

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 235

(BY SENATORS KESSLER (ACTING PRESIDENT) AND HALL,
BY REQUEST OF THE EXECUTIVE)

[Passed March 10, 2011; in effect ninety days from passage.]

AN ACT to amend and reenact §7-22-3, §7-22-4, §7-22-5, §7-22-7, §7-22-10, §7-22-12, §7-22-14, §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 or other 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; reducing the amount of capital investment required for project approval; providing that the Development Office cannot approve a project involving remediation unless all development expenditures proposed within a certain time frame result in more than \$25 million in capital investment in the district; changing “ordinance” to “order”; correcting language by changing “municipality” to “county”; providing 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; allowing for minor modifications of districts without public hearing or approval by the Development Office or the Legislature under certain circumstances; and providing technical and clerical cleanup.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 22. COUNTY ECONOMIC OPPORTUNITY DEVELOPMENT DISTRICTS.

§7-22-3. Definitions.

1 For purposes of this article, the term:

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

4 (2) "Development expenditures" means payments for
5 governmental functions, programs, activities, facility
6 construction, improvements and other goods and services
7 which a district board is authorized to perform or provide
8 under section five of this article;

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

11 (4) "District board" means a district board created pursu-
12 ant to section ten of this article; and

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

16 (6) “Remediation” means measures undertaken to bring
17 about the reconditioning or restoration of property located
18 within the boundaries of an economic opportunity develop-
19 ment district that has been affected by exploration, mining,
20 industrial operations or solid waste disposal and which
21 measures, when undertaken, will eliminate or ameliorate the
22 existing state of the property and enable the property to be
23 commercially developed.

**§7-22-4. Authorization to create economic opportunity develop-
ment districts.**

1 A county commission may, in accordance with the proce-
2 dures and subject to the limitations set forth in this article:

3 (1) Create one or more economic opportunity development
4 districts within its county;

5 (2) Provide for the administration and financing of devel-
6 opment expenditures within the districts; and

7 (3) Provide for the administration and financing of a
8 continuing program of development expenditures within the
9 districts.

§7-22-5. Development expenditures.

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

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

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

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

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

28 (5) Acquiring, building, demolishing, razing, constructing,
29 repairing, reconstructing, refurbishing, renovating, rehabili-
30 tating, expanding, altering, otherwise developing, operating
31 and maintaining real property generally, parking facilities,
32 commercial structures and other capital improvements to
33 real property, fixtures and tangible personal property,
34 whether or not physically situate within the district's
35 boundaries: *Provided*, That the expenditure directly benefits
36 the district;

37 (6) Developing plans for the architectural design of the
38 district and portions thereof and developing plans and
39 programs for the future development of the district;

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

43 (8) Providing the administrative costs for a district man-
44 agement program;

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

49 (10) Providing any other services that the county commis-
50 sion or district board is authorized to perform and which the
51 county commission does not also perform to the same extent
52 on a countywide basis;

53 (11) Making grants to the owners or tenants of economic
54 opportunity development district for the purposes described
55 in this section;

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

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

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

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

1 (a) *General.* — The development office shall receive and
2 act on applications filed with it by county commissions
3 pursuant to section six of this article. Each application must
4 include:

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

7 (2) The total cost of the project;

8 (3) A reasonable estimate of the number of months needed
9 to complete the project;

10 (4) A general description of the capital improvements,
11 additional or extended services and other proposed develop-
12 ment expenditures to be made in the district as part of the
13 project;

14 (5) A description of the proposed method of financing the
15 development expenditures, together with a description of the
16 reserves to be established for financing ongoing development
17 expenditures necessary to permanently maintain the opti-
18 mum economic viability of the district following its incep-
19 tion: *Provided*, That the amounts of the reserves may not
20 exceed the amounts that would be required by prevailing
21 commercial capital market considerations;

22 (6) A description of the sources and anticipated amounts of
23 all financing, including, but not limited to, proceeds from the
24 issuance of any bonds or other instruments, revenues from
25 the special district excise tax and enhanced revenues from
26 property taxes and fees;

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

29 (8) Identification of any businesses that the county com-
30 mission expects to relocate their business locations from the
31 district to another place in the state in connection with the
32 establishment of the district or from another place in this
33 state to the district: *Provided*, That for purposes of this
34 article, any entities shall be designated "relocated entities";

35 (9) Identification of any businesses currently conducting
36 business in the proposed economic opportunity development
37 district that the county commission expects to continue
38 doing business there after the district is created;

39 (10) A good faith estimate of the aggregate amount of
40 consumers sales and service tax that was actually remitted

41 to the Tax Commissioner by all business locations identified
42 as provided in subdivisions (8) and (9) of this subsection with
43 respect to their sales made and services rendered from their
44 then current business locations that will be relocated from,
45 or to, or remain in the district, for the twelve full calendar
46 months next preceding the date of the application: *Provided*,
47 That for purposes of this article, the aggregate amount is
48 designated as “the base tax revenue amount”;

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

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

53 (13) The Tax Commissioner’s certification of: (i) The
54 amount of consumers sales and service taxes collected from
55 businesses located in the economic opportunity district
56 during the twelve calendar months preceding the calendar
57 quarter during which the application will be submitted to
58 the development office; (ii) the estimated amount of eco-
59 nomic opportunity district excise tax that will be collected
60 during the first twelve months after the month in which the
61 Tax Commissioner would first begin to collect that tax; and
62 (iii) the estimated amount of economic opportunity district
63 excise tax that will be collected during the first thirty-six
64 months after the month in which the Tax Commissioner
65 would first begin to collect that tax; and

66 (14) Any additional information the development office
67 may require.

