this code with the interest income a proper credit to the Fund.

5 (b) *District subaccount.* — A separate and segregated subaccount within the account shall
6 be established for each economic opportunity development district and each joint economic
7 opportunity development district that is approved by the Executive Director of the Development
8 Office. In addition to the economic opportunity district excise tax levied and collected as provided
9 in this article, funds paid into the account for the credit of any subaccount may also be derived
10 from the following sources:

11 (1) All interest or return on the investment accruing to the subaccount;

12 (2) Any gifts, grants, bequests, transfers, appropriations or donations which are received
13 from any governmental entity or unit or any person, firm, foundation or corporation; and

14 (3) Any appropriations by the Legislature which are made for this purpose.

§7-22-12. Special district excise tax authorized.

1 (a) *General.* — The county commission of a county, authorized by the Legislature to levy
2 a special district excise tax for the benefit of an economic opportunity development district, may,
3 by order entered of record, impose that tax on the privilege of selling tangible personal property
4 and rendering select services in the district in accordance with this section.

5 (b) *Tax base.* — The base of a special district excise tax imposed pursuant to this section
6 shall be identical to the base of the consumers sales and service tax imposed pursuant to article
7 fifteen, chapter eleven of this code on sales made and services rendered within the boundaries
8 of the district. Sales of gasoline and special fuel are not subject to special district excise tax but
9 remain subject to the tax levied by article fifteen, chapter eleven of this code. Except for the

10 exemption provided in section nine-f of that article, all exemptions and exceptions from the
11 consumers sales and service tax also apply to the special district excise tax.

12 (c) *Tax rate.* — The rate or rates of a special district excise tax levied pursuant to this
13 section shall be identical to the rate or rates of the consumer sales and service tax imposed
14 pursuant to article fifteen, chapter eleven of this code on sales made and services rendered within
15 the boundaries of the district authorized by this section.

16 (d) *Collection by Tax Commissioner.* — The order of the county commission imposing a
17 special district excise tax shall provide for the tax to be collected by the Tax Commissioner in the
18 same manner as the tax levied by section three, article fifteen, chapter eleven of this code is
19 administered, assessed, collected and enforced.

20 (1) The Tax Commissioner may require the electronic filing of returns related to the special
21 district excise tax imposed pursuant to this section, and also may require the electronic payment
22 of the special district excise tax imposed pursuant to this section. The Tax Commissioner may
23 prescribe by rules adopted or proposed pursuant to article three, chapter twenty-nine-a of this
24 code, administrative notices, and forms and instructions, the procedures and criteria to be
25 followed to electronically file those returns and to electronically pay the special district excise tax
26 imposed pursuant to this section.

27 (2) Any rules filed by the State Tax Commissioner relating to the special district excise tax
28 imposed pursuant to this section shall set forth the following:

29 (A) Acceptable indicia of timely payment;

30 (B) Which type of electronic filing method or methods a particular type of taxpayer may or
31 may not use;

32 (C) What type of electronic payment method or methods a particular type of taxpayer may
33 or may not use;

34 (D) What, if any, exceptions are allowable, and alternative methods of payment that may
35 be used for any exceptions;

36 (E) Procedures for making voluntary or mandatory electronic payments or both; ~~and~~
37 (F) Procedures for ensuring that taxpayers new to an economic opportunity development
38 district are included within the Tax Commissioner's database;

39 (G) Procedures for ensuring that taxpayers with multiple locations properly allocate their
40 special district excise taxes to the appropriate economic opportunity development district and
41 reflect the allocation of their returns; and

42 ~~(F)~~ (H) Any other provisions necessary to ensure the timely electronic filing of returns
43 related to the special district excise tax and the making of payments electronically of the special
44 district excise tax imposed pursuant to this section.

45 (3)(A) Notwithstanding the provisions of section five-d, article ten, chapter eleven of this
46 code: (i) So long as bonds are outstanding pursuant to this article, the Tax Commissioner shall
47 provide on a monthly basis to the trustee for bonds issued pursuant to this article information on
48 returns submitted pursuant to this article; and (ii) the trustee may share the information so
49 obtained with the county commission that established the economic opportunity development
50 district that issued the bonds pursuant to this article and with the bondholders and with bond
51 counsel for bonds issued pursuant to this article. The Tax Commissioner and the trustee may
52 enter into a written agreement in order to accomplish exchange of the information.

53 (B) Any confidential information provided pursuant to this subdivision shall be used solely
54 for the protection and enforcement of the rights and remedies of the bondholders of bonds issued
55 pursuant to this article. Any person or entity that is in possession of information disclosed by the
56 Tax Commissioner or shared by the trustee pursuant to subdivision (a) of this subsection is
57 subject to the provisions of section five-d, article ten, chapter eleven of this code as if the person
58 or entity that is in possession of the tax information is an officer, employee, agent or representative
59 of this state or of a local or municipal governmental entity or other governmental subdivision.

60 (C) Notwithstanding any provision of this code to the contrary, so long as bonds are
61 outstanding pursuant to this article, the Tax Commissioner shall allow a designated representative

62 of the county commission that established the economic opportunity development district for
63 which the bonds were issued to audit the returns filed by the taxpayers in the economic
64 opportunity development district no less often than once each quarter of the fiscal year. The Tax
65 Commissioner may require the audit to be conducted at the Tax Commissioner's office, may
66 prohibit copying of any returns, and may require the representatives to enter into a written
67 confidentiality agreement. The Tax Commissioner shall promptly investigate any questions raised
68 by an audit, shall promptly take all actions required to correct any errors, and shall report to the
69 applicable county commission the results of its investigation and actions.

70 (e) *Deposit of net tax collected.* —

71 (1) The order of the county commission imposing a special district excise tax shall provide
72 that the Tax Commissioner deposit the net amount of tax collected in the Special Economic
73 Opportunity Development District Fund to the credit of the county commission's subaccount
74 therein for the economic opportunity development district and that the money in the subaccount
75 may only be used to pay for development expenditures as provided in this article except as
76 provided in subsection (f) of this section.

