

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 235**

5 (BY SENATORS KESSLER (ACTING PRESIDENT) AND HALL,

6 BY REQUEST OF THE EXECUTIVE)

7 _____
8 [Passed March 10, 2011; in effect ninety days from passage.]
9 _____

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11
12 AN ACT to amend and reenact §7-22-3, §7-22-4, §7-22-5, §7-22-7,
13 §7-22-10, §7-22-12, §7-22-14, §7-22-15, §7-22-17 and §7-22-20
14 of the Code of West Virginia, 1931, as amended, all relating
15 to revising the County Economic Opportunity Development
16 District Act generally; defining the term "remediation";
17 including remediation of landfills, former coal or other
18 mining sites, solid waste facilities or hazardous waste sites
19 as permissible development expenditures for approved projects;
20 changing standard by which the maximum amounts of reserves
21 that may be established in the financing of a project are
22 measured; reducing the amount of capital investment required
23 for project approval; providing that the Development Office
24 cannot approve a project involving remediation unless all
25 development expenditures proposed within a certain time frame

1 result in more than \$25 million in capital investment in the
2 district; changing "ordinance" to "order"; correcting language
3 by changing "municipality" to "county"; providing that the
4 Development Office may not approve a project involving
5 remediation unless the county commission submits clear and
6 convincing information that the proposed remediation
7 expenditures to be financed with bonds or notes do not
8 constitute more than twenty-five percent of a project's total
9 development expenditures; allowing for minor modifications of
10 districts without public hearing or approval by the
11 Development Office or the Legislature under certain
12 circumstances; and providing technical and clerical cleanup.

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

14 That §7-22-3, §7-22-4, §7-22-5, §7-22-7, §7-22-10, §7-22-12,
15 §7-22-14, §7-22-15, §7-22-17 and §7-22-20 of the Code of West
16 Virginia, 1931, as amended, be amended and reenacted, all to read
17 as follows:

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

19 **§7-22-3. Definitions.**

20 For purposes of this article, the term:

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

23 (2) "Development expenditures" means payments for governmental
24 functions, programs, activities, facility construction,
25 improvements and other goods and services which a district board is

1 authorized to perform or provide under section five of this
2 article;

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

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

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

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

17 **§7-22-4. Authorization to create economic opportunity development**
18 **districts.**

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

21 (1) Create one or more economic opportunity development
22 districts within its county;

23 (2) Provide for the administration and financing of
24 development expenditures within the districts; and

25 (3) Provide for the administration and financing of a

1 continuing program of development expenditures within the
2 districts.

3 **§7-22-5. Development expenditures.**

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

11 (1) Beautification of the district by means including
12 landscaping and construction and erection of fountains, shelters,
13 benches, sculptures, signs, lighting, decorations and similar
14 amenities;

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

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

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

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

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

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

18 (8) Providing the administrative costs for a district
19 management program;

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

24 (10) Providing any other services that the county commission
25 or district board is authorized to perform and which the county

1 commission does not also perform to the same extent on a countywide
2 basis;

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

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

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

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

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

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

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

23 (2) The total cost of the project;

24 (3) A reasonable estimate of the number of months needed to
25 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
7 expenditures necessary to permanently maintain the optimum economic
8 viability of the district following its inception: *Provided*, That
9 the amounts of the reserves may not exceed the amounts that would
10 be required by prevailing commercial capital market considerations;

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

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

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

24 (9) Identification of any businesses currently conducting
25 business in the proposed economic opportunity development district

1 that the county commission expects to continue doing business there
2 after the district is created;

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

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

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

17 (13) The Tax Commissioner's certification of: (i) The amount
18 of consumers sales and service taxes collected from businesses
19 located in the economic opportunity district during the twelve
20 calendar months preceding the calendar quarter during which the
21 application will be submitted to the development office; (ii) the
22 estimated amount of economic opportunity district excise tax that
23 will be collected during the first twelve months after the month in
24 which the Tax Commissioner would first begin to collect that tax;
25 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 district excise tax
20 dollars will leverage or be the catalyst for the effective use of
21 private, other local government, state or federal funding that is
22 available;

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

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

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

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

12 (9) Whether the county commission has a strategy for economic
13 development in the county and whether the project is consistent
14 with that strategy;

