WEST virginia legislature

**FISCAL NOTE**

2021 regular session

Introduced

Senate Bill 448

By Senators Martin and Jeffries

[Introduced February 25, 2021; referred
to the Committee on Government Organization; and then to the Committee on Finance]

A BILL to amend and reenact §7-11B-7, §7-11B-9, §7-11B-10, and §7-11B-22 of the Code of West Virginia, 1931, as amended, all relating generally to property tax increment financing districts; authorizing a county commission or municipality to modify the termination time of certain districts; extending length of certain districts; providing clarification as to the discharge of any tax increment financing obligations outstanding on the termination date of a district; eliminating certain existing limitations on the terms of tax increment financing obligations issued to refund existing obligations; providing clarifications with respect to the base assessed value and termination date when two or more tax increment financing districts have been combined; and establishing effect date.

Be it enacted by the Legislature of West Virginia:

Chapter 7. County Commissions and Officers.

ARTICLE 11B. West Virginia Tax Increment Financing Act.

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

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

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

(1) Notice of the hearing shall be published as a Class II legal advertisement in accordance with [§ 59-3-2 of this code](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000041&cite=WVSTS59-3-2&originatingDoc=N0BE5072049B411E8AC66D29347B85835&refType=LQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Keycite)).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(D) In no event shall the tax increment include any taxes collected from excess levies, levies for general obligation bonded indebtedness or any levies other than the regular levies provided for in [§ 11-8-1 et seq. of this code](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000041&cite=WVSTS11-8-1&originatingDoc=N0BE5072049B411E8AC66D29347B85835&refType=LQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Keycite)).

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

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

(g) Notwithstanding subsection (d) of this section, the governing body of a municipality may not adopt an ordinance approving a development or redevelopment project plan unless the governing body expressly finds and states in the ordinance that the development or redevelopment project is not reasonably expected to occur without the use of tax increment financing.

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

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

(j) The county commission may modify the boundaries of the development or redevelopment district, from time to time, or extend the length of existence of the development or redevelopment district as set forth in section 10 of this article, by entry of an order modifying the order creating the development or redevelopment district.

(k) The governing body of a municipality may modify the boundaries of the development or redevelopment district, from time to time, or extend the length of existence of the development or redevelopment district as set forth in section 10 of this article, by amending the ordinance ~~establishing the boundaries of the~~ creating the development or redevelopment district.

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

§7-11B-9. Project plan – Amendment.

(a) The county commission may by order, or the governing body of a municipality by ordinance, adopt an amendment to a project plan.

(b) Adoption of an amendment to a project plan shall be preceded by a public hearing held by the county commission, or governing body of the municipality, at which interested parties shall be afforded a reasonable opportunity to express their views on the amendment.

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

(2) Prior to publication, a copy of the notice shall be sent by first-class mail to the chief executive officer of all other local levying bodies having the power to levy taxes on property within the development or redevelopment district.

(3) Copies of the proposed plan amendments shall be made available to the public at the county clerk's office or municipal clerk's office at least fifteen days prior to the hearing.

(c) One or more existing development or redevelopment districts may be combined pursuant to lawfully adopted amendments to the original plans for each district: Provided, That the county commission, or governing body of the municipality, finds that the combination of the districts will not impair the security for any tax increment financing obligations previously issued pursuant to this article.

(1) The base assessed value of the real and tangible personal property located in the combined development or redevelopment district following such combination shall be the same base assessed value as existed for such real and tangible personal property in each of the separate development or redevelopment districts prior to such combination.

(2) The termination date for the combined development or redevelopment district which results from the combination of two or more previously created districts shall be the termination date as provided pursuant to section 10 of this article of the development or redevelopment district which had the latest termination date prior to the combination of such districts.

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

(a) No development or redevelopment district may be in existence for a period longer than thirty years and no tax increment financing obligations may have a final maturity date later than the termination date of the area or district: *Provided*, That for any existing development or redevelopment district for which tax increment financing obligations have been issued by a county commission, or the governing body of a municipality, prior to December 31, 2020, that existing development or redevelopment district may be in existence until December 31, 2050.

(b) The county commission or governing body of the municipality creating the development or redevelopment district may set a shorter period for the existence of the district. In this event, no tax increment financing obligations may have a final maturity date later than the termination date of the district. The county commission or the governing body of the municipality which created the development or redevelopment district may not take action to terminate a district prior to the time otherwise provided in its official action creating the district if the county commission or the governing body of the municipality then has tax increment revenue obligations which remain outstanding and unpaid.

(c) Upon termination of the district, no further ad valorem tax revenues shall be distributed to the tax increment financing fund of the district.

(d) Upon the termination of the district, other than early termination by the county commission or the governing body of the municipality creating the district prior to the date scheduled for its termination by this act or the official action taken by the county commission or the governing body of the municipality creating the district, any tax increment financing obligations which remain outstanding and unpaid following their maturity date, together with any interest, premium or other charges associated therewith shall be deemed to be discharged and satisfied, and no longer due and payable following such termination date.

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

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

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

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

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

(c) Tax increment financing obligations shall mature over a period not exceeding 30 years from their issue date, ~~the date of entry of the county commission's order, or the effective date of the municipal ordinance, creating the development or redevelopment district and approving the development or redevelopment plan~~ or a period terminating with the date of termination of the development or redevelopment district, whichever period terminates earlier.

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

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

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

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

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

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

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

(k) The bonds may be refunded or refinanced and refunding bonds may be issued in any principal amount: Provided, That the last maturity of the refunding bonds shall not be later than the termination date of the district as set forth in section 10 of this article. ~~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 to December 31, 2050 if tax increment financing obligations were issued for that district prior to or during the COVID-19 worldwide pandemic which has caused an economic recession in the United States. The bill also provides clarifications regarding treatment upon the combination of one or more previously created tax increment financing districts and the treatment of tax increment financing obligations upon the termination of a district.

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