77 (2) The State Treasurer shall withhold from the county commission's subaccount in the
78 Economic Opportunity Development District Fund and shall deposit in the General Revenue Fund
79 of this state, on or before the twentieth day of each calendar month next following the effective
80 date of a special district excise tax, a sum equal to one twelfth of the base tax revenue amount
81 last certified by the Development Office pursuant to section seven of this article.

82 (f) *Effective date of special district excise tax.* — Any taxes imposed pursuant to the
83 authority of this section are effective on the first day of the calendar month that begins sixty days
84 after the date of adoption of an order entered of record imposing the tax or the first day of any
85 later calendar month expressly designated in the order.

86 (g) *Copies of order.* — Upon entry of an order levying a special district excise tax, a
87 certified copy of the order shall be mailed to the State Auditor, as ex officio the chief inspector
88 and supervisor of public offices, the State Treasurer and the Tax Commissioner.

§7-22-14. Modification of Included area; notice; hearing.

1 (a) *General.* — The order creating an economic opportunity development district may not
2 be amended to include additional contiguous property until after the amendment is approved by
3 the executive director of the Development Office in the same manner as an application to approve
4 the establishment of the district is acted upon under section seven of this article and the
5 amendment is authorized by the Legislature. The order creating an economic opportunity
6 development district may not be amended to remove property until after the amendment is
7 approved by the executive director of the Development Office in the same manner as an
8 application to approve the establishment of the district is acted upon under section seven of this
9 article: *Provided, That any amendment for the purpose of removing property from an economic*
10 *opportunity development district may not require authorization from the Legislature and shall*
11 *ensure that any such district after such an amendment remains contiguous. The order which is*
12 *entered for the purpose of removing parcels from an existing economic opportunity development*
13 *district may not be effective any earlier than the first day of the calendar month which begins at*
14 *least thirty days following the entry of the order or such later date as may be specified by the*
15 *county commission in the order.*

16 (b) *Limitations.* — Additional property may not be included in the district unless it is situated
17 within the boundaries of the county and is contiguous to the then current boundaries of the district.

18 (c) *Public hearing required.* —

19 (1) The county commission of any county desiring to amend its order shall designate a
20 time and place for a public hearing upon the proposal to include additional property. The notice
21 shall meet the requirements set forth in section six of this article.

22 (2) At the time and place set forth in the notice, the county commission shall afford the
23 opportunity to be heard to any owners of real property either currently included in or proposed to
24 be added to the existing district and to any other residents of the county.

25 (d) *Application to West Virginia Development Office.* — Following the hearing, the county
26 commission may, by resolution, ~~apply~~ approve the filing of an application with the Development
27 Office ~~to approve~~ for the inclusion of the additional property in the district or for the removal of the
28 applicable parcels from the district.

29 (e) *Consideration by the Executive Director of the Development Office.* — Before the
30 Executive Director of the Development Office approves inclusion of the additional property in the
31 district, the Development Office shall determine the amount of taxes levied by article fifteen,
32 chapter eleven of this code that were collected by businesses located in the area the county
33 commission proposes to add to the district in the same manner as the base amount of tax was
34 determined when the district was first created. The State Treasurer shall also deposit one twelfth
35 of this additional tax base amount into the General Revenue Fund each month, as provided in
36 section twelve of this article.

37 (f) *Legislative action required to include additional property.* — After the Executive Director
38 of the Development Office approves amending the boundaries of the district to include additional
39 property, the Legislature must amend section nine of this article to allow levy of the special district
40 excise tax on business located in geographic area to be included in the district. After the
41 Legislature amends said section, the county commission may then amend its order: *Provided,*
42 That the order may not be effective any earlier than the first day of the calendar month that begins
43 sixty days after the effective date of the act of the Legislature authorizing the levy on the special
44 district excise tax on businesses located in the geographic area to be added to the boundaries of
45 the district for which the tax is levied or a later date as set forth in the order of the county
46 commission.

47 (g) *Collection of special district excise tax.* — All businesses included in a district because
48 of the boundary amendment shall on the effective date of the order, determined as provided in
49 subsection (f) of this section, collect the special district excise tax on all sales on tangible property
50 or services made from locations in the district on or after the effective date of the county
51 commission’s order or a later date as set forth in the order.

52 (h) *Minor Modifications.* — Notwithstanding any provision of this article to contrary, a
53 county commission may amend the order creating an economic opportunity development district
54 to make, and may make, modifications to the boundaries of the economic opportunity
55 development district without holding a public hearing or receiving approval of the Executive
56 Director of the West Virginia Development Office or authorization by the Legislature if the
57 modifications do not increase the total acreage of the economic opportunity development district
58 or result in a change to the base tax revenue amount. The county commission is authorized to
59 levy special district excise taxes on sales of tangible personal property and services made from
60 business locations within the modified boundaries of the economic opportunity development
61 district.

§7-22-23. Joint economic opportunity development districts.

1 (a) The Legislature hereby finds and declares that the citizens of the state would benefit
2 from coordinated road construction efforts by county commissions and municipalities.

3 (b) Notwithstanding any other section of this code to the contrary, any two or more county
4 commissions, any two or more municipalities, or any combination thereof, may: (1) Create a
5 combined economic opportunity development district; (2) propose joint applications for the
6 districts; (3) enter into one or more intergovernmental agreements between themselves and/or
7 the Commissioner of Highways to share: (A) Project expenses; and (B) certain excise tax
8 collections, on a pro rata or other basis, to facilitate construction of projects within the combined
9 economic opportunity development district and to jointly take such other actions as are authorized
10 in the County Economic Opportunity Development District Act.

