

H. B. 2762

(By Mr. Speaker, (Mr. Thompson) and Delegate Armstead)

[By Request of the Executive]

[Introduced January 24, 2011; referred to the

Committee on Energy, Industry and Labor, Economic Development and

Small Business then the Judiciary then Finance.]

**FISCAL
NOTE**

A BILL to amend and reenact §7-22-3, §7-22-4, §7-22-5, §7-22-7, §7-22-10, §7-22-12, §7-22-15, §7-22-17 and §7-22-20 of the Code of West Virginia, 1931, as amended, all relating to revising the County Economic Opportunity Development District Act generally; defining the term "remediation;" including remediation of landfills, former coal mining sites, solid waste facilities or hazardous waste sites as permissible development expenditures for approved projects; changing standard by which the maximum amounts of reserves that may be established in the financing of a project are measured; providing that the development office cannot approve a project involving remediation unless all development expenditures proposed within a certain timeframe result in more than \$50 million in capital investment in the district; changing

1 ordinance to order; correcting language by changing
2 municipality to county; providing that the development office
3 may not approve a project involving remediation unless the
4 county commission submits clear and convincing information
5 that the proposed remediation expenditures to be financed with
6 bonds or notes do not constitute more than twenty-five percent
7 of a project's total development expenditures; and providing
8 technical and clerical clean-up.

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

10 That §7-22-3, §7-22-4, §7-22-5, §7-22-7, §7-22-10, §7-22-12,
11 §7-22-15, §7-22-17 and §7-22-20 of the Code of West Virginia, 1931,
12 as amended, be amended and reenacted, all to read as follows:

13 **ARTICLE 22. COUNTY ECONOMIC OPPORTUNITY DEVELOPMENT DISTRICTS.**

14 **§7-22-3. Definitions.**

15 For purposes of this article, the term:

16 (1) "County commission" means the governing body of a county
17 of this state;

18 (2) "Development expenditures" means payments for governmental
19 functions, programs, activities, facility construction,
20 improvements and other goods and services which a district board is
21 authorized to perform or provide under section five of this
22 article;

23 (3) "District" means an economic opportunity development
24 district created pursuant to this article;

1 (4) "District board" means a district board created pursuant
2 to section ten of this article; and

3 (5) "Eligible property" means any taxable or exempt real
4 property located in a district established pursuant to this
5 article.

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

13 **§7-22-4. Authorization to create economic opportunity development**
14 **districts.**

15 A county commission may, in accordance with the procedures and
16 subject to the limitations set forth in this article:

17 (1) Create one or more economic opportunity development
18 districts within its county;

19 (2) Provide for the administration and financing of
20 development expenditures within the districts; and

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

24 **§7-22-5. Development expenditures.**

1 Any county commission that has established an economic
2 opportunity development district under this article may make, or
3 authorize to be made by a district board and other public or
4 private parties, development expenditures as will promote the
5 economic vitality of the district and the general welfare of the
6 county, including, but not limited to, expenditures for the
7 following purposes:

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

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

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

23 (4) Providing financial support for public transportation and
24 vehicle parking facilities open to the general public, whether

1 physically situate within the district's boundaries or on adjacent
2 land;

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

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

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

16 (8) Providing the administrative costs for a district
17 management program;

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

22 (10) Providing any other services that the county commission
23 or district board is authorized to perform and which the county
24 commission does not also perform to the same extent on a countywide

1 basis;

2 (11) Making grants to the owners or tenants of economic
3 opportunity development district for the purposes described in this
4 section;

5 (12) Acquiring an interest in any entity or entities that own
6 any portion of the real property situate in the district and
7 contributing capital to any entity or entities; ~~and~~

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

12 ~~(13)~~ (14) To do any and all things necessary, desirable or
13 appropriate to carry out and accomplish the purposes of this
14 article notwithstanding any provision of this code to the contrary.

