

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 272**

4 (By Senators Kessler (Acting President) and Hall,

5 By Request of the Executive)

6 \_\_\_\_\_  
7 [Originating in the Committee on Energy, Industry and Mining;  
8 introduced February 17, 2011.]  
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11  
12 A BILL to amend and reenact §7-11B-3, §7-11B-4, §7-11B-7, §7-11B-8,  
13 §7-11B-9, §7-11B-10, §7-11B-17 and §7-11B-22 of the Code of  
14 West Virginia, 1931, as amended, all relating to the West  
15 Virginia Tax Increment Financing Act; clarifying exclusions to  
16 the definition of "base-assessed value"; revising definitions  
17 relating to governing bodies of counties and municipalities;  
18 adding definition for "municipality"; adding provisions which  
19 allow the funding of improvements to terrain, capital  
20 improvements and the acquisition and installation of equipment  
21 for ski resorts as an authorized project and project cost;  
22 adding remediation of property to definition of "development  
23 or redevelopment project"; redefining "project costs" to  
24 include remediation costs for landfills, former coal or other

1 mining sites, solid waste facilities or hazardous waste sites;  
2 defining "remediation"; requiring the Director of the  
3 Development Office to provide the Legislature with an itemized  
4 list of applications seeking approval of development and  
5 redevelopment districts along with a status explanation of  
6 applications on dates certain; clarifying municipalities'  
7 power to utilize tax increment financing and to finance  
8 project costs by other means; requiring county commissions and  
9 municipalities to send descriptions of development districts  
10 and project plans to local levying bodies prior to issuing a  
11 notice; clarifying that municipalities are not required to  
12 seek approval when amending project plans if the project is  
13 not enlarged or the total amount of indebtedness increased;  
14 providing that development or redevelopment districts shall  
15 not be terminated so long as tax increment financing  
16 obligations remain outstanding; clarifying the time when bonds  
17 may be refunded or refinanced and when refunding bonds may be  
18 issued in principal amounts; and providing technical  
19 corrections.

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

21 That §7-11B-3, §7-11B-4, §7-11B-7, §7-11B-8, §7-11B-9, §7-11B-  
22 10, §7-11B-17 and §7-11B-22 of the Code of West Virginia, 1931, as  
23 amended, be amended and reenacted, all to read as follows:

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

1 **§7-11B-3. Definitions.**

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

7 (b) *Words and phrases defined.* --

8 (1) "Agency" includes a municipality, a county or municipal  
9 development agency established pursuant to authority granted in  
10 section one, article twelve of this chapter, a port authority, an  
11 airport authority or ~~any~~ other entity created by this state or an  
12 agency or instrumentality of this state that engages in economic  
13 development activity.

14 (2) "Base assessed value" means the taxable assessed value of  
15 all real and tangible personal property, excluding personal motor  
16 vehicles, personal trailers, personal boats, personal campers,  
17 personal motor homes and personal motorcycles, having a tax situs  
18 within a development or redevelopment district as shown upon the  
19 landbooks and personal property books of the assessor on July 1 of  
20 the calendar year preceding the effective date of the order or  
21 ordinance creating and establishing the development or  
22 redevelopment district.

23 (3) "Blighted area" means an area within the boundaries of a  
24 redevelopment district located within the territorial limits of a

1 municipality or county in which the structures, buildings or  
2 improvements, by reason of dilapidation, deterioration, age or  
3 obsolescence, inadequate provision for access, ventilation, light,  
4 air, sanitation, open spaces, high density of population and  
5 overcrowding or the existence of conditions which endanger life or  
6 property, are detrimental to the public health, safety, morals or  
7 welfare. "Blighted area" includes any area which, by reason of the  
8 presence of a substantial number of substandard, slum, deteriorated  
9 or deteriorating structures, predominance of defective or  
10 inadequate street layout, faulty lot layout in relation to size,  
11 adequacy, accessibility or usefulness, unsanitary or unsafe  
12 conditions, deterioration of site or other improvements, diversity  
13 of ownership, defective or unusual conditions of title or the  
14 existence of conditions which endanger life or property by fire and  
15 other causes, or any combination of such factors, substantially  
16 impairs or arrests the sound growth of a municipality, retards the  
17 provision of housing accommodations or constitutes an economic or  
18 social liability and is a menace to the public health, safety,  
19 morals or welfare in its present condition and use, or any area  
20 which is predominantly open and which because of lack of  
21 accessibility, obsolete platting, diversity of ownership,  
22 deterioration of structures or of site improvements, or otherwise,  
23 substantially impairs or arrests the sound growth of the community.