11 (c) When a project begins in one county and ends in another county of this state, the
12 county commission of each county included in a multicounty project may, by resolution, adopt a
13 written intergovernmental agreement with each county and/or the Commissioner of Highways
14 regarding the proposed multicounty project. When the project begins or passes through the
15 corporate limits of a municipality, the governing body of that municipality may by resolution adopt
16 a written intergovernmental agreement with the county or counties in which the project is located.

17 (d) No county commission or municipality may withdraw from an intergovernmental
18 agreement if bonds or notes, remain outstanding the proceeds of which were used to finance
19 construction of the project for which the written intergovernmental agreement was executed.

20 (e) No withdrawing county commission or municipality is entitled to the return of any money
21 or property advanced to the project.

22 (f) Notwithstanding any provision of this code to the contrary, any county commission or
23 municipality that creates an economic opportunity development district may enter into one or more
24 intergovernmental agreements with one or more other counties or municipalities that also create
25 an economic opportunity development district to finance, in whole or in part, one or more projects,
26 to pool tax increment and other revenues to finance, in whole or in part, contiguous projects on a
27 cash basis or to pay debt service on bonds or notes.

28 (g) The obligations of the parties under any intergovernmental agreement executed
29 pursuant to this article is not debt within the meaning of sections six or eight, article X of the
30 Constitution of West Virginia.

31 (h) Any intergovernmental agreement must be approved by resolution adopted by a
32 majority vote of the county commission of each county participating in the agreement, by a
33 majority vote of the governing body of each municipality participating in the agreement and by the
34 Commissioner of Highways.

35 (i) The Commissioner of Highways is authorized to enter into intergovernmental
36 agreements with county commissions and municipalities of this state, or with the federal

37 government or any agency thereof, respecting the financing, planning, and construction of state
38 roads and bridges, including related infrastructure if any, constructed, in whole or in part, pursuant
39 to this article.

§7-22-24. Application by Division of Highways.

1 (a) The Commissioner of Highways may propose the creation by a county commission of
2 an economic opportunity development district and project plans, or propose amendments to
3 existing project plans. This plan may include related infrastructure that is necessary or convenient
4 to economic development adjacent to the proposed project.

5 (b) Projects proposed by the Commissioner of Highways are limited to those related to the
6 construction, reconstruction, improvement or modernization of state roads, as defined in article
7 four, chapter seventeen of this code, that are part of the state road system, as defined in that
8 article, or that will become part of the state road system upon completion of the construction. All
9 construction, reconstruction, improvement or modernization and maintenance of state roads shall
10 be done by or under the supervision of the Commissioner of Highways.

11 (c) All road projects that are accepted as part of the state road system, and all real property
12 interests and appurtenances, shall be under the exclusive jurisdiction and control of the
13 Commissioner of Highways, who may exercise the same rights and authority as he or she has
14 over other transportation facilities in the state road system.

15 (d) Except as provided in an intergovernmental agreement executed by one or more
16 county commissions, municipalities and/or the Commissioner of Highways and as provided in this
17 article, a county commission or municipality may not be required to pay for the cost of
18 constructing, reconstructing, improving, maintaining a road that is part of the state road system
19 as defined in article four, chapter seventeen of this code or to pay any other expense fairly related
20 to that road.

21 (e) The powers conferred by this article on the Commissioner of Highways or the Division
22 of Highways are in addition and supplemental to the powers conferred upon the Commissioner of

23 Highways, the Division of Highways, and the Department of Transportation by the Legislature
24 elsewhere in this code.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 38. MUNICIPAL ECONOMIC OPPORTUNITY DEVELOPMENT DISTRICTS.

§8-38-5. Development expenditures.

1 Any municipality that has established an economic opportunity development district under
2 this article may make, or authorize to be made by a district board and other public or private
3 parties, development expenditures as will promote the economic vitality of the district and the
4 general welfare of the municipality, including, but not limited to, expenditures for the following
5 purposes:

6 (1) Beautification of the district by means including landscaping and construction and
7 erection of fountains, shelters, benches, sculptures, signs, lighting, decorations and similar
8 amenities;

9 (2) Provision of special or additional public services such as sanitation, security for
10 persons and property and the construction and maintenance of public facilities, including, but not
11 limited to, sidewalks, parking lots, parking garages and other public areas;

12 (3) Making payments for principal, interest, issuance costs, any of the costs described in
13 section twenty of this article and appropriate reserves for bonds and other instruments and
14 arrangements issued or entered into by the municipality for financing the expenditures of the
15 district described in this section and to otherwise implement the purposes of this article;

16 (4) Providing financial support for public transportation and vehicle parking facilities open
17 to the general public, whether physically situate within the district's boundaries or on adjacent
18 land;

19 (5) Acquiring, building, demolishing, razing, constructing, repairing, reconstructing,
20 refurbishing, renovating, rehabilitating, expanding, altering, otherwise developing, operating and

21 maintaining real property generally, parking facilities, commercial structures and other capital
22 improvements to real property, fixtures and tangible personal property, whether or not physically
23 situate within the district's boundaries including, but not limited to, state road improvements
24 pursuant to an intergovernmental agreement with the Commissioner of Highways: *Provided*, That
25 the expenditure directly benefits the district;

26 (6) Developing plans for the architectural design of the district and portions thereof and
27 developing plans and programs for the future development of the district;

28 (7) Developing, promoting and supporting community events and activities open to the
29 general public that benefit the district;

30 (8) Providing the administrative costs for a district management program;

31 (9) Providing for the usual and customary maintenance and upkeep of all improvements
32 and amenities in the district as are commercially reasonable and necessary to sustain its
33 economic viability on a permanent basis;

34 (10) Providing any other services that the municipality or district board is authorized to
35 perform and which the municipality does not also perform to the same extent on a countywide
36 basis;

37 (11) Making grants to the owners or tenants of economic opportunity development district
38 for the purposes described in this section;

39 (12) Making grants to the Division of Highways for road projects benefitting an economic
40 opportunity development district;

41 ~~(12)~~ (13) Acquiring an interest in any entity or entities that own any portion of the real
42 property situate in the district and contributing capital to any entity or entities;

43 ~~(13)~~ (14) Remediation of publicly or privately owned landfills, former coal or other mining
44 sites, solid waste facilities or hazardous waste sites to facilitate commercial development which
45 would not otherwise be economically feasible; and

46 ~~(14)~~ (15) To do any and all things necessary, desirable or appropriate to carry out and
47 accomplish the purposes of this article notwithstanding any provision of this code to the contrary.

