

1 **H. B. 2760**

2
3 (By Mr. Speaker, (Mr. Thompson) and Delegate Armstead)
4 [By Request of the Executive]
5 [Introduced January 24, 2011; referred to the
6 Committee on Political Subdivisions then Finance.]

7 **FISCAL**
8 **NOTE**

9
10 A BILL to amend and reenact §8-38-3, §8-38-4, §8-38-5, §8-38-7,
11 §8-38-10, §8-38-12, §8-38-15, §8-38-16, §8-38-17 and §8-38-20
12 of the Code of West Virginia, 1931, as amended, all relating
13 to revising the Municipal Economic Opportunity Development
14 District Act generally; enlarging the types of municipal
15 corporations that may use sales tax increment financing to
16 finance certain economic development projects to any Class I,
17 Class II and Class III city and any Class IV town or village;
18 including mining operations in the definition of remediation;
19 including remediation of former coal mining sites as a
20 permissible development expenditure for a project; changing
21 the standard by which the maximum amounts of reserves that may
22 be established in the financing of a project are measured;
23 recommending that the development office consider whether the
24 economic development that a project enables is large enough to

1 require that it contain mixed use development consisting of a
 2 housing component with at least ten percent of housing units
 3 in the district allocated for affordable housing when
 4 determining whether there is a pressing need for the project;
 5 defining affordable housing; allowing the development office
 6 to reduce the minimum amount of local sales tax revenues that
 7 would be deposited into the State's General Revenue Fund in
 8 certain circumstances; providing that the maximum repayment
 9 schedule of all notes, bonds or other instruments issued to
 10 fund projects is thirty years; and providing technical and
 11 clerical clean-up.

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

13 That §8-38-3, §8-38-4, §8-38-5, §8-38-7, §8-38-10, §8-38-12,
 14 §8-38-15, §8-38-16, §8-38-17 and §8-38-20 of the Code of West
 15 Virginia, 1931, as amended, be amended and reenacted, all to read
 16 as follows:

17 **ARTICLE 38. MUNICIPAL ECONOMIC OPPORTUNITY DEVELOPMENT DISTRICTS.**

18 **§8-38-3. Definitions.**

19 For purposes of this article, the term:

20 (1) "Affordable housing" means housing that could be purchased
 21 with a cash down payment of at least ten percent and the proceeds
 22 of a mortgage loan, the monthly principal and interest payments on
 23 which do not exceed thirty percent of the gross monthly income of
 24 a household earning one hundred percent of the current median

1 family income, as computed by the United States Department of
2 Housing and Urban Development, for the county in which the district
3 is located. For the purposes of this definition, the monthly
4 principal and interest payments referred to in the preceding
5 sentence are computed using a standard amortization calculation
6 incorporating the prevailing annual rate of interest on mortgage
7 loans offered by financial institutions in the vicinity of the
8 district, as determined by the Development Office at the time of
9 its review of a municipality's application in accordance with
10 section seven of this article, and a thirty year amortization
11 period.

12 ~~(1)~~ (2) "Development expenditures" means payments for
13 governmental functions, programs, activities, facility
14 construction, improvements and other goods and services which a
15 district board is authorized to perform or provide under section
16 five of this article;

17 ~~(2)~~ (3) "District" means an economic opportunity development
18 district created pursuant to this article;

19 ~~(3)~~ (4) "District board" means a district board created
20 pursuant to section ten of this article;

21 ~~(4)~~ (5) "Eligible property" means any taxable or exempt real
22 property located in a district established pursuant to this
23 article;

24 ~~(5)~~ (6) "Municipality" is a word of art and ~~shall mean, for~~

1 ~~the purposes of this article, only~~ means any Class I, and Class II
2 and Class III city or any Class IV town or village as classified in
3 section three, article one of this chapter;

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

11 **§8-38-4. Authorization to create economic opportunity development**
12 **districts.**

13 A municipality may, in accordance with the procedures and
14 subject to the limitations set forth in this article:

15 (1) Create one or more economic opportunity development
16 districts within its limits;

17 (2) Provide for the administration and financing of
18 development expenditures within the districts; and

19 (3) Provide for the administration and financing of a
20 continuing program of development ~~and redevelopment~~ expenditures
21 within the districts.