15 **§7-22-7. Application to development office for approval of an**
16 **economic opportunity development district project.**

17 (a) *General.* -- The development office shall receive and act
18 on applications filed with it by county commissions pursuant to
19 section six of this article. Each application must include:

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

22 (2) The total cost of the project;

23 (3) A reasonable estimate of the number of months needed to
24 complete the project;

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

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

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

17 (7) A description of the financial contribution of the county
18 commission to the funding of development expenditures;

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

1 (9) Identification of any businesses currently conducting
2 business in the proposed economic opportunity development district
3 that the county commission expects to continue doing business there
4 after the district is created;

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

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

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

19 (13) The Tax Commissioner's certification of: (i) The amount
20 of consumers sales and service taxes collected from businesses
21 located in the economic opportunity district during the twelve
22 calendar months preceding the calendar quarter during which the
23 application will be submitted to the development office; (ii) the
24 estimated amount of economic opportunity district excise tax that

1 will be collected during the first twelve months after the month in
2 which the Tax Commissioner would first begin to collect that tax;
3 and (iii) the estimated amount of economic opportunity district
4 excise tax that will be collected during the first thirty-six
5 months after the month in which the Tax Commissioner would first
6 begin to collect that tax; and

7 (14) Any additional information the development office may
8 require.

9 (b) *Review of applications.* -- The development office shall
10 review all project proposals for conformance to statutory and
11 regulatory requirements, the reasonableness of the project's budget
12 and timetable for completion and the following criteria:

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

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

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

22 (4) Whether the economic opportunity district excise tax
23 dollars will leverage or be the catalyst for the effective use of
24 private, other local government, state or federal funding that is

1 available;

2 (5) Whether there is substantial and credible evidence that
3 the project is likely to be started and completed in a timely
4 fashion;

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

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

13 (8) Whether the project will fulfill a pressing need for the
14 area, or part of the area, in which the economic opportunity
15 district is located;

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

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

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

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

24 (13) (A) The ability of the county commission and the project

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

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

1 article do not constitute more than twenty-five percent of the
2 total development expenditures associated with the project.

3 (c) *Additional criteria.* -- The development office may
4 establish other criteria for consideration when approving the
5 applications.

6 (d) *Action on the application.* -- The executive director of
7 the development office shall act to approve or not approve any
8 application within thirty days following the receipt of the
9 application or the receipt of any additional information requested
10 by the development office, whichever is the later.

11 (e) *Certification of project.* -- If the executive director of
12 the development office approves a county's economic opportunity
13 district project application, he or she shall issue to the county
14 commission a written certificate evidencing the approval.

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

1 office: *Provided*, That in determining the net annual district tax
2 revenue amount, the development office may not use a base tax
3 revenue amount less than that amount certified by the Tax
4 Commissioner but, in lieu of confirmation from the Tax Commissioner
5 of the gross annual district tax revenue amount, the development
6 office may use the estimate of the gross annual district tax
7 revenue amount provided by the county commission pursuant to
8 subsection (a) of this section.

9 (f) *Certification of enlargement of geographic boundaries of*
10 *previously certified district.* -- If the executive director of the
11 development office approves a county's economic opportunity
12 district project application to expand the geographic boundaries of
13 a previously certified district, he or she shall issue to the
14 county commission a written certificate evidencing the approval.

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

1 office: *Provided*, That in determining the net annual district tax
 2 revenue amount, the development office may not use a base tax
 3 revenue amount less than that amount certified by the tax
 4 commissioner but, in lieu of confirmation from the Tax Commissioner
 5 of the gross annual district tax revenue amount, the development
 6 office may use the estimate of the gross annual district tax
 7 revenue amount provided by the county commission pursuant to
 8 subsection (a) of this section.

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

16 **§7-22-10. Ordinance Order to create district as approved by**
 17 **Development Office and authorized by the**
 18 **Legislature.**

19 (a) *General.* -- If an economic opportunity development
 20 district project has been approved by the executive director of the
 21 development office and the levying of a special district excise tax
 22 for the district has been authorized by the Legislature, all in
 23 accordance with this article, the county commission may create the
 24 district by order entered of record as provided in article one of

1 this chapter: *Provided*, That the county commission may not amend,
2 alter or change in any manner the boundaries of the economic
3 opportunity development district authorized by the Legislature. In
4 addition to all other requirements, the order shall contain the
5 following:

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

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

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

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

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

23 (B) To elect its own officers, to appoint committees and to
24 employ and fix compensation for personnel necessary for its

1 operations;

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

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

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

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

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

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

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

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

18 (J) Pursuant to a determination by the district board that
19 there exists a continuing need for ~~redevelopment~~ development
20 expenditures and that moneys or funds of the district are necessary
21 therefor, to borrow money and execute and deliver the district's
22 negotiable notes and other evidences of indebtedness therefor, on
23 the terms as the district shall determine, and give security
24 therefor as is requisite, including, without limitation, a pledge

1 of the district's rights in its subaccount of the economic
2 opportunity development district fund;

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

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

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

20 (c) *Mailing of certified copies of order.* -- Upon entry of an
21 order establishing an economic opportunity development district
22 excise tax, a certified copy of the order shall be mailed to the
23 State Auditor, as ex officio the chief inspector and supervisor of
24 public offices, the State Treasurer and the Tax Commissioner.