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

16 (11) Whether the project is consistent with the goals of this
17 article;

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

20 (13) (A) The ability of the county commission and the project
21 developer or project team to carry out the project: *Provided*, That
22 no project may be approved by the development office unless the
23 amount of all development expenditures proposed to be made in the
24 first twenty-four months following the creation of the district
25 results in capital investment of more than \$25 million in the

1 district and the county submits clear and convincing information,
2 to the satisfaction of the development office, that the investment
3 will be made if the development office approves the project and the
4 Legislature authorizes the county commission to levy an excise tax
5 on sales of goods and services made within the economic opportunity
6 district as provided in this article.

7 (B) Notwithstanding any provision of paragraph (A) of this
8 subdivision to the contrary, no project involving remediation may
9 be approved by the Development Office unless the amount of all
10 development expenditures proposed to be made in the first
11 forty-eight months following the creation of the district results
12 in capital investment of more than \$25 million in the district. In
13 addition to the remaining provisions of paragraph (A) of this
14 subdivision the development office may not approve a project
15 involving remediation authorized under section five of this article
16 unless the county commission submits clear and convincing
17 information, to the satisfaction of the development office, that
18 the proposed remediation expenditures to be financed by the
19 issuance of bonds or notes pursuant to section sixteen of this
20 article do not constitute more than twenty-five percent of the
21 total development expenditures associated with the project.

22 (c) *Additional criteria.* -- The development office may
23 establish other criteria for consideration when approving the
24 applications.

25 (d) *Action on the application.* -- The executive director of

1 the development office shall act to approve or not approve any
2 application within thirty days following the receipt of the
3 application or the receipt of any additional information requested
4 by the development office, whichever is the later.

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

9 The certificate shall expressly state a base tax revenue
10 amount, the gross annual district tax revenue amount and the
11 estimated net annual district tax revenue amount which, for
12 purposes of this article, is the difference between the gross
13 annual district tax revenue amount and the base tax revenue amount,
14 all of which the development office has determined with respect to
15 the district's application based on any investigation it considers
16 reasonable and necessary, including, but not limited to, any
17 relevant information the development office requests from the Tax
18 Commissioner and the Tax Commissioner provides to the development
19 office: *Provided*, That in determining the net annual district tax
20 revenue amount, the development office may not use a base tax
21 revenue amount less than that amount certified by the Tax
22 Commissioner but, in lieu of confirmation from the Tax Commissioner
23 of the gross annual district tax revenue amount, the development
24 office may use the estimate of the gross annual district tax
25 revenue amount provided by the county commission pursuant to

1 subsection (a) of this section.

2 (f) *Certification of enlargement of geographic boundaries of*
3 *previously certified district.* -- If the executive director of the
4 development office approves a county's economic opportunity
5 district project application to expand the geographic boundaries of
6 a previously certified district, he or she shall issue to the
7 county commission a written certificate evidencing the approval.

8 The certificate shall expressly state a base tax revenue
9 amount, the gross annual district tax revenue amount and the
10 estimated net annual district tax revenue amount which, for
11 purposes of this article, is the difference between the gross
12 annual district tax revenue amount and the base tax revenue amount,
13 all of which the development office has determined with respect to
14 the district's application based on any investigation it considers
15 reasonable and necessary, including, but not limited to, any
16 relevant information the development office requests from the tax
17 commissioner and the tax commissioner provides to the development
18 office: *Provided*, That in determining the net annual district tax
19 revenue amount, the development office may not use a base tax
20 revenue amount less than that amount certified by the tax
21 commissioner but, in lieu of confirmation from the Tax Commissioner
22 of the gross annual district tax revenue amount, the development
23 office may use the estimate of the gross annual district tax
24 revenue amount provided by the county commission pursuant to
25 subsection (a) of this section.

1 (g) *Promulgation of rules.* -- The executive director of the
2 development office may promulgate rules to implement the economic
3 opportunity development district project application approval
4 process and to describe the criteria and procedures it has
5 established in connection therewith. These rules are not subject
6 to the provisions of chapter twenty-nine-a of this code but shall
7 be filed with the Secretary of State.