**§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 act on applications filed with it
2 by municipalities pursuant to section six of this article. Each application must include:

- 3 (1) A true copy of the notice described in section six of this article;
- 4 (2) The total cost of the project;
- 5 (3) A reasonable estimate of the number of months needed to complete the project;
- 6 (4) A general description of the capital improvements, additional or extended services and
7 other proposed development expenditures to be made in the district as part of the project;
- 8 (5) A description of the proposed method of financing the development expenditures,
9 together with a description of the reserves to be established for financing ongoing development
10 expenditures necessary to permanently maintain the optimum economic viability of the district
11 following its inception: *Provided*, That the amounts of the reserves may not exceed the amounts
12 that would be required by prevailing commercial capital market considerations;
- 13 (6) A description of the sources and anticipated amounts of all financing, including, but not
14 limited to, proceeds from the issuance of any bonds or other instruments, revenues from the
15 special district excise tax and enhanced revenues from property taxes and fees;
- 16 (7) A description of the financial contribution of the municipality to the funding of
17 development expenditures;
- 18 (8) Identification of any businesses that the municipality expects to relocate their business
19 locations from the district to another place in the state in connection with the establishment of the
20 district or from another place in this state to the district: *Provided*, That for purposes of this article,
21 any entities shall be designated “relocated entities”;

22 (9) Identification of any businesses currently conducting business in the proposed
23 economic opportunity development district that the municipality expects to continue doing
24 business there after the district is created;

25 (10) A good faith estimate of the aggregate amount of consumers sales and service tax
26 that was actually remitted to the Tax Commissioner by all business locations identified as provided
27 in subdivisions (8) and (9) of this subsection with respect to their sales made and services
28 rendered from their then current business locations that will be relocated from, or to, or remain in
29 the district for the twelve full calendar months next preceding the date of the application: *Provided,*
30 That for purposes of this article, the aggregate amount is designated as “the base tax revenue
31 amount”;

32 (11) A good faith estimate of the gross annual district tax revenue amount;

33 (12) The proposed application of any surplus from all funding sources to further the
34 objectives of this article; and

35 ~~(13) The Tax Commissioner’s certification of: (i) The amount of consumers sales and~~
36 ~~service taxes collected from businesses located in the economic opportunity district during the~~
37 ~~twelve calendar months preceding the calendar quarter during which the application will be~~
38 ~~submitted to the Development Office; (ii) the estimated amount of economic opportunity district~~
39 ~~excise tax that will be collected during the first twelve months after the month in which the Tax~~
40 ~~Commissioner would first begin to collect that tax; and (iii) the estimated amount of economic~~
41 ~~opportunity district excise tax that will be collected during the first thirty-six months after the month~~
42 ~~in which the Tax Commissioner would first begin to collect that tax; and~~

43 ~~(14)~~ (13) Any additional information the Development Office may require.

44 (b) *Review of applications.* — The Development Office shall review all project proposals
45 for conformance to statutory and regulatory requirements, the reasonableness of the project’s
46 budget and timetable for completion and the following criteria:

47 (1) The quality of the proposed project and how it addresses economic problems in the
48 area in which the project will be located;

49 (2) The merits of the project determined by a cost-benefit analysis that incorporates all
50 costs and benefits, both public and private;

51 (3) Whether the project is supported by significant private sector investment and
52 substantial credible evidence that, but for the existence of sales tax increment financing, the
53 project would not be feasible;

54 (4) Whether the economic opportunity development district excise tax dollars will leverage
55 or be the catalyst for the effective use of private, other local government, state or federal funding
56 that is available;

57 (5) Whether there is substantial and credible evidence that the project is likely to be started
58 and completed in a timely fashion;

59 (6) Whether the project will, directly or indirectly, improve the opportunities in the area
60 where the project will be located for the successful establishment or expansion of other industrial
61 or commercial businesses;

62 (7) Whether the project will, directly or indirectly, assist in the creation of additional long-
63 term employment opportunities in the area and the quality of jobs created in all phases of the
64 project, to include, but not be limited to, wages and benefits;

65 (8) Whether the project will fulfill a pressing need for the area, or part of the area, in which
66 the economic opportunity district is located; ~~Provided, That the Development Office should~~
67 ~~consider whether the economic development project is large enough to require that it contain a~~
68 ~~mixed use development provision consisting of a housing component with at least ten percent of~~
69 ~~housing units in the district allocated for affordable housing;~~

70 (9) Whether the municipality has a strategy for economic development in the municipality
71 and whether the project is consistent with that strategy;

72 (10) Whether the project helps to diversify the local economy;

73 (11) Whether the project is consistent with the goals of this article;

74 (12) Whether the project is economically and fiscally sound using recognized business
75 standards of finance and accounting; and

76 (13)(A) The ability of the municipality and the project developer or project team to carry
77 out the project: *Provided*, That no project may be approved by the Development Office unless the
78 amount of all development expenditures proposed to be made in the first twenty-four months
79 following the creation of the district results in capital investment of more than \$75 million in the
80 district and the municipality submits clear and convincing information, to the satisfaction of the
81 Development Office, that the investment will be made if the Development Office approves the
82 project and the Legislature authorizes the municipality to levy an excise tax on sales of goods and
83 services made within the economic opportunity development district as provided in this article:
84 *Provided, however, That such minimum capital investment does not apply to projects proposed*
85 *by the Commissioner of Highways in accordance with section twenty-three, article twenty-two,*
86 *chapter seven of this code.*