24 (4) "Conservation area" means any improved area within the

1 boundaries of a development or redevelopment district located  
2 within the territorial limits of a municipality or county in which  
3 fifty percent or more of the structures in the area have an age of  
4 thirty-five years or more. A conservation area is not yet a  
5 blighted area but is detrimental to the public health, safety,  
6 morals or welfare and may become a blighted area because of any one  
7 or more of the following factors: Dilapidation, obsolescence,  
8 deterioration, illegal use of individual structures, presence of  
9 structures below minimum code standards, abandonment, excessive  
10 vacancies, overcrowding of structures and community facilities,  
11 lack of ventilation, light or sanitary facilities, inadequate  
12 utilities, excessive land coverage, deleterious land use or layout,  
13 depreciation of physical maintenance and lack of community  
14 planning. A conservation area shall meet at least three of the  
15 factors provided in this subdivision.

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

19 (6) "Current assessed value" means the annual taxable assessed  
20 value of all real and tangible personal property, excluding  
21 personal motor vehicles, having a tax situs within a development or  
22 redevelopment district as shown upon the landbook and personal  
23 property records of the assessor.

24 (7) "Development office" means the West Virginia Development

1 Office created in section one, article two, chapter five-b of this  
2 code.

3 (8) "Development project" or "redevelopment project" means a  
4 project undertaken in a development or redevelopment district for  
5 eliminating or preventing the development or spread of slums or  
6 deteriorated, deteriorating or blighted areas, for discouraging the  
7 loss of commerce, industry or employment, for increasing  
8 employment, for remediation of property or for any combination  
9 thereof in accordance with a tax increment financing plan. A  
10 development or redevelopment project may include one or more of the  
11 following:

12 (A) The acquisition of land and improvements, if any, within  
13 the development or redevelopment district and clearance or  
14 remediation, or both, of the land so acquired; or

15 (B) The development, redevelopment, revitalization or  
16 conservation of the project area whenever necessary to provide land  
17 for needed public facilities, public housing, or industrial or  
18 commercial development or revitalization, to eliminate unhealthful,  
19 unsanitary or unsafe conditions, to lessen density, mitigate or  
20 eliminate traffic congestion, reduce traffic hazards, eliminate  
21 obsolete or other uses detrimental to public welfare or otherwise  
22 remove or prevent the spread of blight or deterioration;

23 (C) The financial or other assistance in the relocation of  
24 persons and organizations displaced as a result of carrying out the

1 development or redevelopment project and other improvements  
2 necessary for carrying out the project plan, together with those  
3 site improvements that are necessary for the preparation of any  
4 sites and making any land or improvements acquired in the project  
5 area available, by sale or lease, for public housing or for  
6 development, redevelopment or rehabilitation by private enterprise  
7 for commercial or industrial uses in accordance with the plan;

8 (D) The construction of capital improvements within a  
9 development or redevelopment district designed to increase or  
10 enhance the development of commerce, industry or housing within the  
11 development project area, including any improvements to mountain  
12 terrain or the construction of amenities for an existing or new ski  
13 resort; or

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

16 (9) "Development or redevelopment district" means an area  
17 proposed by one or more agencies as a development or redevelopment  
18 district, which may include one or more counties, one or more  
19 municipalities or any combination, ~~thereof~~, that has been approved  
20 by the county commission of each county in which the project area  
21 is located if the project is located outside the corporate limits  
22 of a municipality, or by the governing body of a municipality if  
23 the project area is located within a municipality, or by both the  
24 county commission and the governing body of the municipality when

1 the development or redevelopment district is located both within  
2 and without a municipality.

3 (10) "Economic development area" means any area or portion of  
4 an area within the boundaries of a development or redevelopment  
5 district located within the territorial limits of a municipality or  
6 county that does not meet the requirements of subdivisions (3) and  
7 (4) of this subsection and for which the county commission finds  
8 that development or redevelopment will not be solely used for  
9 development of commercial businesses that will unfairly compete in  
10 the local economy and that development or redevelopment is in the  
11 public interest because it will:

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

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

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

18 (11) "Governing body of a municipality" means the city council  
19 of a ~~Class I or Class II~~ municipality in this state.

20 (12) "Incremental value" for ~~any~~ a development or  
21 redevelopment district means the difference between the base  
22 assessed value and the current assessed value. The incremental  
23 value will be positive if the current value exceeds the base value  
24 and the incremental value will be negative if the current value is



1 less than the base assessed value.

2 (13) "Includes" and "including" when used in a definition  
3 contained in this article ~~shall not be deemed to~~ does not exclude  
4 other things otherwise within the meaning of the term being  
5 defined.

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

11 (15) "Municipality" means any Class I, Class II and Class III  
12 city heretofore or hereafter incorporated as a municipal  
13 corporation under the laws of this state.