22 **§8-38-5. Development expenditures.**

23 Any municipality that has established an economic opportunity
24 development district under this article may make, or authorize to

1 be made by a district board and other public or private parties,
2 development expenditures as will promote the economic vitality of
3 the district and the general welfare of the municipality,
4 including, but not limited to, expenditures for the following
5 purposes:

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

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

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

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

1 (5) Acquiring, building, demolishing, razing, constructing,
2 repairing, reconstructing, refurbishing, renovating,
3 rehabilitating, expanding, altering, otherwise developing,
4 operating and maintaining real property generally, parking
5 facilities, commercial structures and other capital improvements to
6 real property, fixtures and tangible personal property, whether or
7 not physically situate within the district's boundaries: *Provided,*
8 That the expenditure directly benefits the district;

9 (6) Developing plans for the architectural design of the
10 district and portions thereof and developing plans and programs for
11 the future development of the district;

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

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

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

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

23 (11) Making grants to the owners or tenants of economic
24 opportunity development district for the purposes described in this

1 section;

2 (12) Acquiring an interest in any entity or entities that own
3 any portion of the real property situate in the district and
4 contributing capital to any entity or entities;

5 (13) Remediation of publicly or privately owned landfills,
6 former coal mining sites, solid waste facilities or hazardous waste
7 sites to facilitate commercial development which would not
8 otherwise be economically feasible; and

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

12 **§8-38-7. Application to Development Office for approval of an**
13 **economic opportunity development district project.**

14 (a) *General.* -- The Development Office shall receive and act
15 on applications filed with it by municipalities pursuant to section
16 six of this article. Each application must include:

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

19 (2) The total cost of the project;

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

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

1 (5) A description of the proposed method of financing the
2 development expenditures, together with a description of the
3 reserves to be established for financing ongoing development ~~or~~
4 ~~redevelopment~~ expenditures necessary to permanently maintain the
5 optimum economic viability of the district following its inception:
6 *Provided*, That the amounts of the reserves ~~shall~~ may not exceed the
7 amounts that would be required by ~~ordinary~~ prevailing commercial
8 capital market considerations;

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

14 (7) A description of the financial contribution of the
15 municipality to the funding of development expenditures;

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

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

1 after the district is created;

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

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

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

16 (13) The Tax Commissioner's certification of: (i) The amount
17 of consumers sales and service taxes collected from businesses
18 located in the economic opportunity district during the twelve
19 calendar months preceding the calendar quarter during which the
20 application will be submitted to the Development Office; (ii) the
21 estimated amount of economic opportunity district excise tax that
22 will be collected during the first twelve months after the month in
23 which the Tax Commissioner would first begin to collect that tax;
24 and (iii) the estimated amount of economic opportunity district

1 excise tax that will be collected during the first thirty-six
2 months after the month in which the Tax Commissioner would first
3 begin to collect that tax; and

4 (14) Any additional information the Development Office may
5 require.

6 (b) *Review of applications.* -- The Development Office shall
7 review all project proposals for conformance to statutory and
8 regulatory requirements, the reasonableness of the project's budget
9 and timetable for completion and the following criteria:

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

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

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

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

23 (5) Whether there is substantial and credible evidence that
24 the project is likely to be started and completed in a timely

1 fashion;

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

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

10 (8) Whether the project will fulfill a pressing need for the
11 area, or part of the area, in which the economic opportunity
12 district is located: Provided, That the Development Office should
13 consider whether the economic development project is large enough
14 to require that it contain a mixed use development provision
15 consisting of a housing component with at least ten percent of
16 housing units in the district allocated for affordable housing;

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

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

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

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

1 (13) (A) The ability of the municipality and the project
2 developer or project team to carry out the project: *Provided*, That
3 no project may be approved by the Development Office unless the
4 amount of all development expenditures proposed to be made in the
5 first twenty-four months following the creation of the district
6 results in capital investment of more than \$50 million in the
7 district and the municipality submits clear and convincing
8 information, to the satisfaction of the Development Office, that
9 ~~such~~ the investment will be made if the Development Office approves
10 the project and the Legislature authorizes the municipality to levy
11 an excise tax on sales of goods and services made within the
12 economic opportunity development district as provided in this
13 article.

14 (B) Notwithstanding any provision of paragraph (A) of this
15 subdivision to the contrary, no project involving remediation may
16 be approved by the Development Office unless the amount of all
17 development expenditures proposed to be made in the first
18 forty-eight months following the creation of the district results
19 in capital investment of more than \$50 million in the district. In
20 addition to the remaining provisions of paragraph (A) of this
21 subdivision the Development Office may not approve a project
22 involving remediation authorized under section five of this article
23 unless the municipality submits clear and convincing information,
24 to the satisfaction of the Development Office, that the proposed

1 remediation expenditures to be financed by the issuance of bonds or
2 notes pursuant to section sixteen of this article do not constitute
3 more than twenty-five percent of the total ~~redevelopment~~
4 development expenditures associated with the project.

5 (c) *Additional criteria.* -- The Development Office may
6 establish other criteria for consideration when approving the
7 applications.

8 (d) *Action on the application.* -- The Executive Director of
9 the Development Office shall act to approve or not approve any
10 application within thirty days following the receipt of the
11 application or the receipt of any additional information requested
12 by the Development Office, whichever is the later.

13 (e) *Certification of project.* -- If the Executive Director of
14 the Development Office approves a municipality's economic
15 opportunity district project application, he or she shall issue to
16 the municipality a written certificate evidencing the approval.