87 (B) Notwithstanding any provision of paragraph (A) of this subdivision to the contrary, no
88 project involving remediation may be approved by the Development Office unless the amount of
89 all development expenditures proposed to be made in the first forty-eight months following the
90 creation of the district results in capital investment of more than \$75 million in the district. In
91 addition to the remaining provisions of paragraph (A) of this subdivision the Development Office
92 may not approve a project involving remediation authorized under section five of this article unless
93 the municipality submits clear and convincing information, to the satisfaction of the Development
94 Office, that the proposed remediation expenditures to be financed by the issuance of bonds or
95 notes pursuant to section sixteen of this article do not constitute more than twenty-five percent of
96 the total development expenditures associated with the project.

97 (c) *Additional criteria.* — The Development Office may establish other criteria for
98 consideration when approving the applications.

99 (d) *Action on the application.* — The Executive Director of the Development Office shall
100 act to approve or not approve any application within thirty days following the receipt of the
101 application or the receipt of any additional information requested by the Development Office,
102 whichever is the later.

103 (e) *Certification of project.* — If the Executive Director of the Development Office approves
104 a municipality's economic opportunity district project application, he or she shall issue to the
105 municipality a written certificate evidencing the approval.

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

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

123 The certificate shall expressly state a base tax revenue amount, the gross annual district
124 tax revenue amount and the estimated net annual district tax revenue amount which, for purposes

125 of this article, is the difference between the gross annual district tax revenue amount and the base
126 tax revenue amount, all of which the Development Office has determined with respect to the
127 district's application based on any investigation it considers reasonable and necessary, including,
128 but not limited to, any relevant information the Development Office requests from the Tax
129 Commissioner and the Tax Commissioner provides to the Development Office: *Provided*, That in
130 determining the net annual district tax revenue amount, the Development Office may not use a
131 base tax revenue amount less than that amount certified by the Tax Commissioner, but, in lieu of
132 confirmation from the Tax Commissioner of the gross annual district tax revenue amount, the
133 Development Office may use the estimate of the gross annual district tax revenue amount
134 provided by the municipality pursuant to subsection (a) of this section.

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

§8-38-8. Establishment of the Economic Opportunity Development District Fund.

1 (a) *General.* — There is hereby created a special revenue account in the State Treasury
2 designated the “Economic Opportunity Development District Fund” which is an interest-bearing
3 account and shall be invested in the manner described in section nine-c, article six, chapter twelve
4 of this code with the interest income a proper credit to the Fund.

5 (b) *District subaccount.* -- A separate and segregated subaccount within the account shall
6 be established for each economic opportunity development district and each joint economic
7 opportunity development district that is approved by the Executive Director of the Development
8 Office. In addition to the economic opportunity district excise tax levied and collected as provided
9 in this article, funds paid into the account for the credit of any subaccount may also be derived
10 from the following sources:

- 11 (1) All interest or return on the investment accruing to the subaccount;
- 12 (2) Any gifts, grants, bequests, transfers, appropriations or donations which are received
- 13 from any governmental entity or unit or any person, firm, foundation or corporation; and
- 14 (3) Any appropriations by the Legislature which are made for this purpose

§8-38-12. Special district excise tax authorized.

1 (a) *General.* — The council of a municipality, authorized by the Legislature to levy a special

2 district excise tax for the benefit of an economic opportunity development district, may, by

3 ordinance, impose that tax on the privilege of selling tangible personal property and rendering

4 select services in the district in accordance with this section.

5 (b) *Tax base.* — The base of a special district excise tax imposed pursuant to this section

6 shall be identical to the base of the consumers sales and service tax imposed pursuant to article

7 fifteen, chapter eleven of this code on sales made and services rendered within the boundaries

8 of the district. Sales of gasoline and special fuel are not subject to special district excise tax, but

9 remain subject to the tax levied by article fifteen, chapter eleven of this code. Except for the

10 exemption provided in section nine-f of article fifteen, chapter eleven of this code, all exemptions

11 and exceptions from the consumers sales and service tax also apply to the special district excise

12 tax.

13 (c) *Tax rate.* — The rate or rates of a special district excise tax levied pursuant to this

14 section shall be stated in an ordinance enacted by the municipality and identical to the rate or

15 rates of the consumers sales and service tax imposed pursuant to article fifteen, chapter eleven

16 of this code on sales rendered within the boundaries of the district authorized by this section.

17 (d) *Collection by Tax Commissioner.* — The ordinance of the municipality imposing a

18 special district excise tax shall provide for the tax to be collected by the Tax Commissioner in the

19 same manner as the tax levied by section three, article fifteen, chapter eleven of this code is

20 administered, assessed, collected and enforced.

21 (1) The State Tax Commissioner may require the electronic filing of returns related to the
22 special district excise tax imposed pursuant to this section and may require the electronic payment
23 of the special district excise tax imposed pursuant to this section. The State Tax Commissioner
24 may prescribe by rules adopted or proposed pursuant to article three, chapter twenty-nine-a of
25 this code, administrative notices, and forms and instructions, the procedures and criteria to be
26 followed to electronically file those returns and to electronically pay the special district excise tax
27 imposed pursuant to this section.

