

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

ENGROSSED

Committee Substitute

for

House Bill 2843

BY DELEGATES FAST, KESSINGER, HILL,

HOWELL AND WARD

[Originating in the Committee on Finance;

February 20, 2018.]

1 A BILL to amend and reenact §7-11B-3, §7-11B-4 and §7-11B-7 of the Code of West Virginia,
2 1931, as amended, all relating to permitting Class III municipalities to be included in the
3 West Virginia Tax Increment Act.

Be it enacted by the Legislature of West Virginia:

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 “Agency” includes a municipality, a county or municipal development agency established
6 pursuant to authority granted in ~~section one, article twelve of this chapter~~ §7-12-1 of this code, a
7 port 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 “Base assessed value” means the taxable assessed value of all real and tangible personal
11 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 “Blighted area” means an area within the boundaries of a development or redevelopment
20 district located within the territorial limits of a municipality or county in which the structures,

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

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

59 “Development office” means the West Virginia Development Office created in ~~section one,~~
60 ~~article two, chapter five-b~~ §5B-2-1 of this code.

61 “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 “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 “Economic development area” means any area or portion of an area within the boundaries
98 of a development or redevelopment district located within the territorial limits of a municipality or
99 county that is neither a blighted area nor a conservation area and for which the county commission
100 finds that development or redevelopment will not be solely used for development of commercial
101 businesses that will unfairly compete in the local economy and that development or
102 redevelopment is in the public interest because it will:

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

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

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

108 “Governing body of a municipality” means the city council of a Class I, ~~or Class II~~ or Class
109 III municipality in this state.

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

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

116 “Intergovernmental agreement” means any written agreement that may be entered into by
117 and between two or more county commissions, or between two or more municipalities, or between
118 a county commission and a municipality, in the singular and the plural, or between two or more
119 government entities and the Commissioner of Highways: *Provided*, That any intergovernmental
120 agreement shall not be subject to provisions governing intergovernmental agreements set forth
121 in other provisions of this code, including, but not limited to, ~~article twenty-three, chapter eight~~ §8-
122 23-1 et seq. of this code, but shall be subject to the provisions of this article.

123 “Local levying body” means the county board of education and the county commission
124 and includes the governing body of a municipality when the development or redevelopment district
125 is located, in whole or in part, within the boundaries of the municipality.

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

130 “Order” means an order of the county commission adopted in conformity with the
131 provisions of this article and as provided in this chapter.

132 “Ordinance” means a law adopted by the governing body of a municipality in conformity
133 with the provisions of this article and as provided in ~~chapter eight~~ §8-1-1 et seq. of this code.

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

144 “Person” means any natural person, and any corporation, association, partnership, limited
145 partnership, limited liability company or other entity, regardless of its form, structure or nature,
146 other than a government agency or instrumentality.

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

150 “Project” means any capital improvement, facility or both, as specifically set forth and
151 defined in the project plan, requiring an investment of capital including, but not limited to,
152 extensions, additions or improvements to existing facilities, including water or wastewater
153 facilities, and the remediation of contaminated property as provided for in ~~article twenty-two,~~
154 ~~chapter twenty-two~~ §22-22-1 et seq. of this code, but does not include performance of any
155 governmental service by a county or municipal government.

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

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

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

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

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

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

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

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

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

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

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

194 "Project developer" means any person who engages in the development of projects in the
195 state.

196 "Project plan" means the plan for a development or redevelopment project that is adopted
197 by a county commission or governing body of a municipality in conformity with the requirements
198 of this article and this chapter or ~~chapter eight~~ §8-1-1 et seq. of this code.

199 "Real property" means all lands, including improvements and fixtures on them and
200 property of any nature appurtenant to them or used in connection with them and every estate,

201 interest and right, legal or equitable, in them, including terms of years and liens by way of
202 judgment, mortgage or otherwise, and indebtedness secured by the liens.

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

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

216 "Tax increment" means the amount of regular levy property taxes attributable to the
217 amount by which the current assessed value of real and tangible personal property having a tax
218 situs in a development or redevelopment district exceeds the base assessed value of the property.

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

224 "This code" means the Code of West Virginia, 1931, as amended by the Legislature.

225 "Total ad valorem property tax regular levy rate" means the aggregate levy rate of all
226 levying bodies on all taxable property having a tax situs within a development or redevelopment

227 district in a tax year but does not include excess levies, levies for general obligation bonded
228 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~~ Class II or Class III municipality may exercise any powers necessary and
3 convenient to carry out the 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~~ §54-1-1 et
23 seq. of this code 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;

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

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

1 (a) County commissions and the governing bodies of Class I, ~~or Class II~~ or Class III
2 municipalities, upon their own initiative or upon application of an agency or a developer, may
3 propose creation of a development or redevelopment district and designate the boundaries of the
4 district: *Provided*, 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~~ §59-3-2 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~~ §11-8-1 et seq. 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)~~ (d) of this section, a county commission may not enter
88 an 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)~~ (d) 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, by entry of an order modifying the order creating the
104 development or redevelopment district.