17 The certificate shall expressly state a base tax revenue
18 amount, the gross annual district tax revenue amount and the
19 estimated net annual district tax revenue amount which, for
20 purposes of this article, is the difference between the gross
21 annual district tax revenue amount and the base tax revenue amount,
22 all of which the Development Office has determined with respect to
23 the district's application based on any investigation it considers
24 reasonable and necessary, including, but not limited to, any

1 relevant information the Development Office requests from the Tax
2 Commissioner and the Tax Commissioner provides to the Development
3 Office: *Provided*, That in determining the net annual district tax
4 revenue amount, the Development Office may not use a base tax
5 revenue amount less than that amount certified by the Tax
6 Commissioner but, in lieu of confirmation from the Tax Commissioner
7 of the gross annual district tax revenue amount, the Development
8 Office may use the estimate of the gross annual district tax
9 revenue amount provided by the municipality pursuant to subsection
10 (a) of this section.

11 (f) *Certification of enlargement of geographic boundaries of*
12 *previously certified district.* -- If the Executive Director of the
13 Development Office approves a municipality's economic opportunity
14 district project application to expand the geographic boundaries of
15 a previously certified district, he or she shall issue to the
16 municipality a written certificate evidencing the approval.

17 The certificate shall expressly state a base tax revenue
18 amount, the gross annual district tax revenue amount and the
19 estimated net annual district tax revenue amount which, for
20 purposes of this article, is the difference between the gross
21 annual district tax revenue amount and the base tax revenue amount,
22 all of which the Development Office has determined with respect to
23 the district's application based on any investigation it considers
24 reasonable and necessary, including, but not limited to, any

1 relevant information the Development Office requests from the Tax
2 Commissioner and the Tax Commissioner provides to the Development
3 Office: *Provided*, That in determining the net annual district tax
4 revenue amount, the Development Office may not use a base tax
5 revenue amount less than that amount certified by the Tax
6 Commissioner, but, in lieu of confirmation from the Tax
7 Commissioner of the gross annual district tax revenue amount, the
8 Development Office may use the estimate of the gross annual
9 district tax revenue amount provided by the municipality pursuant
10 to subsection (a) of this section.

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

18 **§8-38-10. Ordinance to create district as approved by Development**
19 **Office and authorized by the Legislature.**

20 (a) *General.* -- If an economic opportunity development
21 district project has been approved by the Executive Director of the
22 Development Office and the levying of a special district excise tax
23 for the district has been authorized by the Legislature, all in
24 accordance with this article, the municipality may create the

1 district by ordinance entered of record as provided in article one
2 of this chapter: *Provided*, That the municipality may not amend,
3 alter or change in any manner the boundaries of the economic
4 opportunity development district authorized by the Legislature. In
5 addition to all other requirements, the ordinance shall contain the
6 following:

7 (1) The name of the district and a description of its
8 boundaries;

9 (2) A summary of any proposed services to be provided and
10 capital improvements to be made within the district and a
11 reasonable estimate of any attendant costs;

12 (3) The base and rate of any special district excise tax that
13 may be imposed upon sales by businesses for the privilege of
14 operating within the district, which tax shall be passed on to and
15 paid by the consumer, and the manner in which the taxes will be
16 imposed, administered and collected, all of which shall be in
17 conformity with the requirements of this article; and

18 (4) The district board members' terms, their method of
19 appointment and a general description of the district board's
20 powers and duties, which powers may include the authority:

21 (A) To make and adopt all necessary bylaws and rules for its
22 organization and operations not inconsistent with any applicable
23 laws;

24 (B) To elect its own officers, to appoint committees and to

1 employ and fix compensation for personnel necessary for its
2 operations;

3 (C) To enter into contracts with any person, agency,
4 government entity, agency or instrumentality, firm, partnership,
5 limited partnership, limited liability company or corporation,
6 including both public and private corporations, and for-profit and
7 not-for-profit organizations and generally to do any and all things
8 necessary or convenient for the purpose of promoting, developing
9 and advancing the purposes described in section two of this
10 article;

11 (D) To amend or supplement any contracts or leases or to enter
12 into new, additional or further contracts or leases upon the terms
13 and conditions for consideration and for any term of duration, with
14 or without option of renewal, as agreed upon by the district board
15 and any person, agency, government entity, agency or
16 instrumentality, firm, partnership, limited partnership, limited
17 liability company or corporation;

18 (E) To, unless otherwise provided in, and subject to the
19 provisions of any contracts or leases to operate, repair, manage,
20 and maintain buildings and structures and provide adequate
21 insurance of all types and in connection with the primary use
22 thereof and incidental thereto to provide services, such as retail
23 stores and restaurants, and to effectuate incidental purposes,
24 grant leases, permits, concessions or other authorizations to any