28 (2) Any rules filed by the State Tax Commissioner relating to the special district excise tax
29 imposed pursuant to this section shall set forth the following:

30 (A) Acceptable indicia of timely payment;

31 (B) Which type of electronic filing method or methods a particular type of taxpayer may or
32 may not use;

33 (C) What type of electronic payment method or methods a particular type of taxpayer may
34 or may not use;

35 (D) What, if any, exceptions are allowable and alternative methods of payment that may
36 be used for any exceptions;

37 (E) Procedures for making voluntary or mandatory electronic payments or both; ~~and~~

38 (F) Procedures for ensuring that taxpayers new to an economic opportunity development
39 district are included within the Tax Commissioner's database;

40 (G) Procedures for ensuring that taxpayers with multiple locations properly allocate their
41 special district excise taxes to the appropriate economic opportunity development district and
42 reflect the allocation of their returns; and

43 ~~(F)~~ (H) Any other provisions necessary to ensure the timely electronic filing of returns
44 related to the special district excise tax and the making of payments electronically of the special
45 district excise tax imposed pursuant to this section.

46 (3)(A) Notwithstanding the provisions of section five-d, article ten, chapter eleven of this
47 code: (i) So long as bonds are outstanding pursuant to this article, the Tax Commissioner shall
48 provide on a monthly basis to the trustee for bonds issued pursuant to this article information on
49 returns submitted pursuant to this article; and (ii) the trustee may share the information so
50 obtained with the municipality that established the economic opportunity development district that
51 issued the bonds pursuant to this article and with the bondholders and with bond counsel for
52 bonds issued pursuant to this article. The Tax Commissioner and the trustee may enter into a
53 written agreement in order to accomplish exchange of the information.

54 (B) Any confidential information provided pursuant to this subdivision shall be used solely
55 for the protection and enforcement of the rights and remedies of the bondholders of bonds issued
56 pursuant to this article. Any person or entity that is in possession of information disclosed by the
57 Tax Commissioner or shared by the trustee pursuant to subdivision (a) of this subsection is
58 subject to the provisions of section five-d, article ten, chapter eleven of this code as if the person
59 or entity that is in possession of the tax information is an officer, employee, agent or representative
60 of this state or of a local or municipal governmental entity or other governmental subdivision.

61 (C) Notwithstanding any provision of this code to the contrary, so long as bonds are
62 outstanding pursuant to this article, the Tax Commissioner shall allow a designated representative
63 of the municipality that established the economic opportunity development district for which the
64 bonds were issued to audit the returns filed by the taxpayers in the economic opportunity
65 development district no less often than once each quarter of the fiscal year. The Tax
66 Commissioner may require the audit to be conducted at the Tax Commissioner's office, may
67 prohibit copying of any returns, and may require the representatives to enter into a written
68 confidentiality agreement. The Tax Commissioner shall promptly investigate any questions raised
69 by an audit, shall promptly take all actions required to correct any errors, and shall report to the
70 applicable municipality the results of its investigation and actions.

71 (e) *Deposit of net tax collected.* —

72 (1) The ordinance of the municipality imposing a special district excise tax shall provide
73 that the Tax Commissioner deposit the net amount of tax collected in the special Economic
74 Opportunity Development District Fund to the credit of the municipality's subaccount therein for
75 the economic opportunity development district and that the money in the subaccount may only be
76 used to pay for development expenditures as provided in this article except as provided in
77 subsection (f) of this section.

78 (2)(A) The State Treasurer shall withhold from the municipality's subaccount in the
79 Economic Opportunity Development District Fund and shall deposit in the General Revenue Fund
80 of this state, on or before the twentieth day of each calendar month next following the effective
81 date of a special district excise tax, a sum equal to one twelfth of the base tax revenue amount
82 last certified by the Development Office pursuant to section seven of this article.

83 (B) In addition to the amounts described in paragraph (A) of this subdivision, the Tax
84 Commissioner shall deposit in the General Revenue Fund of this state on the dates specified in
85 paragraph (A) not less than twenty percent nor more than fifty percent of the excess of the special
86 district excise taxes collected during the preceding month above one twelfth of the base tax
87 revenue, said percentage to be fixed by the Development Office in conjunction with its approval
88 of an application in accordance with section seven of this article based on the amount of state
89 funds, if any, to be expended in conjunction with the respective economic opportunity
90 development district project for items including, but not limited to, the acquisition, construction,
91 reconstruction, improvement, enlargement or extension of roadways, rights-of-way, sidewalks,
92 traffic signals, water or sewer lines and other public infrastructure and such other expenditures of
93 state funds identified by the Development Office: *Provided*, That the Development Office has the
94 discretion to reduce the minimum percentage of the excess special district excise taxes deposited
95 by the Tax Commissioner in the General Revenue Fund as outlined above from twenty percent
96 to ten percent in conjunction with its approval of an application in accordance with section seven
97 of this article based on its determination that:

98 (i) The economic development project provides for expenditures in excess of \$100 million;

99 (ii) The economic opportunity development district project does not require the state to
100 expend any additional state funds for items within the district including, but not limited to, the
101 acquisition, construction, reconstruction, improvement, enlargement or extension of roadways,
102 rights-of-way, sidewalks, traffic signals, water or sewer lines and other public infrastructure; and

103 (iii) The economic development project contains a provision for a mixed use development
104 with a housing component with at least ten percent of housing units in the district allocated as
105 affordable housing.

106 (f) *Effective date of special district excise tax.* — Any taxes imposed pursuant to the
107 authority of this section are effective on the first day of the calendar month that begins at least
108 sixty days after the date of enactment of the ordinance imposing the tax or at any later date
109 expressly designated in the ordinance that begins on the first day of a calendar month.

110 (g) *Copies of ordinance.* — Upon enactment of an ordinance levying a special district
111 excise tax, a certified copy of the ordinance shall be mailed to the State Auditor, as ex officio the
112 chief inspector and supervisor of public offices, the State Treasurer and the Tax Commissioner.

§8-38-14. Modification of included area; notice; hearing.