1 **§7-22-12. Special district excise tax authorized.**

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

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

19 (c) *Tax rate.* -- The rate or rates of a special district
20 excise tax levied pursuant to this section shall be identical to
21 the rate or rates of the consumer sales and service tax imposed
22 pursuant to article fifteen, chapter eleven of this code on sales
23 made and services rendered within the boundaries of the district
24 authorized by this section.

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

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

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

19 (A) Acceptable indicia of timely payment;

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

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

24 (D) What, if any, exceptions are allowable, and alternative

1 methods of payment that may be used for any exceptions;

2 (E) Procedures for making voluntary or mandatory electronic
3 payments or both; and

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

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

20 (B) Any confidential information provided pursuant to this
21 subdivision shall be used solely for the protection and enforcement
22 of the rights and remedies of the bondholders of bonds issued
23 pursuant to this article. Any person or entity that is in
24 possession of information disclosed by the Tax Commissioner or

1 shared by the trustee pursuant to subdivision (a) of this
2 subsection is subject to the provisions of section five-d, article
3 ten, chapter eleven of this code as if ~~that~~ the person or entity
4 that is in possession of the tax information is an officer,
5 employee, agent or representative of this state or of a local or
6 municipal governmental entity or other governmental subdivision.

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

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

16 (2) The State Treasurer shall withhold from the county
17 commission's subaccount in the Economic Opportunity Development
18 District Fund and shall deposit in the General Revenue Fund of this
19 state, on or before the twentieth day of each calendar month next
20 following the effective date of a special district excise tax, a
21 sum equal to one twelfth of the base tax revenue amount last
22 certified by the development office pursuant to section seven of
23 this article.

24 (f) *Effective date of special district excise tax.* -- Any

1 taxes imposed pursuant to the authority of this section ~~shall be~~
2 are effective on the first day of the calendar month that begins
3 sixty days after the date of adoption of an order entered of record
4 imposing the tax or the first day of any later calendar month
5 expressly designated in the order.

6 (g) *Copies of order.* -- Upon entry of an order levying a
7 special district excise tax, a certified copy of the order shall be
8 mailed to the State Auditor, as ex officio the chief inspector and
9 supervisor of public offices, the State Treasurer and the Tax
10 Commissioner.

11 **§7-22-15. Abolishment and dissolution of district; notice;**
12 **hearing.**

13 (a) *General.* -- Except upon the express written consent of
14 the executive director of the development office and of all the
15 holders or obligees of any indebtedness or other instruments the
16 proceeds of which were applied to any development ~~or redevelopment~~
17 expenditures or any indebtedness the payment of which is secured by
18 revenues payable into the fund provided under section eight of this
19 article or by any public property, a district may only be abolished
20 by the county commission when there is no outstanding indebtedness,
21 the proceeds of which were applied to any development ~~or~~
22 ~~redevelopment~~ expenditures or the payment of which is secured by
23 revenues payable into the fund provided under section eight of this
24 article, or by any public property, and following a public hearing

1 upon the proposed abolishment.

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

8 (c) *Transfer of district assets and funds.* -- Upon the
9 abolishment of any economic opportunity development district, any
10 funds or other assets, contractual rights or obligations, claims
11 against holders of indebtedness or other financial benefits,
12 liabilities or obligations existing after full payment has been
13 made on all existing contracts, bonds, notes or other obligations
14 of the district are transferred to and assumed by the county
15 commission. Any funds or other assets transferred shall be used for
16 the benefit of the area included in the district being abolished.