1 person or persons upon the terms and conditions for consideration
2 and for the term of duration as agreed upon by the district board
3 and any person, agency, governmental department, firm or
4 corporation;

5 (F) To delegate any authority given to it by law to any of its
6 officers, committees, agents or employees;

7 (G) To apply for, receive and use grants-in-aid, donations and
8 contributions from any source or sources and to accept and use
9 bequests, devises, gifts and donations from any person, firm or
10 corporation;

11 (H) To acquire real property by gift, purchase or construction
12 or in any other lawful manner and hold title thereto in its own
13 name and to sell, lease or otherwise dispose of all or part of any
14 real property which it may own, either by contract or at public
15 auction, upon the approval by the district board;

16 (I) To purchase or otherwise acquire, own, hold, sell, lease
17 and dispose of all or part of any personal property which it may
18 own, either by contract or at public auction;

19 (J) Pursuant to a determination by the district board that
20 there exists a continuing need for ~~redevelopment~~ development
21 expenditures and that moneys or funds of the district are necessary
22 therefor, to borrow money and execute and deliver the district's
23 negotiable notes and other evidences of indebtedness therefor, on
24 the terms as the district shall determine, and give security

1 therefor as is requisite, including, without limitation, a pledge
2 of the district's rights in its subaccount of the Economic
3 Opportunity Development District Fund;

4 (K) To acquire (either directly or on behalf of the
5 municipality) an interest in any entity or entities that own any
6 real property situate in the district, to contribute capital to any
7 entity or entities and to exercise the rights of an owner with
8 respect thereto; and

9 (L) To expend its funds in the execution of the powers and
10 authority given in this section, which expenditures, by the means
11 authorized in this section, are hereby determined and declared as
12 a matter of legislative finding to be for a public purpose and use,
13 in the public interest and for the general welfare of the people of
14 West Virginia, to alleviate and prevent economic deterioration and
15 to relieve the existing critical condition of unemployment existing
16 within the state.

17 (b) *Additional contents of ordinance.* -- The municipality's
18 ordinance shall also state the general intention of the
19 municipality to develop and increase services and to make capital
20 improvements within the district.

21 (c) *Mailing of certified copies of ordinance.* -- Upon
22 enactment of an ordinance establishing an economic opportunity
23 development district excise tax, a certified copy of the ordinance
24 shall be mailed to the State Auditor, as ex officio the chief

1 inspector and supervisor of public offices, the State Treasurer and
2 the Tax Commissioner.

3 **§8-38-12. Special district excise tax authorized.**

4 (a) *General.* -- The council of a municipality, authorized by
5 the Legislature to levy a special district excise tax for the
6 benefit of an economic opportunity development district, may, by
7 ordinance, impose that tax on the privilege of selling tangible
8 personal property and rendering select services in the district in
9 accordance with this section.

10 (b) *Tax base.* -- The base of a special district excise tax
11 imposed pursuant to this section shall be identical to the base of
12 the consumers sales and service tax imposed pursuant to article
13 fifteen, chapter eleven of this code on sales made and services
14 rendered within the boundaries of the district. Sales of gasoline
15 and special fuel are not subject to special district excise tax,
16 but remain subject to the tax levied by article fifteen, chapter
17 eleven of this code. Except for the exemption provided in section
18 nine-f of ~~said~~ article fifteen, chapter eleven, all exemptions and
19 exceptions from the consumers sales and service tax ~~shall~~ also
20 apply to the special district excise tax.

21 (c) *Tax rate.* -- The rate or rates of a special district
22 excise tax levied pursuant to this section shall be stated in an
23 ordinance enacted by the municipality and identical to the rate or
24 rates of the consumers sales and service tax imposed pursuant to

1 article fifteen, chapter eleven of this code on sales rendered
2 within the boundaries of the district authorized by this section.

3 (d) *Collection by Tax Commissioner.* -- The ordinance of the
4 municipality imposing a special district excise tax shall provide
5 for the tax to be collected by the Tax Commissioner in the same
6 manner as the tax levied by section three, article fifteen, chapter
7 eleven of this code is administered, assessed, collected and
8 enforced.

9 (1) The State Tax Commissioner may require the electronic
10 filing of returns related to the special district excise tax
11 imposed pursuant to this section and may require the electronic
12 payment of the special district excise tax imposed pursuant to this
13 section. The State Tax Commissioner may prescribe by rules
14 ~~promulgated~~ adopted or proposed pursuant to article three, chapter
15 twenty-nine-a of this code, administrative notices, and forms and
16 instructions, the procedures and criteria to be followed to
17 electronically file ~~such~~ those returns and to electronically pay
18 the special district excise tax imposed pursuant to this section.

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

22 (A) Acceptable indicia of timely payment;

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

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

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

5 (E) Procedures for making voluntary or mandatory electronic
6 payments or both; and

7 (F) Any other provisions necessary to ensure the timely
8 electronic filing of returns related to the special district excise
9 tax and the making of payments electronically of the special
10 district excise tax imposed pursuant to this section.