105 (k) The governing body of a municipality may modify the boundaries of the development
106 or redevelopment district, from time to time, by amending the ordinance establishing the
107 boundaries of the district.

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

§7-11B-8. Project plan — approval.

1 (a) The county commission or municipality creating the district shall cause the preparation
2 of a project plan for each development or redevelopment district and the project plan shall be
3 adopted by order of the county commission, or ordinance adopted by the governing body of the
4 municipality, after it is approved by the executive director of the Development Office. This process
5 shall conform to the procedures set forth in this section.

6 (b) Each project plan shall include:

7 (1) A statement listing the kind, number and location of all proposed public works or other
8 improvements within the district and on land outside but contiguous to the district;

9 (2) A cost-benefit analysis showing the economic impact of the plan on each levying body
10 that is at least partially within the boundaries of the development or redevelopment district. This
11 analysis shall show the impact on the economy if the project is not built and is built pursuant to
12 the development or redevelopment plan under consideration. The cost-benefit analysis shall
13 include a fiscal impact study on every affected levying body and sufficient information from the
14 developer for the agency, if any proposing the plan, the county commission be asked to approve
15 the project and the Development Office to evaluate whether the project as proposed is financially
16 feasible;

- 17 (3) An economic feasibility study;
- 18 (4) A detailed list of estimated project costs;
- 19 (5) A description of the methods of financing all estimated project costs, including the
20 issuance of tax increment obligations and the time when the costs or monetary obligations related
21 thereto are to be incurred;
- 22 (6) A certification by the county assessor of the base assessed value of real and tangible
23 personal property having a tax situs in a development or redevelopment district: *Provided*, That if
24 such certification is made during the months of January or February of each year, the county
25 assessor may certify an estimated base assessed value of real and tangible personal property
26 having a tax situs in a development or redevelopment district: *Provided, however*, That prior to
27 issuance of tax increment obligations, the county assessor shall certify a final base assessed
28 value for the estimated base assessed value permitted by this section;
- 29 (7) The type and amount of any other revenues that are expected to be deposited to the
30 tax increment financing fund of the development or redevelopment district;
- 31 (8) A map showing existing uses and conditions of real property in the development or
32 redevelopment district;
- 33 (9) A map of proposed improvements and uses in the district;
- 34 (10) Proposed changes of zoning ordinances, if any;
- 35 (11) Appropriate cross-references to any master plan, map, building codes and municipal
36 ordinances or county commission orders affected by the project plan;
- 37 (12) A list of estimated nonproject costs;
- 38 (13) A statement of the proposed method for the relocation of any persons, businesses or
39 organizations to be displaced;
- 40 (14) A certificate from the executive director of the workers' compensation commission,
41 the commissioner of the Bureau of Employment Programs and the State Tax Commissioner that

42 the project developer is in good standing with the workers' compensation commission, the Bureau
43 of Employment Programs and the state Tax Division; and

44 (15) A certificate from the sheriff of the county or counties in which the development or
45 redevelopment district is located that the project developer is not delinquent on payment of any
46 real and personal property taxes in such county.

47 (c) If the project plan is to include tax increment financing, the tax increment financing
48 portion of the plan shall set forth:

49 (1) The amount of indebtedness to be incurred pursuant to this article;

50 (2) An estimate of the tax increment to be generated as a result of the project;

51 (3) The method for calculating the tax increment, which shall be in conformance with the
52 provisions of this article, together with any provision for adjustment of the method of calculation;

53 (4) Any other revenues, such as payment in lieu of tax revenues, to be used to secure the
54 tax increment financing; and

55 (5) Any other provisions as may be deemed necessary in order to carry out any tax
56 increment financing to be used for the development or redevelopment project.

57 (d) If less than all of the tax increment is to be used to fund a development or
58 redevelopment project or to pay project costs or retire tax increment financing, the project plan
59 shall set forth the portion of the tax increment to be deposited in the tax increment financing fund
60 of the development or redevelopment district and provide for the distribution of the remaining
61 portion of the tax increment to the levying bodies in whose jurisdiction the district lies.

62 (e) The county commission or governing body of the municipality that established the tax
63 increment financing fund shall hold a public hearing at which interested parties shall be afforded
64 a reasonable opportunity to express their views on the proposed project plan being considered
65 by the county commission or the governing body of the municipality.

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

68 (2) ~~Prior~~ At least 30 days prior to this publication, a copy of the notice and a copy of the
69 proposed project plan shall be sent by first-class mail to the chief executive officer of all other
70 levying bodies having the power to levy taxes on property located within the proposed
71 development or redevelopment district.

72 (f) Approval by the county commission or the governing body of a municipality of an initial
73 development or redevelopment project plan must be within one year after the date of the county
74 assessor's certification required by subdivision (6), subsection (b) of this section: *Provided*, That
75 additional development or redevelopment project plans may be approved by the county
76 commission or the governing body of a municipality in subsequent years, so long as the
77 development or redevelopment district continues to exist. The approval shall be by order of the
78 county commission or ordinance of the municipality, which shall contain a finding that the plan is
79 economically feasible.