14 ~~(15)~~ (16) "Obligations" or "tax increment financing  
15 obligations" means bonds, loans, debentures, notes, special  
16 certificates or other evidences of indebtedness issued by a county  
17 commission or municipality pursuant to this article to carry out a  
18 development or redevelopment project or to refund outstanding  
19 obligations under this article.

20 ~~(16)~~ (17) "Order" means an order of the county commission  
21 adopted in conformity with the provisions of this article and as  
22 provided in this chapter.

23 ~~(17)~~ (18) "Ordinance" means a law adopted by the governing  
24 body of a municipality in conformity with the provisions of this

1 article and as provided in chapter eight of this code.

2       ~~(18)~~ (19) "Payment in lieu of taxes" means those estimated  
3 revenues from real property and tangible personal property having  
4 a tax situs in the area selected for a development or redevelopment  
5 project which revenues, according to the development or  
6 redevelopment project or plan, are to be used for a private use and  
7 which levying bodies would have received had a county or  
8 municipality not adopted one or more tax increment financing plans  
9 and which would result from levies made after the date of adoption  
10 of a tax increment financing plan during the time the current  
11 assessed value of all taxable real and tangible personal property  
12 in the area selected for the development or redevelopment project  
13 exceeds the total base assessed value of all taxable real and  
14 tangible personal property in the development or redevelopment  
15 district until the designation is terminated as provided in this  
16 article.

17       ~~(19)~~ (20) "Person" means ~~any~~ a natural person and ~~any~~ a  
18 corporation, association, partnership, limited partnership, limited  
19 liability company or other entity, regardless of its form,  
20 structure or nature, other than a government agency or  
21 instrumentality.

22       ~~(20)~~ (21) "Private project" means any project that is subject  
23 to ad valorem property taxation in this state or to a payment in  
24 lieu of tax agreement that is undertaken by a project developer in

1 accordance with a tax increment financing plan in a development or  
2 redevelopment district.

3       ~~(21)~~ (22) "Project" means any capital improvement, facility  
4 or both, as specifically set forth and defined in the project plan,  
5 requiring an investment of capital, including, but not limited to,  
6 extensions, additions or improvements to existing facilities,  
7 including water or wastewater facilities, ~~and~~ the remediation of  
8 ~~contaminated property as provided for in article twenty-two,~~  
9 ~~chapter twenty-two of this code~~ property located within the  
10 development or redevelopment district as provided herein and  
11 improvements to mountain terrain for the purposes of improving or  
12 creating ski slopes but does not include performance of any  
13 governmental service by a county or municipal government.

14       ~~(22)~~ (23) "Project area" means an area within the boundaries  
15 of a development or redevelopment district in which a development  
16 or redevelopment project is undertaken as specifically set forth  
17 and defined in the project plan.

18       ~~(23)~~ (24) "Project costs" means expenditures made in  
19 preparation of the development or redevelopment project plan and  
20 made, or estimated to be made, or monetary obligations incurred, or  
21 estimated to be incurred, by the county commission which are listed  
22 in the project plan as capital improvements within a development or  
23 redevelopment district, plus any costs incidental thereto. "Project  
24 costs" include, but are not limited to:

1 (A) Capital costs, including, but not limited to, the actual  
2 costs of the construction of public works or improvements, capital  
3 improvements and facilities, new buildings, structures and  
4 fixtures, the demolition, alteration, remodeling, repair or  
5 reconstruction of existing buildings, structures and fixtures,  
6 ~~environmental remediation,~~ parking and landscaping, the acquisition  
7 of equipment, the acquisition and installation of equipment,  
8 structures or fixtures necessary for the maintenance and operation  
9 of a ski area as defined in section two, article three-a, chapter  
10 twenty of this code and for the transportation of passengers for  
11 such ski area, improving mountain terrain for the purposes of  
12 skiing, and site clearing, grading and preparation;

13 (B) Costs of remediation of publicly or privately owned  
14 landfills, former coal or other mining sites, solid waste  
15 facilities or hazardous waste sites to facilitate commercial  
16 development which would not otherwise be economically feasible;

17 ~~(B)~~ (C) Financing costs, including, but not limited to, an  
18 interest paid to holders of evidences of indebtedness issued to pay  
19 for project costs, all costs of issuance and any redemption  
20 premiums, credit enhancement or other related costs;

21 ~~(C)~~ (D) Real property assembly costs, meaning any deficit  
22 incurred resulting from the sale or lease as lessor by the county  
23 commission of real or personal property having a tax situs within  
24 a development or redevelopment district for consideration that is

1 less than its cost to the county commission;

2       ~~(D)~~ (E) Professional service costs, including, but not limited  
3 to, ~~those~~ costs incurred for architectural planning, engineering  
4 and legal advice and services;