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

22 **§7-22-17. Security for bonds.**

23 (a) *General.* -- Unless the county commission ~~shall~~ otherwise
24 ~~determine~~ determines in the ~~resolution~~ order authorizing the

1 issuance of the bonds or notes under the authority of this article,
2 there is hereby created a statutory lien upon the subaccount
3 created pursuant to section eight of this article and all special
4 district excise tax revenues collected for the benefit of the
5 district pursuant to section eleven-a, article ten, chapter eleven
6 of this code for the purpose of securing the principal of the bonds
7 or notes and the interest thereon.

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

15 (c) *Trust indenture.* --

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

21 (2) The resolution order authorizing the bonds or notes and
22 fixing the details thereof may provide that the trust indenture may
23 contain provisions for the protection and enforcing the rights and
24 remedies of the bondholders as are reasonable and proper, not in

1 violation of law, including covenants setting forth the duties of
2 the county commission in relation to the construction, acquisition
3 or financing of an economic opportunity development district
4 project, or part thereof or an addition thereto, and the
5 improvement, repair, maintenance and insurance thereof and for the
6 custody, safeguarding and application of all moneys and may provide
7 that the economic opportunity development district project shall be
8 constructed and paid for under the supervision and approval of the
9 consulting engineers or architects employed and designated by the
10 county commission or, if directed by the county commission in the
11 resolution order, by the district board, and satisfactory to the
12 purchasers of the bonds or notes, their successors, assigns or
13 nominees who may require the security given by any contractor or
14 any depository of the proceeds of the bonds or notes or the
15 revenues received from the district project be satisfactory to the
16 purchasers, their successors, assigns or nominees.

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

23 (4) The county commission may also provide by resolution and
24 in the trust indenture for the payment of the proceeds of the sale

1 of the bonds or notes and the revenues from the economic
2 opportunity development district project to any depository it
3 determines, for the custody and investment thereof and for the
4 method of distribution thereof, with safeguards and restrictions it
5 determines to be necessary or advisable for the protection thereof
6 and upon the filing of a certified copy of the resolution or of the
7 indenture for record in the office of the clerk of the county
8 commission of the county in which the economic opportunity
9 development project is located, the resolution has the same effect,
10 as to notice, as the recordation of a deed of trust or other
11 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 county
6 commission and a trustee and any mortgage or deed of trust may
7 contain any agreements and provisions customarily contained in
8 instruments securing bonds or notes, including, without limiting
9 the generality of the foregoing, provisions respecting the fixing
10 and collection of revenues from the economic opportunity
11 development district project covered by the proceedings or
12 mortgage, the terms to be incorporated in any lease, sale or
13 financing agreement with respect to the economic opportunity
14 development district project, the improvement, repair, maintenance
15 and insurance of the economic opportunity district project, the
16 creation and maintenance of special funds from the revenues
17 received from the economic opportunity development district project
18 and the rights and remedies available in event of default to the
19 bondholders or note holders, the county commission, or to the
20 trustee under an agreement, indenture, mortgage or deed of trust,
21 all as the county commission body considers advisable and shall not
22 be in conflict with the provisions of this article or any existing
23 law: *Provided*, That in making any agreements or provisions, a
24 county commission shall not have the power to incur original

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

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

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

21 (2) Any agreement, indenture, mortgage or deed of trust may
22 provide also that, in the event of default in payment or the
23 violation of any agreement contained in the mortgage or deed of
24 trust, the agreement, indenture, mortgage or deed of trust may be

1 foreclosed either by sale at public outcry or by proceedings in
2 equity and may provide that the holder or holders of any of the
3 bonds secured thereby may become the purchaser at any foreclosure
4 sale, if the highest bidder therefor.

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

9 **§7-22-20. Use of proceeds from sale of bonds.**

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

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

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

1 necessary;

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

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

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

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

NOTE: The purpose of this bill is to revise the County Economic Opportunity Development District Act. The bill defines remediation and includes remediation of landfills, former coal mining sites, solid waste facilities or hazardous waste sites as permissible development expenditures for approved projects. 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 provides that the development office cannot approve a project involving remediation unless all development expenditures proposed within a certain timeframe result in more than \$50 million in capital investment in the district. The bill also changes the term ordinance to order and corrects other language by changing municipality to county. The bill provides that the development office may not approve a project involving remediation unless the county commission submits clear and convincing information that the

proposed remediation expenditures to be financed with bonds or notes do not constitute more than twenty-five percent of a project's total development expenditures.

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