11 (3) (A) Notwithstanding the provisions of section five-d,
12 article ten, chapter eleven of this code: (i) So long as bonds are
13 outstanding pursuant to this article, the Tax Commissioner shall
14 provide on a monthly basis to the trustee for bonds issued pursuant
15 to this article information on returns submitted pursuant to this
16 article; and (ii) the trustee may share the information so obtained
17 with the ~~county commission~~ municipality that established the
18 economic opportunity development district that issued the bonds
19 pursuant to this article and with the bondholders and with bond
20 counsel for bonds issued pursuant to this article. The Tax
21 Commissioner and the trustee may enter into a written agreement in
22 order to accomplish ~~such~~ exchange of the information.

23 (B) Any confidential information provided pursuant to this
24 subdivision shall be used solely for the protection and enforcement

1 of the rights and remedies of the bondholders of bonds issued
2 pursuant to this article. Any person or entity that is in
3 possession of information disclosed by the Tax Commissioner or
4 shared by the trustee pursuant to subdivision (a) of this
5 subsection is subject to the provisions of section five-d, article
6 ten, chapter eleven of this code as if ~~such~~ the person or entity
7 that is in possession of ~~such~~ the tax information is an officer,
8 employee, agent or representative of this state or of a local or
9 municipal governmental entity or other governmental subdivision.

10 (e) *Deposit of net tax collected.* --

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

19 (2) (A) The State Treasurer shall withhold from the
20 municipality's subaccount in the Economic Opportunity Development
21 District Fund and shall deposit in the General Revenue Fund of this
22 state, on or before the twentieth day of each calendar month next
23 following the effective date of a special district excise tax, a
24 sum equal to one twelfth of the base tax revenue amount last

1 certified by the Development Office pursuant to section seven of
2 this article.

3 (B) In addition to the amounts described in paragraph (A) of
4 this subdivision, the Tax Commissioner shall deposit in the General
5 Revenue Fund of this state on the dates specified in paragraph (A)
6 not less than twenty percent nor more than fifty percent of the
7 excess of the special district excise taxes collected during the
8 preceding month above one twelfth of the base tax revenue, said
9 percentage to be fixed by the Development Office in conjunction
10 with its approval of an application in accordance with section
11 seven of this article based on the amount of state funds, if any,
12 to be expended in conjunction with the respective economic
13 opportunity development district project for items including, but
14 not limited to, the acquisition, construction, reconstruction,
15 improvement, enlargement or extension of roadways, rights-of-way,
16 sidewalks, traffic signals, water or sewer lines and other public
17 infrastructure and such other expenditures of state funds
18 identified by the Development Office: Provided, That the
19 Development Office has the discretion to reduce the minimum
20 percentage of the excess special district excise taxes deposited by
21 the Tax Commissioner in the General Revenue Fund as outlined above
22 from twenty percent to ten percent in conjunction with its approval
23 of an application in accordance with section seven of this article
24 based on its determination that:

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

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

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

13 (f) *Effective date of special district excise tax.* -- Any
14 taxes imposed pursuant to the authority of this section ~~shall be~~
15 are effective on the first day of the calendar month that begins at
16 least sixty days after the date of enactment of the ordinance
17 imposing the tax or at any later date expressly designated in the
18 ordinance that begins on the first day of a calendar month.

19 (g) *Copies of ordinance.* -- Upon enactment of an ordinance
20 levying a special district excise tax, a certified copy of the
21 ordinance shall be mailed to the State Auditor, as ex officio the
22 chief inspector and supervisor of public offices, the State
23 Treasurer and the Tax Commissioner.

24 **§8-38-15. Abolishment and dissolution of district; notice;**

1 **hearing.**

2 (a) *General.* -- Except upon the express written consent of the
3 Executive Director of the Development Office and of all the holders
4 or obligees of any indebtedness or other instruments the proceeds
5 of which were applied to any development ~~or redevelopment~~
6 expenditures or any indebtedness, the payment of which is secured
7 by revenues payable into the fund provided under section eight of
8 this article or by any public property, a district may only be
9 abolished by the municipality when there is no outstanding
10 indebtedness the proceeds of which were applied to any development
11 ~~or redevelopment~~ expenditures or the payment of which is secured by
12 revenues payable into the fund provided under section eight of this
13 article, or by any public property, and following a public hearing
14 upon the proposed abolishment.

15 (b) *Notice of public hearing.* -- Notice of the public hearing
16 required by subsection (a) of this section shall be provided by
17 first-class mail to all owners of real property within the district
18 and shall be published as a Class I-0 legal advertisement in
19 compliance with article three, chapter fifty-nine of this code at
20 least twenty days prior to the public hearing.