5       ~~(E)~~ (F) Imputed administrative costs, including, but not  
6 limited to, reasonable charges for time spent by county employees  
7 or municipal employees in connection with the implementation of a  
8 project plan;

9       ~~(F)~~ (G) Relocation costs, including, but not limited to, ~~those~~  
10 relocation payments made following condemnation and job training  
11 and retraining;

12       ~~(G)~~ (H) Organizational costs, including, but not limited to,  
13 the costs of conducting environmental impact and other studies and  
14 the costs of informing the public with respect to the creation of  
15 a development or redevelopment district and the implementation of  
16 project plans;

17       ~~(H)~~ (I) Payments made, in the discretion of the county  
18 commission or the governing body of a municipality, which are found  
19 to be necessary or convenient to creation of development or  
20 redevelopment districts or the implementation of project plans; and

21       ~~(I)~~ (J) That portion of costs related to the construction of  
22 environmental protection devices, storm or sanitary sewer lines,  
23 water lines, amenities or streets or the rebuilding or expansion of  
24 streets, or the construction, alteration, rebuilding or expansion

1 ~~of which is~~ necessitated by the project plan for a development or  
2 redevelopment district whether or not the construction, alteration,  
3 rebuilding or expansion is within the area or on land contiguous  
4 thereto.

5 ~~(24)~~ (25) "Project developer" means any person who engages in  
6 the development of projects in the state.

7 ~~(25)~~ (26) "Project plan" means the plan for a development or  
8 redevelopment project that is adopted by a county commission or  
9 governing body of a municipality in conformity with the  
10 requirements of this article and this chapter or chapter eight of  
11 this code.

12 ~~(26)~~ (27) "Real property" means all lands, including  
13 improvements and fixtures on them and property of any nature  
14 appurtenant to them or used in connection with them and every  
15 estate, interest and right, legal or equitable, in them, including  
16 terms of years and liens by way of judgment, mortgage or otherwise,  
17 and indebtedness secured by the liens.

18 ~~(27)~~ (28) "Redevelopment area" means an area designated by a  
19 county commission or the governing body of a municipality in  
20 respect to which the commission or governing body has made a  
21 finding that there exist conditions which cause the area to be  
22 classified as a blighted area, a conservation area, an economic  
23 development area or a combination thereof, which area includes only  
24 those parcels of real property directly and substantially

1 benefitted by the proposed redevelopment project located within the  
2 development or redevelopment district or ~~land contiguous thereto.~~  
3 contiguous land.

4 (29) "Remediation" means measures undertaken to bring about  
5 the reconditioning or restoration of property located within the  
6 boundaries of a development or redevelopment district that has been  
7 affected by exploration, mining, industrial operations or solid  
8 waste disposal and which measures, when undertaken, will eliminate  
9 or ameliorate the existing state of the property and enable the  
10 property to be commercially developed.

11 ~~(28)~~ (30) "Redevelopment plan" means the comprehensive program  
12 under this article of a county or municipality for redevelopment  
13 intended by the payment of redevelopment costs to reduce or  
14 eliminate those conditions, the existence of which qualified the  
15 redevelopment area as a blighted area, conservation area, economic  
16 development area or combination thereof and to thereby enhance the  
17 tax bases of the levying bodies which extend into the redevelopment  
18 area. Each redevelopment plan shall conform to the requirements of  
19 this article.

20 ~~(29)~~ (31) "Tax increment" means the amount of regular levy  
21 property taxes attributable to the amount by which the current  
22 assessed value of real and tangible personal property having a tax  
23 situs in a development or redevelopment district exceeds the base  
24 assessed value of the property.

1       ~~(30)~~ (32) "Tax increment financing fund" means a separate fund  
2 for a development or redevelopment district established by the  
3 county commission or governing body of the municipality into which  
4 all tax increment revenues and other pledged revenues are deposited  
5 and from which projected project costs, debt service and other  
6 expenditures authorized by this article are paid.

7       ~~(31)~~ (33) "This code" means the Code of West Virginia, 1931,  
8 as amended by the Legislature.

9       ~~(32)~~ (34) "Total ad valorem property tax regular levy rate"  
10 means the aggregate levy rate of all levying bodies on all taxable  
11 property having a tax situs within a development or redevelopment  
12 district in a tax year but does not include excess levies, levies  
13 for general obligation bonded indebtedness or any other levies that  
14 are not regular levies.

