

# **WEST VIRGINIA LEGISLATURE**

## **2017 REGULAR SESSION**

**Introduced**

### **House Bill 2859**

BY DELEGATES HAMRICK, MILEY, QUEEN AND IAQUINTA

[Introduced March 8, 2017; Referred  
to the Committee on Finance.]

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

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

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

**ARTICLE 11B. WEST VIRGINIA TAX INCREMENT FINANCING ACT.**

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

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

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

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

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

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

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

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

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

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

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

41 (3) Assigns a name to the development or redevelopment district for identification

42 purposes.

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

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

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

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

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

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

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

67 (B) Ad valorem taxes collected from regular levies upon real and tangible personal

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

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

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

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

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

91 (g) Notwithstanding subsection (e) of this section, the governing body of a municipality  
92 may not adopt an ordinance approving a development or redevelopment project plan unless the  
93 governing body expressly finds and states in the ordinance that the development or

94 redevelopment project is not reasonably expected to occur without the use of tax increment  
95 financing.

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

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

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

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

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

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

1 (a) No development or redevelopment district may be in existence for a period longer than  
2 thirty years and no tax increment financing obligations may have a final maturity date later than

3 the termination date of the area or district: Provided, That for any existing development or  
 4 redevelopment district for which tax increment financing obligations have been issued by a county  
 5 commission, or the governing body of a municipality, prior to December 31, 2008, that existing  
 6 development or redevelopment district may be in existence until December 31, 2048.

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

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

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

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

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

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

4 (b) Tax increment financing obligations shall not be included in the computation of the

5 Constitutional debt limitation of the county commission or municipality issuing the tax increment  
6 financing obligations.

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

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

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

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

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

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

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

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

30 (k) The bonds may be refunded or refinanced and refunding bonds may be issued in any



31 principal amount. ~~Provided, That the last maturity of the refunding bonds shall not be later than~~  
32 ~~the last maturity of the bonds being refunded~~

NOTE: The purpose of this bill is to provide an option for certain governmental entities to extend the term of a tax increment financing district until December 31, 2048, if tax increment financing obligations were issued for that district in the years leading up to the most recent United States economic recession.

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