21 (c) *Transfer of district assets and funds.* -- Upon the
22 abolishment of any economic opportunity development district, any
23 funds or other assets, contractual rights or obligations, claims
24 against holders of indebtedness or other financial benefits,

1 liabilities or obligations existing after full payment has been
2 made on all existing contracts, bonds, notes or other obligations
3 of the district are transferred to and assumed by the municipality.
4 Any funds or other assets transferred shall be used for the benefit
5 of the area included in the district being abolished.

6 (d) *Reinstatement of district.* -- Following abolishment of a
7 district pursuant to this section, its reinstatement requires
8 compliance with all requirements and procedures set forth in this
9 article for the initial development, approval, establishment and
10 creation of an economic opportunity development district.

11 **§8-38-16. Bonds issued to finance economic opportunity development**
12 **district projects.**

13 (a) *General.* -- The municipality that established the economic
14 opportunity development district may issue bonds or notes for the
15 purpose of financing development expenditures, as described in
16 section five of this article, with respect to one or more projects
17 within the economic opportunity development district.

18 (b) *Limited obligations.* -- All bonds and notes issued by a
19 municipality under the authority of this article are limited
20 obligations of the municipality.

21 (c) *Term of obligations.* -- No municipality may issue notes,
22 bonds or other instruments for funding district projects or
23 improvements that exceed a repayment schedule of thirty years:—
24 ~~Provided, That the maximum repayment schedule of bonds issued to~~

1 ~~finance remediation authorized under section five of this article~~
2 ~~may not exceed twenty years.~~

3 (d) *Debt service.* -- The principal and interest on the bonds
4 ~~shall be~~ is payable out of the funds on deposit in the subaccount
5 established for the economic opportunity development district
6 pursuant to section eight of this article, including, without
7 limitation, any funds derived from the special district excise tax
8 imposed by section twelve of this article or other revenues derived
9 from the economic opportunity development district to the extent
10 pledged for the purpose by the municipality in the ~~resolution~~
11 ordinance authorizing the bonds.

12 (e) *Surplus funds.* -- To the extent that the average daily
13 amount on deposit in the subaccount established for a district
14 pursuant to section eight of this article exceeds, for more than
15 six consecutive calendar months, the sum of: (1) \$100,000; plus
16 (2) the amount required to be kept on deposit pursuant to the
17 documents authorizing, securing or otherwise relating to the bonds
18 or notes issued under this section, then the excess shall be used
19 by the district either to redeem the bonds or notes previously
20 issued or remitted to the General Fund of this state.

21 (f) *Debt not general obligation of municipality.* -- Neither
22 the notes or bonds and any interest coupons issued under the
23 authority of this article shall ever constitute an indebtedness of
24 the municipality issuing the notes or bonds within the meaning of

1 any Constitutional provision or statutory limitation and ~~shall~~
2 ~~never~~ do not constitute or give rise to a pecuniary liability of
3 the municipality issuing the notes or bonds.

4 (g) *Debt not a charge general credit or taxing powers of*
5 *municipality.* -- Neither the bonds or notes, nor interest thereon,
6 is a charge against the general credit or taxing powers of the
7 municipality and that fact shall be plainly stated on the face of
8 each bond or note.

9 (h) *Issuance of bonds or notes.* --

10 (1) Bonds or notes allowed under this section may be executed,
11 issued and delivered at any time and, from time to time, may be in
12 a form and denomination, may be of a tenor, must be negotiable but
13 may be registered as to the principal thereof or as to the
14 principal and interest thereof, may be payable in any amounts and
15 at any time or times, may be payable at any place or places, may
16 bear interest at any rate or rates payable at any place or places
17 and evidenced in any manner and may contain any provisions therein
18 not inconsistent herewith, all as provided in the ordinance of the
19 municipality whereunder the bonds or notes are authorized to be
20 issued.

21 (2) The bonds may be sold by the municipality at public or
22 private sale at, above or below par as the municipality authorizes.

23 (3) Bonds and notes issued pursuant to this article shall be
24 signed by the authorized representative of the municipality and

1 attested by the municipal clerk or recorder and be under the seal
2 of the municipality.

3 (4) Any coupons attached to the bonds shall bear the facsimile
4 signature of the authorized representative of the municipality. ~~In~~
5 ~~case~~ If any of the officials whose signatures appear on the bonds,
6 notes or coupons cease to be officers before the delivery of the
7 bonds or notes, their signatures ~~shall, nevertheless, be~~ are valid
8 and sufficient for all purposes to the same extent as if they had
9 remained in office until the delivery.

10 (i) *Additional bonds or notes.* -- If the proceeds of the bonds
11 or notes, by error of calculation or otherwise, are less than the
12 cost of the economic opportunity development district project, or
13 if additional real or personal property is to be added to the
14 district project or if it is determined that financing is needed
15 for additional development ~~or redevelopment~~ expenditures,
16 additional bonds or notes may, in like manner, be issued to provide
17 the amount of the deficiency or to defray the cost of acquiring or
18 financing any additional real or personal property or development
19 ~~or redevelopment~~ expenditures and, unless otherwise provided in the
20 trust agreement, mortgage or deed of trust, are considered to be of
21 the same issue and ~~shall be~~ are entitled to payment from the same
22 fund, without preference or priority, and ~~shall be~~ are of equal
23 priority as to any security.