15 **§7-11B-4. Powers generally.**

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

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

22       (2) Cause project plans to be prepared, to approve the project  
23 plans and to implement the provisions and effectuate the purposes  
24 of the project plans;



1 (3) Establish tax increment financing funds for each  
2 development or redevelopment district;

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

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

7 (6) Enter into any contracts or agreements, including, but not  
8 limited to, agreements with project developers, consultants,  
9 professionals, financing institutions, trustees and bondholders  
10 determined by the county commission to be necessary or convenient  
11 to implement the provisions and effectuate the purposes of project  
12 plans which may include provisions for reimbursement of project  
13 costs expended by such entities from tax increment or the proceeds  
14 of tax increment financing obligations;

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

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

24 (9) Make relocation payments to those persons, businesses or

1 organizations that are displaced as a result of carrying out the  
2 development or redevelopment project;

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

8 (11) Cause parks, playgrounds or water, sewer or drainage  
9 facilities or any other public improvements, including, but not  
10 limited to, fire stations, community centers and other public  
11 buildings which the county commission is otherwise authorized to  
12 undertake to be laid out, constructed or furnished in connection  
13 with the development or redevelopment project. When the public  
14 improvement of the county commission is to be located, in whole or  
15 in part, within the corporate limits of a municipality, the county  
16 commission shall consult with the mayor and the governing body of  
17 the municipality regarding the public improvement and shall pay for  
18 the cost of the public improvement from the tax increment financing  
19 fund;

20 (12) Lay out and construct, alter, relocate, change the grade  
21 of, make specific repairs upon or discontinue public ways and  
22 construct sidewalks in, or adjacent to, the project area. ~~Provided,~~  
23 ~~That~~ When the public way or sidewalk is located within a  
24 municipality, the governing body of the municipality shall consent

1 ~~to the same~~ and if the public way is a state road, the consent of  
2 the commissioner of highways ~~shall be~~ is necessary;

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

8 (14) Construct any capital improvements of a public nature;

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

12 (16) Cause capital improvements owned by one or more private  
13 entities to be constructed within the development or redevelopment  
14 district, including improvements to mountain terrain for the  
15 purposes of skiing;

16 (17) Designate one or more official or employee of the county  
17 commission to make decisions and handle the affairs of development  
18 and redevelopment project areas or ~~districts~~ district created by  
19 the county commission pursuant to this article;

20 (18) Adopt orders, ordinances or bylaws or repeal or modify  
21 such ordinances or bylaws or establish exceptions to existing  
22 ordinances and bylaws regulating the design, construction and use  
23 of buildings within the development or redevelopment district  
24 created by a county commission or governing body of a municipality

1 under this article;

2 ~~(19) Enter orders, adopt bylaws or repeal or modify such~~  
3 ~~orders or bylaws or establish exceptions to existing orders and~~  
4 ~~bylaws regulating the design, construction and use of buildings~~  
5 ~~within the development or redevelopment district created by a~~  
6 ~~county commission or governing body of a municipality under this~~  
7 ~~article;~~

8 ~~(20)~~ (19) Sell, mortgage, lease, transfer or dispose of any  
9 property or interest therein, by contract or auction, acquired by  
10 it the county commission or governing body of the municipality  
11 pursuant to the project plan for development, redevelopment or  
12 rehabilitation in accordance with the project plan;

13 ~~(21)~~ (20) Expend project revenues as provided in this article;  
14 and

15 (21) Temporarily finance any project costs through the  
16 issuance of bonds, loans, debentures, notes, special certificates  
17 or other evidences of indebtedness or the expenditure of the  
18 general funds of a county commission or municipality: Provided,  
19 That any temporary financing may be paid from tax increments or the  
20 proceeds of any tax increment financing obligations and any  
21 expenditure of general funds for such costs may be reimbursed from  
22 tax increment or the proceeds of any tax increment financing  
23 obligations; and

24 (22) Do all things necessary or convenient to carry out the

1 powers granted in this article.

2 **§7-11B-7. Creation of a development or redevelopment or district.**

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

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

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

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

24 (3) Prior to the issuance of the notice as provided in

1 subdivision (2) of this subsection, the descriptions described in  
2 subdivision (2) of this subsection shall be sent by first class  
3 mail to the local levying bodies having the power to levy taxes on  
4 real and tangible personal property located within the proposed  
5 development or redevelopment district.

6 ~~(3)~~(4) Prior to the first day of publication, a copy of the  
7 notice shall be sent by first-class mail to the director of the  
8 Development Office and to the chief executive officer of all other  
9 local levying bodies having the power to levy taxes on real and  
10 tangible personal property located within the proposed development  
11 or redevelopment district.

12 ~~(4)~~(5) All parties who appear at the hearing shall be afforded  
13 an opportunity to express their views on the proposal to create the  
14 development or redevelopment district and, if applicable, the  
15 development or redevelopment project plan and proposed tax  
16 increment financing obligations.