8 **§7-22-10. Order to create district as approved by Development**
9 **Office and authorized by the Legislature.**

10 (a) *General.* -- If an economic opportunity development
11 district project has been approved by the executive director of the
12 development office and the levying of a special district excise tax
13 for the district has been authorized by the Legislature, all in
14 accordance with this article, the county commission may create the
15 district by order entered of record as provided in article one of
16 this chapter: *Provided,* That the county commission may not amend,
17 alter or change in any manner the boundaries of the economic
18 opportunity development district authorized by the Legislature. In
19 addition to all other requirements, the order shall contain the
20 following:

21 (1) The name of the district and a description of its
22 boundaries;

23 (2) A summary of any proposed services to be provided and
24 capital improvements to be made within the district and a

1 reasonable estimate of any attendant costs;

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

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

11 (A) To make and adopt all necessary bylaws and rules for its
12 organization and operations not inconsistent with any applicable
13 laws;

14 (B) To elect its own officers, to appoint committees and to
15 employ and fix compensation for personnel necessary for its
16 operations;

17 (C) To enter into contracts with any person, agency,
18 government entity, agency or instrumentality, firm, partnership,
19 limited partnership, limited liability company or corporation,
20 including both public and private corporations, and for-profit and
21 not-for-profit organizations and generally to do any and all things
22 necessary or convenient for the purpose of promoting, developing
23 and advancing the purposes described in section two of this
24 article;

25 (D) To amend or supplement any contracts or leases or to enter

1 into new, additional or further contracts or leases upon the terms
2 and conditions for consideration and for any term of duration, with
3 or without option of renewal, as agreed upon by the district board
4 and any person, agency, government entity, agency or
5 instrumentality, firm, partnership, limited partnership, limited
6 liability company or corporation;

7 (E) To, unless otherwise provided in, and subject to the
8 provisions of any contracts or leases to operate, repair, manage
9 and maintain buildings and structures and provide adequate
10 insurance of all types and in connection with the primary use
11 thereof and incidental thereto to provide services, such as retail
12 stores and restaurants, and to effectuate incidental purposes,
13 grant leases, permits, concessions or other authorizations to any
14 person or persons upon the terms and conditions for consideration
15 and for the term of duration as agreed upon by the district board
16 and any person, agency, governmental department, firm or
17 corporation;

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

20 (G) To apply for, receive and use grants-in-aid, donations and
21 contributions from any source or sources and to accept and use
22 bequests, devises, gifts and donations from any person, firm or
23 corporation;

24 (H) To acquire real property by gift, purchase or construction
25 or in any other lawful manner and hold title thereto in its own

1 name and to sell, lease or otherwise dispose of all or part of any
2 real property which it may own, either by contract or at public
3 auction, upon the approval by the district board;

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

7 (J) Pursuant to a determination by the district board that
8 there exists a continuing need for development expenditures and
9 that moneys or funds of the district are necessary therefor, to
10 borrow money and execute and deliver the district's negotiable
11 notes and other evidences of indebtedness therefor, on the terms as
12 the district shall determine, and give security therefor as is
13 requisite, including, without limitation, a pledge of the
14 district's rights in its subaccount of the economic opportunity
15 development district fund;

16 (K) To acquire (either directly or on behalf of the county an
17 interest in any entity or entities that own any real property
18 situate in the district, to contribute capital to any entity or
19 entities and to exercise the rights of an owner with respect
20 thereto; and

21 (L) To expend its funds in the execution of the powers and
22 authority given in this section, which expenditures, by the means
23 authorized in this section, are hereby determined and declared as
24 a matter of legislative finding to be for a public purpose and use,
25 in the public interest and for the general welfare of the people of

1 West Virginia, to alleviate and prevent economic deterioration and
2 to relieve the existing critical condition of unemployment existing
3 within the state.

4 (b) *Additional contents of order.* -- The county commission's
5 order shall also state the general intention of the county
6 commission to develop and increase services and to make capital
7 improvements within the district.