1 (a) *General.* — The ordinance creating an economic opportunity development district may
2 not be amended to include additional contiguous property until after the amendment is approved
3 by the Executive Director of the Development Office in the same manner as an application to
4 approve the establishment of the district is acted upon under section seven of this article. The
5 order creating an economic opportunity development district may not be amended to remove
6 property until after the amendment is approved by the Executive Director of the Development
7 Office in the same manner as an application to approve the establishment of the district is acted
8 upon under section seven of this article: *Provided, That any such amendment for the purpose of*
9 removing property from an economic opportunity development district shall not require
10 authorization from the Legislature and shall ensure that any such district after such an amendment

11 remains contiguous. The order which is entered for the purpose of removing parcels from an
12 existing economic opportunity development district may not be effective any earlier than the first
13 day of the calendar month which begins at least thirty days following the entry of the order or such
14 later date as may be specified by the county commission in the order.

15 (b) *Limitations.* — Additional property may not be included in the district unless it is situated
16 within the boundaries of the municipality and is contiguous to the then current boundaries of the
17 district.

18 (c) *Public hearing required.* —

19 (1) The council of any municipality desiring to amend its ordinance shall designate a time
20 and place for a public hearing upon the proposal to include additional property. The notice shall
21 meet the requirements set forth in section six of this article.

22 (2) At the time and place set forth in the notice, the municipality shall afford the opportunity
23 to be heard to any owners of real property either currently included in or proposed to be added to
24 the existing district and to any other residents of the municipality.

25 (d) *Application to West Virginia Development Office.* — Following the hearing, the
26 municipality may, by resolution, ~~apply to~~ approve the filing of an application with the Development
27 Office to approve for the inclusion of the additional property in the district or for the removal of the
28 applicable parcels from the district.

29 (e) *Consideration by the Executive Director of the Development Office.* — Before the
30 Executive Director of the Development Office approves inclusion of the additional property in the
31 district, the Development Office shall determine the amount of taxes levied by article fifteen,
32 chapter eleven of this code that were collected by businesses located in the area the municipality
33 proposes to add to the district in the same manner as the base amount of tax was determined
34 when the district was first created. The State Treasurer shall also deposit one twelfth of this
35 additional tax base amount into the General Revenue Fund each month, as provided in section
36 twelve of this article.

37 (f) Legislative action required to include additional property. — After the Executive Director
38 of the Development Office approves amending the boundaries of the district to include additional
39 property, the Legislature must amend section nine of this article to allow levy of the special district
40 excise tax on business located in geographic area to be included in the district. After the
41 Legislature amends said section, the municipality may then amend its ordinance: *Provided*, That
42 the ordinance may not be effective any earlier than the first day of the calendar month that begins
43 sixty days after the effective date of the amended ordinance imposing the levy of the special
44 district excise tax on businesses located in the geographic area to be added to the boundaries of
45 the district for which the tax is levied or the first day of a later calendar month as set forth in the
46 ordinance of the municipality.

47 (g) Collection of special district excise tax. — All businesses included in a district because
48 of the boundary amendment shall on the effective date of the ordinance, determined as provided
49 in subsection (f) of this section, collect the special district excise tax on all sales on tangible
50 property or services made from locations in the district on or after the effective date of the
51 municipality's ordinance or a later date as set forth in the ordinance.

52 (h) Minor modifications. — Notwithstanding any provision of this article to contrary, a
53 municipality may amend the ordinance creating an economic opportunity development district to
54 make, and may make, modifications to the boundaries of the economic opportunity development
55 district without holding a public hearing or receiving approval of the executive director of the West
56 Virginia Development Office or authorization by the Legislature if the modifications do not increase
57 the total acreage of the economic opportunity development district or result in a change to the
58 base tax revenue amount. The municipality is authorized to levy special district excise taxes on
59 sales of tangible personal property and services made from business locations within the modified
60 boundaries of the economic opportunity development district.

§8-38-23. Joint economic opportunity development districts.

1 (a) The Legislature hereby finds and declares that the citizens of the state would benefit
2 from coordinated road construction efforts by county commissions and municipalities.

3 (b) Notwithstanding any other section of this code to the contrary, any two or more county
4 commissions, any two or more municipalities, or any combination thereof, may: (1) Create a
5 combined economic opportunity development district; (2) propose joint applications for the
6 districts; and (3) enter into one or more intergovernmental agreements between themselves
7 and/or the Commissioner of Highways to share: (A) Project expenses; and (B) certain excise tax
8 collections, on a pro rata or other basis, to facilitate construction of projects within the combined
9 economic opportunity development district and to jointly take such other actions as are authorized
10 in the County Economic Opportunity Development District Act.

11 (c) When a project begins in one county and ends in another county of this state, the
12 county commission of each county included in a multicounty project may, by resolution, adopt a
13 written intergovernmental agreement with each county and/or the Commissioner of Highways
14 regarding the proposed multicounty project. When the project begins or passes through the
15 corporate limits of a municipality, the governing body of that municipality may by resolution adopt
16 a written intergovernmental agreement with the county or counties in which the project is located.

17 (d) No county commission or municipality may withdraw from an intergovernmental
18 agreement as long as bonds or notes, remain outstanding the proceeds of which were used to
19 finance construction of the project for which the written intergovernmental agreement was
20 executed.

21 (e) No withdrawing county commission or municipality is entitled to the return of any money
22 or property advanced to the project.

23 (f) Notwithstanding any provision of this code to the contrary, any county commission or
24 municipality that creates an economic opportunity development district may enter into one or more
25 intergovernmental agreements with one or more other counties or municipalities that also create
26 an economic opportunity development district to finance, in whole or in part, one or more projects,
27 to pool tax increment and other revenues to finance, in whole or in part, contiguous projects on a
28 cash basis or to pay debt service on bonds or notes.

29 (g) The obligations of the parties under any intergovernmental agreement executed
30 pursuant to this article is not debt within the meaning of sections six or eight, article X of the
31 Constitution of West Virginia.