24 **§8-38-17. Security for bonds.**

1 (a) *General.* -- Unless the municipality ~~shall~~ otherwise
2 ~~determine~~ determines in the ~~resolution~~ ordinance authorizing the
3 issuance of the bonds or notes under the authority of this article,
4 there is hereby created a statutory lien upon the subaccount
5 created pursuant to section eight of this article and all special
6 district excise tax revenues collected for the benefit of the
7 district pursuant to section eleven-a, article ten, chapter eleven
8 of this code for the purpose of securing the principal of the bonds
9 or notes and the interest thereon.

10 (b) *Security for debt service.* -- The principal of and
11 interest on any bonds or notes issued under the authority of this
12 article shall be secured by a pledge of the special district excise
13 tax revenues derived from the economic opportunity development
14 district project by the municipality issuing the bonds or notes to
15 the extent provided in the ~~resolution~~ ordinance adopted by the
16 municipality authorizing the issuance of the bonds or notes.

17 (c) *Trust indenture.* --

18 (1) In the discretion and at the option of the municipality,
19 the bonds and notes may also be secured by a trust indenture by and
20 between the municipality and a corporate trustee, which may be a
21 trust company or bank having trust powers, within or without the
22 State of West Virginia.

23 (2) The ~~resolution~~ ordinance authorizing the bonds or notes
24 and fixing the details thereof may provide that the trust indenture

1 may contain provisions for the protection and enforcing the rights
2 and remedies of the bondholders as are reasonable and proper, not
3 in violation of law, including covenants setting forth the duties
4 of the municipality in relation to the construction, acquisition or
5 financing of an economic opportunity development district project,
6 or part thereof or an addition thereto, and the improvement,
7 repair, maintenance and insurance thereof and for the custody,
8 safeguarding and application of all moneys and may provide that the
9 economic opportunity development district project shall be
10 constructed and paid for under the supervision and approval of the
11 consulting engineers or architects employed and designated by the
12 municipality or, if directed by the municipality in the ~~resolution~~
13 ordinance, by the district board, and satisfactory to the
14 purchasers of the bonds or notes, their successors, assigns or
15 nominees who may require the security given by any contractor or
16 any depository of the proceeds of the bonds or notes or the
17 revenues received from the district project be satisfactory to the
18 purchasers, their successors, assigns or nominees.

19 (3) The indenture may set forth the rights and remedies of
20 the bondholders, the municipality or trustee and the indenture may
21 provide for accelerating the maturity of the revenue bonds, at the
22 option of the bondholders or the municipality issuing the bonds,
23 upon default in the payment of the amounts due under the bonds.

24 (4) The municipality may also provide by resolution and in the

1 trust indenture for the payment of the proceeds of the sale of the
2 bonds or notes and the revenues from the economic opportunity
3 development district project to any depository it determines, for
4 the custody and investment thereof and for the method of
5 distribution thereof, with safeguards and restrictions it
6 determines to be necessary or advisable for the protection thereof
7 and upon the filing of a certified copy of the resolution or of the
8 indenture for record with the clerk or recorder of the municipality
9 in which the economic opportunity development project is located,
10 the resolution has the same effect, as to notice, as the
11 recordation of a deed of trust or other recordable instrument.

12 (5) In the event that more than one certified resolution or
13 indenture is recorded, the security interest granted by the first
14 recorded resolution or indenture has priority in the same manner as
15 an earlier filed deed of trust except to the extent the earlier
16 recorded resolution or indenture provides otherwise.

17 (d) *Mortgage or deed of trust.* --

18 (1) In addition to or in lieu of the indenture provided in
19 subsection (c) of this section, the principal of and interest on
20 the bonds or notes may, but need not, be secured by a mortgage or
21 deed of trust covering all or any part of the economic opportunity
22 development district project from which the revenues pledged are
23 derived and the same may be secured by an assignment or pledge of
24 the income received from the economic opportunity development

1 district project.