17 (c) After the public hearing, the county commission or the  
18 governing body of the municipality, shall finalize the boundaries  
19 of the development or redevelopment district, the development or  
20 redevelopment project plan, or both, and submit the same to the  
21 director of the Development Office for his or her review and  
22 approval. The director, within sixty days after receipt of the  
23 application, shall approve the application as submitted, reject the  
24 application or return the application to the county commission or

1 governing body of the municipality for further development or  
2 review in accordance with instructions of the director of the  
3 Development Office. A development or redevelopment district or  
4 development or redevelopment project plan may not be adopted by the  
5 county commission or the governing body of a municipality until  
6 ~~after~~ it has been approved by the ~~executive~~ director of the  
7 Development Office. On February 1 and August 1 of each year, the  
8 director of the Development Office shall deliver to the Legislature  
9 of this state an itemized list of all applications seeking approval  
10 of: (i) the boundaries of a development or redevelopment district  
11 and: (ii) a development or redevelopment project plan, or both,  
12 that have not been approved, rejected or returned to the county  
13 commission or governing body of the municipality as required  
14 herein. Such itemized list shall include a detailed explanation of  
15 the reasons why such applications, if any, have not been approved,  
16 rejected or returned to the county commission or governing body of  
17 the municipality within the time frame provided herein.

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

22 (1) Describes the boundaries of a development or redevelopment  
23 district sufficiently to identify with ordinary and reasonable  
24 certainty the territory included in the district, which boundaries

1 shall create a contiguous district;

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

4       (3) Assigns a name to the development or redevelopment  
5 district for identification purposes and which:

6       (A) ~~The name~~ May include a geographic or other designation;

7       (B) Shall identify the county or municipality authorizing the  
8 district; and

9       (C) Shall be assigned a number, beginning with the number one

10 ~~(B) Each subsequently~~ and each subsequently created district in the  
11 county or municipality shall be assigned the next consecutive  
12 number;

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

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

21       (6) Establishes a tax increment financing fund as a separate  
22 fund into which all tax increment revenues and other revenues  
23 designated by the county commission or governing body of the  
24 municipality for the benefit of the development or redevelopment



1 district shall be deposited and from which all project costs shall  
2 be paid, which may be assigned to and held by a trustee for the  
3 benefit of bondholders if tax increment financing obligations are  
4 issued by the county commission or the governing body of the  
5 municipality; and

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

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

18 (B) Ad valorem taxes collected from regular levies upon real  
19 and tangible personal property having a tax situs in the district  
20 that are attributable to the lower of the base assessed value or  
21 the current assessed value of real and tangible personal property  
22 located in the development project shall be allocated to the  
23 levying bodies in the same manner as applicable to the tax year in  
24 which the development or redevelopment project plan is adopted by

1 order of the county commission or by ordinance adopted by the  
2 governing body of the municipality;

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

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

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

22 (f) Notwithstanding subsection ~~(e)~~ (d) of this section, a  
23 county commission may not enter an order approving a development or  
24 redevelopment project plan unless the county commission expressly

1 finds and states in the order that the development or redevelopment  
2 project is not reasonably expected to occur without the use of tax  
3 increment financing.

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

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

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

18 (j) The county commission may modify the boundaries of the  
19 development or redevelopment district, from time to time, by entry  
20 of an order modifying the order creating the development or  
21 redevelopment district.

22 (k) The governing body of a municipality may modify the  
23 boundaries of the development or redevelopment district, from time  
24 to time, by amending the ordinance establishing the boundaries of

1 the district.

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

12 **§7-11B-8. Project plan - approval.**

13 (a) The county commission or municipality creating the district  
14 shall cause the preparation of a project plan for each development  
15 or redevelopment district and the project plan shall be adopted by  
16 order of the county commission or ordinance adopted by the governing  
17 body of the municipality after it is approved by the executive  
18 director of the Development Office. This process shall conform to  
19 the procedures set forth in this section.

20 (b) Each project plan shall include:

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

24 (2) A cost-benefit analysis showing the economic impact of the

1 plan on each levying body that is at least partially within the  
2 boundaries of the development or redevelopment district. This  
3 analysis shall show the impact on the economy if the project is not  
4 built and is built pursuant to the development or redevelopment plan  
5 under consideration. The cost-benefit analysis shall include a  
6 fiscal impact study on every affected levying body and sufficient  
7 information from the developer for the agency, if any are proposing  
8 the plan, to enable the county commission ~~be asked~~ to approve the  
9 project and the Development Office to evaluate whether the project  
10 as proposed is financially feasible;

11 (3) An economic feasibility study;

12 (4) A detailed list of estimated project costs;

13 (5) A description of the methods of financing all estimated  
14 project costs including the issuance of tax increment obligations  
15 and the time when the costs or ~~monetary obligations related thereto~~  
16 related monetary obligations are to be incurred;