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

13 **§7-22-12. Special district excise tax authorized.**

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

20 (b) *Tax base.* -- The base of a special district excise tax
21 imposed pursuant to this section shall be identical to the base of
22 the consumers sales and service tax imposed pursuant to article
23 fifteen, chapter eleven of this code on sales made and services
24 rendered within the boundaries of the district. Sales of gasoline
25 and special fuel are not subject to special district excise tax but

1 remain subject to the tax levied by article fifteen, chapter eleven
2 of this code. Except for the exemption provided in section nine-f
3 of that article, all exemptions and exceptions from the consumers
4 sales and service tax also apply to the special district excise
5 tax.

6 (c) *Tax rate.* -- The rate or rates of a special district
7 excise tax levied pursuant to this section shall be identical to
8 the rate or rates of the consumer sales and service tax imposed
9 pursuant to article fifteen, chapter eleven of this code on sales
10 made and services rendered within the boundaries of the district
11 authorized by this section.

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

18 (1) The Tax Commissioner may require the electronic filing of
19 returns related to the special district excise tax imposed pursuant
20 to this section, and also may require the electronic payment of the
21 special district excise tax imposed pursuant to this section. The
22 Tax Commissioner may prescribe by rules adopted or proposed
23 pursuant to article three, chapter twenty-nine-a of this code,
24 administrative notices, and forms and instructions, the procedures
25 and criteria to be followed to electronically file those returns

1 and to electronically pay the special district excise tax imposed
2 pursuant to this section.

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

6 (A) Acceptable indicia of timely payment;

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

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

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

13 (E) Procedures for making voluntary or mandatory electronic
14 payments or both; and

15 (F) Any other provisions necessary to ensure the timely
16 electronic filing of returns related to the special district excise
17 tax and the making of payments electronically of the special
18 district excise tax imposed pursuant to this section.

19 (3) (A) Notwithstanding the provisions of section five-d,
20 article ten, chapter eleven of this code: (i) So long as bonds are
21 outstanding pursuant to this article, the Tax Commissioner shall
22 provide on a monthly basis to the trustee for bonds issued pursuant
23 to this article information on returns submitted pursuant to this
24 article; and (ii) the trustee may share the information so obtained
25 with the county commission that established the economic

1 opportunity development district that issued the bonds pursuant to
2 this article and with the bondholders and with bond counsel for
3 bonds issued pursuant to this article. The Tax Commissioner and
4 the trustee may enter into a written agreement in order to
5 accomplish exchange of the information.

6 (B) Any confidential information provided pursuant to this
7 subdivision shall be used solely for the protection and enforcement
8 of the rights and remedies of the bondholders of bonds issued
9 pursuant to this article. Any person or entity that is in
10 possession of information disclosed by the Tax Commissioner or
11 shared by the trustee pursuant to subdivision (a) of this
12 subsection is subject to the provisions of section five-d, article
13 ten, chapter eleven of this code as if the person or entity that is
14 in possession of the tax information is an officer, employee, agent
15 or representative of this state or of a local or municipal
16 governmental entity or other governmental subdivision.

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

18 (1) The order of the county commission imposing a special
19 district excise tax shall provide that the Tax Commissioner deposit
20 the net amount of tax collected in the Special Economic Opportunity
21 Development District Fund to the credit of the county commission's
22 subaccount therein for the economic opportunity development
23 district and that the money in the subaccount may only be used to
24 pay for development expenditures as provided in this article except
25 as provided in subsection (f) of this section.

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

9 (f) *Effective date of special district excise tax.* -- Any
10 taxes imposed pursuant to the authority of this section are
11 effective on the first day of the calendar month that begins sixty
12 days after the date of adoption of an order entered of record
13 imposing the tax or the first day of any later calendar month
14 expressly designated in the order.

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

20 **§7-22-14. Modification of Included area; notice; hearing.**

21 (a) *General.* -- The order creating an economic opportunity
22 development district may not be amended to include additional
23 contiguous property until after the amendment is approved by the
24 executive director of the Development Office in the same manner as
25 an application to approve the establishment of the district is

1 acted upon under section seven of this article and the amendment is
2 authorized by the Legislature.

3 (b) *Limitations.* -- Additional property may not be included
4 in the district unless it is situated within the boundaries of the
5 county and is contiguous to the then current boundaries of the
6 district.