2 (2) The proceedings under which bonds or notes are authorized
3 to be issued, when secured by a mortgage or deed of trust, may
4 contain the same terms, conditions and provisions provided for
5 herein when an indenture is entered into between the municipality
6 and a trustee and any mortgage or deed of trust may contain any
7 agreements and provisions customarily contained in instruments
8 securing bonds or notes, including, without limiting the generality
9 of the foregoing, provisions respecting the fixing and collection
10 of revenues from the economic opportunity development district
11 project covered by the proceedings or mortgage, the terms to be
12 incorporated in any lease, sale or financing agreement with respect
13 to the economic opportunity development district project, the
14 improvement, repair, maintenance and insurance of the economic
15 opportunity development district project, the creation and
16 maintenance of special funds from the revenues received from the
17 economic opportunity development district project and the rights
18 and remedies available in event of default to the bondholders or
19 note holders, the municipality, or to the trustee under an
20 agreement, indenture, mortgage or deed of trust, all as the
21 municipality considers advisable and shall not be in conflict with
22 the provisions of this article or any existing law: *Provided*, That
23 in making any agreements or provisions, a municipality shall not
24 have the power to incur original indebtedness by indenture,

1 ordinance, resolution, mortgage or deed of trust except with
2 respect to the economic opportunity development district project
3 and the application of the revenues therefrom and shall not have
4 the power to incur a pecuniary liability or a charge upon its
5 general credit or against its taxing powers unless approved by the
6 voters in accordance with article one, chapter thirteen of this
7 code or as otherwise permitted by the Constitution of this state.

8 (e) *Enforcement of obligations.* --

9 (1) The proceedings authorizing any bonds and any indenture,
10 mortgage or deed of trust securing the bonds may provide that, in
11 the event of default in payment of the principal of or the interest
12 on the bonds, or notes, or in the performance of any agreement
13 contained in the proceedings, indenture, mortgage or deed of trust,
14 payment and performance may be enforced by the appointment of a
15 receiver in equity with power to charge and collect rents or other
16 amounts and to apply the revenues from the economic opportunity
17 development district project in accordance with the proceedings or
18 the provisions of the agreement, indenture, mortgage or deed of
19 trust.

20 (2) Any agreement, indenture, mortgage or deed of trust may
21 provide also that, in the event of default in payment or the
22 violation of any agreement contained in the mortgage or deed of
23 trust, the agreement, indenture, mortgage or deed of trust may be
24 foreclosed either by sale at public outcry or by proceedings in

1 equity and may provide that the holder or holders of any of the
2 bonds secured thereby may become the purchaser at any foreclosure
3 sale, if the highest bidder therefor.

4 (f) *No pecuniary liability.* -- No breach of any agreement,
5 indenture, mortgage or deed of trust ~~shall~~ may impose any pecuniary
6 liability upon a municipality or any charge upon its general credit
7 or against its taxing powers.

8 **§8-38-20. Use of proceeds from sale of bonds.**

9 (a) *General.* -- The proceeds from the sale of any bonds issued
10 under authority of this article shall be applied only for the
11 purpose for which the bonds were issued: *Provided,* That any
12 accrued interest received in any sale shall be applied to the
13 payment of the interest on the bonds sold: *Provided, however,* That
14 if for any reason any portion of the proceeds may not be needed for
15 the purpose for which the bonds were issued, then the unneeded
16 portion of the proceeds may be applied to the purchase of bonds for
17 cancellation or payment of the principal of or the interest on the
18 bonds, or held in reserve for the payment thereof.

19 (b) *Payment of costs.* -- The costs that may be paid with the
20 proceeds of the bonds include all development ~~and redevelopment~~
21 ~~costs~~ expenditures described in section five of this article and
22 may also include, but not be limited to, the following:

23 (1) The cost of acquiring any real estate determined
24 necessary;

1 (2) The actual cost of the construction of any part of an
2 economic opportunity development district project which may be
3 constructed, including architects', engineers', financial or other
4 consultants' and legal fees;

5 (3) The purchase price or rental of any part of an economic
6 opportunity development district project that may be acquired by
7 purchase or lease;

8 (4) All expenses incurred in connection with the
9 authorization, sale and issuance of the bonds to finance the
10 acquisition and the interest on the bonds for a reasonable time
11 prior to construction during construction and for not exceeding
12 twelve months after completion of construction; and

13 (5) Any other costs and expenses reasonably necessary in the
14 establishment and acquisition of an economic opportunity
15 development district project and the financing thereof.

NOTE: The purpose of this bill is to revise the Municipal Economic Opportunity Development District Act generally. The bill enlarges the types of municipal corporations that may use sales tax increment financing to finance certain economic development projects to any Class I, Class II and Class III city and any Class IV town or village. The bill includes mining operations in the definition of remediation and includes remediation of former coal mining sites as a permissible development expenditure for a project. The bill changes the standard by which the maximum amounts of reserves that may be established in the financing of a project are measured. The bill recommends that the development office consider whether the economic development that a project enables is large enough to require that it contain mixed use development consisting of a housing component with at least ten percent of housing units in the district allocated for affordable housing when determining whether there is a pressing need for the

project. The bill defines "affordable housing." The bill allows the development office to reduce the minimum amount of local sales tax revenues that would be deposited into the state's general revenue fund in certain circumstances. The bill provides that the maximum repayment schedule of all notes, bonds or other instruments issued to fund projects is thirty years.

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