17 (6) A certification by the county assessor of the base assessed  
18 value of real and tangible personal property having a tax situs in  
19 a development or redevelopment district. ~~Provided, That~~ If such  
20 certification is made during the months of January or February of  
21 each year, the county assessor may certify an estimated base  
22 assessed value of real and tangible personal property having a tax  
23 situs in a development or redevelopment district ~~Provided, however,~~  
24 and that prior to issuance of tax increment obligations, the county

1 assessor shall certify a final base assessed value for the estimated  
2 base assessed value permitted by this section;

3 (7) The type and amount of any other revenues that are expected  
4 to be deposited to the tax increment financing fund of the  
5 development or redevelopment district;

6 (8) A map showing existing uses and conditions of real property  
7 in the development or redevelopment district;

8 (9) A map of proposed improvements and uses in the district;

9 (10) Proposed changes of zoning ordinances, if any;

10 (11) Appropriate cross-references to any master plan, map,  
11 building codes and municipal ordinances or county commission orders  
12 affected by the project plan;

13 (12) A list of estimated nonproject costs;

14 (13) A statement of the proposed method for the relocation of  
15 any persons, businesses or organizations to be displaced;

16 (14) A certificate from the executive director of the Workers'  
17 Compensation Commission, the Commissioner of the Bureau of  
18 Employment Programs and the State Tax Commissioner that the project  
19 developer, if any, is in good standing with the Workers'  
20 Compensation Commission, the Bureau of Employment Programs and the  
21 State Tax Division; and

22 (15) A certificate from the sheriff of the county or counties  
23 in which the development or redevelopment district is located that  
24 the project developer, if any, is not delinquent on payment of any

1 real and personal property taxes in such county.

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

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

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

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

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

13 (5) ~~Any~~ Other provisions as may be deemed necessary in order  
14 to carry out any tax increment financing to be used for the  
15 development or redevelopment project.

16 (d) If less than all of the tax increment is to be used to fund  
17 a development or redevelopment project or to pay project costs or  
18 retire tax increment financing obligations, the project plan shall  
19 set forth the portion of the tax increment to be deposited in the  
20 tax increment financing fund of the development or redevelopment  
21 district and provide for the distribution of the remaining portion  
22 of the tax increment to the levying bodies in whose jurisdiction the  
23 district lies.

24 (e) The county commission or governing body of the municipality

1 that established the tax increment financing fund shall hold a  
2 public hearing at which interested parties shall be afforded a  
3 reasonable opportunity to express their views on the proposed  
4 project plan being considered by the county commission or the  
5 governing body of the municipality.

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

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

13 (f) Approval by the county commission or the governing body of  
14 a municipality of an initial development or redevelopment project  
15 plan must be within one year after the date of the county assessor's  
16 certification required by subdivision (6), subsection (b) of this  
17 section. ~~Provided, That~~ Additional development or redevelopment  
18 project plans may be approved by the county commission or the  
19 governing body of a municipality in subsequent years so long as the  
20 development or redevelopment district continues to exist. The  
21 approval shall be by order of the county commission or ordinance of  
22 the municipality which shall contain a finding that the plan is  
23 economically feasible.

24 **§7-11B-9. Project plan - amendment.**



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

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

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

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

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

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

1 this article.

2 (d) A municipality or county commission is not required to  
3 obtain the approval of the director of the Development Office prior  
4 to amending a project plan if the amendment does not enlarge the  
5 development or redevelopment district or increase the total amount  
6 of indebtedness contained in the tax increment financing portion of  
7 the project plan application.

8 **§7-11B-10. Termination of development or redevelopment district.**

9 (a) No development or redevelopment district may be in  
10 existence for a period longer than thirty years and no tax increment  
11 financing obligations may have a final maturity date later than the  
12 termination date of the ~~area or~~ district.

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

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

21 (d) The county commission shall adopt, upon the expiration of  
22 the time periods set forth in this section, an order terminating the  
23 development or redevelopment district created by the county  
24 commission. ~~Provided, That No district shall~~ No district may be

1 terminated so long as ~~bonds~~ tax increment financing obligations with  
2 respect to the district remain outstanding.

3 (e) The governing body of the county commission shall repeal,  
4 upon the expiration of the time periods set forth in this section,  
5 the ordinance establishing the development or redevelopment  
6 district. ~~Provided, That no district shall~~ No district may be  
7 terminated so long as ~~bonds~~ tax increment financing obligations with  
8 respect to the district remain outstanding.