32 (h) Any intergovernmental agreement must be approved by resolution adopted by a
33 majority vote of the county commission of each county participating in the agreement, by a
34 majority vote of the governing body of each municipality participating in the agreement and by the
35 Commissioner of Highways.

36 (i) The Commissioner of Highways is authorized to enter into intergovernmental
37 agreements with county commissions and municipalities of this state, or with the federal
38 government or any agency thereof, respecting the financing, planning, and construction of state
39 roads and bridges, including related infrastructure if any, constructed, in whole or in part, pursuant
40 to this article.

§8-38-24. Application by Division of Highways.

1 (a) The Commissioner of Highways may propose the creation by a county commission of
2 an economic opportunity development district and project plans, or propose amendments to
3 existing project plans.

4 (b) Projects proposed by the Commissioner of Highways are limited to those related to the
5 construction, reconstruction, improvement or modernization of state roads, as defined in article
6 four, chapter seventeen of this code, that are part of the state road system, as defined in that
7 article or that will become part of the state road system upon completion of the construction. All
8 construction, reconstruction, improvement or modernization and maintenance of state roads shall
9 be done by or under the supervision of the Commissioner of Highways.

10 (c) All road projects that are accepted as part of the state road system, and all real property
11 interests and appurtenances, shall be under the exclusive jurisdiction and control of the
12 Commissioner of Highways, who may exercise the same rights and authority as he or she has
13 over other transportation facilities in the state road system.

14 (d) Except as provided in an intergovernmental agreement executed by one or more
15 county commissions, municipalities and/or the Commissioner of Highways and as provided in this
16 article, a county commission or municipality may not be required to pay for the cost of
17 constructing, reconstructing, improving, maintaining a road that is part of the state road system
18 as defined in article four, chapter seventeen of this code or to pay any other expense fairly related
19 to that road.

20 (e) The powers conferred by this article on the Commissioner of Highways or the Division
21 of Highways are in addition and supplemental to the powers conferred upon the Commissioner of
22 Highways, the Division of Highways, and the Department of Transportation by the Legislature
23 elsewhere in this code.

CHAPTER 11. TAXATION.

ARTICLE 10. WEST VIRGINIA TAX PROCEDURE AND ADMINISTRATION ACT.

§11-10-11a. Administration of special district excise tax; commission authorized.

24 (a) Any municipality or county commission which, pursuant to section twelve, article
25 twenty-two, chapter seven of this code, ~~section eleven, article thirteen-b, chapter eight of this~~
26 ~~code~~ or section twelve, article thirty-eight, chapter eight of this code imposes a special district
27 excise tax shall, by express provision in the order or ordinance imposing that tax, authorize the
28 State Tax Commissioner to administer, assess, collect and enforce that tax on behalf of and as
29 its agent.

30 (1) The county commission or municipality shall make such authorization by the adoption
31 of a provision in its order or ordinance levying a special district excise tax stating its purpose and
32 referring to this section and providing that the order or ordinance shall be effective on the first day
33 of a month at least sixty days after its adoption.

34 (2) A certified copy of the order or ordinance shall be forwarded to the State Auditor, the
35 State Treasurer and the Tax Commissioner so that it will be received within five days after its
36 adoption or enactment.

37 (b) Any special district excise tax administered under this section shall be administered
38 and collected by the Tax Commissioner in the same manner and subject to the same interest,
39 additions to tax and penalties as provided for the tax imposed in article fifteen of this chapter.

40 (c) All special district excise tax moneys collected by the Tax Commissioner under this
41 section shall be paid into the State Treasury to the credit of each county commission's subaccount
42 in the economic opportunity development district fund created pursuant to section nine, article
43 twenty-two, chapter seven of this code, or to the credit of each municipality's subaccount in the
44 economic opportunity development district fund created pursuant to section nine, article thirty-
45 eight, chapter eight of this code, for the particular economic opportunity development district. The
46 special district excise tax moneys shall be credited to the subaccount of each particular county
47 commission or municipality levying a special district excise tax being administered under this
48 section. The credit shall be made to the subaccount of the county commission or municipality for
49 the economic opportunity development district in which the taxable sales were made and taxable
50 services rendered as shown by the records of the Tax Commissioner and certified by him or her
51 monthly to the State Treasurer, namely, the location of each place of business of every vendor
52 collecting and paying the tax to the Tax Commissioner without regard to the place of possible use
53 by the purchaser.

54 (d) As soon as practicable after the special district excise tax moneys have been paid into
55 the State Treasury in any month for the preceding reporting period, the district board or the county
56 commission or municipality imposing the tax may issue a requisition to the State Auditor
57 requesting issuance of a state warrant for the proper amount in favor of each county commission
58 or municipality entitled to the monthly remittance of its special district excise tax moneys.

59 (1) Upon receipt of the requisition, the Auditor shall issue his or her warrant on the State
60 Treasurer for the funds requested and the State Treasurer shall pay the warrant out of the
61 subaccount.

62 (2) If errors are made in any payment, or adjustments are otherwise necessary, whether
63 attributable to refunds to taxpayers or to some other fact, the errors shall be corrected and
64 adjustments made in the payments for the next six months as follows: One sixth of the total
65 adjustment shall be included in the payments for the next six months. In addition, the payment
66 shall include a refund of amounts erroneously not paid to the county commission or the
67 municipality and not previously remitted during the three years preceding the discovery of the
68 error.

69 (3) A correction and adjustment in payments described in this subsection due to the
70 misallocation of funds by the vendor shall be made within three years of the date of the payment
71 error.

72 (e) Notwithstanding any other provision of this code to the contrary, the Tax Commissioner
73 shall deduct and retain for the benefit of his or her office for expenditure pursuant to appropriation
74 of the Legislature from each payment into the State Treasury, as provided in subsection (c) of this
75 section, one percent thereof as a commission to compensate his or her office for the discharge of
76 the duties described in this section.