7 (c) *Public hearing required.* --

8 (1) The county commission of any county desiring to amend its
9 order shall designate a time and place for a public hearing upon
10 the proposal to include additional property. The notice shall meet
11 the requirements set forth in section six of this article.

12 (2) At the time and place set forth in the notice, the county
13 commission shall afford the opportunity to be heard to any owners
14 of real property either currently included in or proposed to be
15 added to the existing district and to any other residents of the
16 county.

17 (d) *Application to West Virginia Development Office.* --
18 Following the hearing, the county commission may, by resolution,
19 apply to the Development Office to approve inclusion of the
20 additional property in the district.

21 (e) *Consideration by the Executive Director of the Development*
22 *Office.* -- Before the executive director of the Development Office
23 approves inclusion of the additional property in the district, the
24 Development Office shall determine the amount of taxes levied by
25 article fifteen, chapter eleven of this code that were collected by

1 businesses located in the area the county commission proposes to
2 add to the district in the same manner as the base amount of tax
3 was determined when the district was first created. The State
4 Treasurer shall also deposit one twelfth of this additional tax
5 base amount into the General Revenue Fund each month, as provided
6 in section twelve of this article.

7 (f) *Legislative action required.* -- After the Executive
8 Director of the Development Office approves amending the boundaries
9 of the district, the Legislature must amend section nine of this
10 article to allow levy of the special district excise tax on
11 business located in geographic area to be included in the district.
12 After the Legislature amends said section, the county commission
13 may then amend its order: *Provided*, That the order may not be
14 effective any earlier than the first day of the calendar month that
15 begins sixty days after the effective date of the act of the
16 Legislature authorizing the levy on the special district excise tax
17 on businesses located in the geographic area to be added to the
18 boundaries of the district for which the tax is levied or a later
19 date as set forth in the order of the county commission.

20 (g) *Collection of special district excise tax.* -- All
21 businesses included in a district because of the boundary amendment
22 shall on the effective date of the order, determined as provided in
23 subsection (f) of this section, collect the special district excise
24 tax on all sales on tangible property or services made from
25 locations in the district on or after the effective date of the

1 county commission's order or a later date as set forth in the
2 order.

3 (h) *Minor Modifications.* Notwithstanding any provision of
4 this article to contrary, a county commission may amend the order
5 creating an economic opportunity development district to make, and
6 may make, modifications to the boundaries of the economic
7 opportunity development district without holding a public hearing
8 or receiving approval of the executive director of the West
9 Virginia Development Office or authorization by the Legislature if
10 the modifications do not increase the total acreage of the economic
11 opportunity development district or result in a change to the base
12 tax revenue amount. The county commission is authorized to levy
13 special district excise taxes on sales of tangible personal
14 property and services made from business locations within the
15 modified boundaries of the economic opportunity development
16 district.

17 **§7-22-15. Abolishment and dissolution of district; notice;**
18 **hearing.**

19 (a) *General.* -- Except upon the express written consent of
20 the executive director of the development office and of all the
21 holders or obligees of any indebtedness or other instruments the
22 proceeds of which were applied to any development expenditures or
23 any indebtedness the payment of which is secured by revenues
24 payable into the fund provided under section eight of this article
25 or by any public property, a district may only be abolished by the

1 county commission when there is no outstanding indebtedness, the
2 proceeds of which were applied to any development expenditures or
3 the payment of which is secured by revenues payable into the fund
4 provided under section eight of this article, or by any public
5 property, and following a public hearing upon the proposed
6 abolishment.

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

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

23 (d) *Reinstatement of district.* -- Following abolishment of a
24 district pursuant to this section, its reinstatement requires
25 compliance with all requirements and procedures set forth in this

1 article for the initial development, approval, establishment and
2 creation of an economic opportunity development district.

3 **§7-22-17. Security for bonds.**

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

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

20 (c) *Trust indenture.* --

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

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

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

1 bonds.

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

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

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

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

1 derived and the same may be secured by an assignment or pledge of
2 the income received from the economic opportunity development
3 district project.

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

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

8 **§7-22-20. Use of proceeds from sale of bonds.**

9 (a) *General.* -- The proceeds from the sale of any bonds
10 issued under authority of this article shall be applied only for
11 the 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 expenditures
21 described in section five of this article and may also include, but
22 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.