9 **§7-11B-17. Division of ad valorem real property tax revenue.**

10 (a) ~~For~~ So long as the development or redevelopment district  
11 exists, the county sheriff shall divide the ad valorem tax revenue  
12 collected, with respect to taxable property in the district, as  
13 follows:

14 (1) The assessor shall determine for each tax year:

15 (A) The amount of ad valorem property tax revenue that should  
16 be generated by multiplying the assessed value of the property for  
17 the then current tax year by the aggregate of applicable levy rates  
18 for the tax year;

19 (B) The amount of ad valorem tax revenue that should be  
20 generated by multiplying the base assessed value of the property by  
21 the applicable regular ad valorem levy rates for the tax year;

22 (C) The amount of ad valorem tax revenue that should be  
23 generated by multiplying the assessed value of the property for the  
24 current tax year by the applicable levy rates for general obligation

1 bond debt service for the tax year;

2 (D) The amount of ad valorem property tax revenue that should  
3 be generated by multiplying the assessed value of the property for  
4 the current tax year by the applicable excess levy rates for the tax  
5 year; and

6 (E) The amount of ad valorem property tax revenue that should  
7 be generated by multiplying the incremental value by the applicable  
8 regular levy rates for the tax year.

9 (2) The sheriff shall determine from the calculations set forth  
10 in subdivision (1) of this subsection the percentage share of total  
11 ad valorem revenue for each levying body according to paragraphs (B)  
12 through (D), inclusive, of said subdivision by dividing each of such  
13 amounts by the total ad valorem revenue figure determined by the  
14 calculation in paragraph (A) of said subdivision; and

15 (3) On each date on which ad valorem tax revenue is to be  
16 distributed to the levying bodies, such revenue shall be distributed  
17 by:

18 (A) Applying the percentage share determined according to  
19 paragraph (B), subdivision (1) of this subsection to the revenues  
20 received and distributing such share to the levying bodies entitled  
21 to such distribution pursuant to current law;

22 (B) Applying the percentage share determined according to  
23 paragraph (C), subdivision (1) of this subsection to the revenues  
24 received and distributing such share to the levying bodies entitled

1 to such distribution by reason of having general obligation bonds  
2 outstanding;

3 (C) Applying the percentage share determined according to  
4 paragraph (D), subdivision (1) of this subsection to the revenues  
5 received and distributing such share to the levying bodies entitled  
6 to such distribution by reason of having excess levies in effect for  
7 the tax year; and

8 (D) Applying the percentage share determined according to  
9 paragraph (E), subdivision (1) of this subsection to the revenues  
10 received and distributing such share to the tax increment financing  
11 fund of the development or redevelopment district.

12 (b) In each year for which there is a positive tax increment,  
13 the county sheriff shall remit to the tax increment financing fund  
14 of the development or redevelopment district that portion of the ad  
15 valorem property taxes collected that consists of the tax increment.

16 (c) Any additional moneys appropriated to the development or  
17 redevelopment district pursuant to an appropriation by the county  
18 commission that created the district and any additional moneys  
19 dedicated to the fund from other sources shall be deposited to the  
20 tax increment financing fund for the development or redevelopment  
21 district by the sheriff.

22 (d) Any funds deposited into the tax increment financing fund  
23 of the development or redevelopment district may be used to pay  
24 project costs, principal and interest on ~~bonds~~ tax increment

1 financing obligations and the cost of any other improvements in the  
2 development or redevelopment district deemed proper by the county  
3 commission.

4 (e) Unless otherwise directed pursuant to ~~any~~ an agreement with  
5 the holders of tax increment financing obligations, moneys in the  
6 tax increment financing fund may be temporarily invested in the same  
7 manner as other funds of the county commission or the municipality  
8 that established the fund.

9 (f) If less than all of the tax increment is to be used for  
10 project costs or pledged to secure tax increment financing  
11 obligations as provided in the plan for the development or  
12 redevelopment district, the sheriff shall account for that fact in  
13 distributing the ad valorem property tax revenues.

14 **§7-11B-22. Tax increment financing obligations -- terms,**  
15 **conditions.**

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

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

23 (c) Tax increment financing obligations shall mature over a  
24 period not exceeding thirty years from the date of entry of the

1 county commission's order, or the effective date of the municipal  
2 ordinance, creating the development or redevelopment district and  
3 approving the development or redevelopment plan, or a period  
4 terminating with the date of termination of the development or  
5 redevelopment district, whichever period terminates earlier.

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

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

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

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

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

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

21 (j) Insofar as they are consistent with subsections (a), (b)  
22 and (c) of this section, the procedures for issuance, form,  
23 contents, execution, negotiation and registration of county and  
24 municipal industrial or commercial revenue bonds set forth in

1 article two-c, chapter thirteen of this code are incorporated by  
2 reference herein.

3 (k) The bonds may be refunded or refinanced and refunding bonds  
4 may be issued in any principal amount: *Provided*, That the last  
5 maturity of the refunding bonds shall not be later than the ~~last~~  
6 ~~maturity of the bonds being refunded~~ maximum maturity provided in  
7 this article.

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