68 (b) *Review of applications.* — The development office shall
69 review all project proposals for conformance to statutory and
70 regulatory requirements, the reasonableness of the project’s
71 budget and timetable for completion and the following
72 criteria:

73 (1) The quality of the proposed project and how it ad-
74 dresses economic problems in the area in which the project
75 will be located;

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

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

83 (4) Whether the economic opportunity district excise tax
84 dollars will leverage or be the catalyst for the effective use of
85 private, other local government, state or federal funding that
86 is available;

87 (5) Whether there is substantial and credible evidence that
88 the project is likely to be started and completed in a timely
89 fashion;

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

94 (7) Whether the project will, directly or indirectly, assist in
95 the creation of additional long-term employment opportuni-
96 ties in the area and the quality of jobs created in all phases
97 of the project, to include, but not be limited to, wages and
98 benefits;

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

102 (9) Whether the county commission has a strategy for
103 economic development in the county and whether the project
104 is consistent with that strategy;

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

107 (11) Whether the project is consistent with the goals of this
108 article;

109 (12) Whether the project is economically and fiscally sound
110 using recognized business standards of finance and account-
111 ing; and

112 (13) (A) The ability of the county commission and the
113 project developer or project team to carry out the project:
114 *Provided*, That no project may be approved by the develop-
115 ment office unless the amount of all development expendi-
116 tures proposed to be made in the first twenty-four months
117 following the creation of the district results in capital
118 investment of more than \$25 million in the district and the
119 county submits clear and convincing information, to the
120 satisfaction of the development office, that the investment
121 will be made if the development office approves the project
122 and the Legislature authorizes the county commission to levy
123 an excise tax on sales of goods and services made within the
124 economic opportunity district as provided in this article.

125 (B) Notwithstanding any provision of paragraph (A) of this
126 subdivision to the contrary, no project involving remediation
127 may be approved by the Development Office unless the
128 amount of all development expenditures proposed to be made
129 in the first forty-eight months following the creation of the
130 district results in capital investment of more than \$25
131 million in the district. In addition to the remaining provi-
132 sions of paragraph (A) of this subdivision the development
133 office may not approve a project involving remediation
134 authorized under section five of this article unless the county
135 commission submits clear and convincing information, to the
136 satisfaction of the development office, that the proposed
137 remediation expenditures to be financed by the issuance of
138 bonds or notes pursuant to section sixteen of this article do
139 not constitute more than twenty-five percent of the total
140 development expenditures associated with the project.

141 (c) *Additional criteria.* — The development office may
142 establish other criteria for consideration when approving the
143 applications.

144 (d) *Action on the application.* — The executive director of
145 the development office shall act to approve or not approve
146 any application within thirty days following the receipt of
147 the application or the receipt of any additional information
148 requested by the development office, whichever is the later.

149 (e) *Certification of project.* — If the executive director of
150 the development office approves a county's economic
151 opportunity district project application, he or she shall issue
152 to the county commission a written certificate evidencing the
153 approval.

154 The certificate shall expressly state a base tax revenue
155 amount, the gross annual district tax revenue amount and
156 the estimated net annual district tax revenue amount which,
157 for purposes of this article, is the difference between the
158 gross annual district tax revenue amount and the base tax
159 revenue amount, all of which the development office has
160 determined with respect to the district's application based on
161 any investigation it considers reasonable and necessary,
162 including, but not limited to, any relevant information the
163 development office requests from the Tax Commissioner and
164 the Tax Commissioner provides to the development office:
165 *Provided, That in determining the net annual district tax*
166 *revenue amount, the development office may not use a base*
167 *tax revenue amount less than that amount certified by the*
168 *Tax Commissioner but, in lieu of confirmation from the Tax*
169 *Commissioner of the gross annual district tax revenue*
170 *amount, the development office may use the estimate of the*
171 *gross annual district tax revenue amount provided by the*
172 *county commission pursuant to subsection (a) of this section.*

173 (f) *Certification of enlargement of geographic boundaries of*
174 *previously certified district.* — If the executive director of
175 the development office approves a county's economic
176 opportunity district project application to expand the
177 geographic boundaries of a previously certified district, he or
178 she shall issue to the county commission a written certificate
179 evidencing the approval.

180 The certificate shall expressly state a base tax revenue
181 amount, the gross annual district tax revenue amount and
182 the estimated net annual district tax revenue amount which,
183 for purposes of this article, is the difference between the
184 gross annual district tax revenue amount and the base tax
185 revenue amount, all of which the development office has
186 determined with respect to the district's application based on
187 any investigation it considers reasonable and necessary,
188 including, but not limited to, any relevant information the
189 development office requests from the tax commissioner and
190 the tax commissioner provides to the development office:
191 *Provided*, That in determining the net annual district tax
192 revenue amount, the development office may not use a base
193 tax revenue amount less than that amount certified by the
194 tax commissioner but, in lieu of confirmation from the Tax
195 Commissioner of the gross annual district tax revenue
196 amount, the development office may use the estimate of the
197 gross annual district tax revenue amount provided by the
198 county commission pursuant to subsection (a) of this section.

199 (g) *Promulgation of rules.* — The executive director of the
200 development office may promulgate rules to implement the
201 economic opportunity development district project applica-
202 tion approval process and to describe the criteria and
203 procedures it has established in connection therewith. These
204 rules are not subject to the provisions of chapter
205 twenty-nine-a of this code but shall be filed with the
206 Secretary of State.

**§7-22-10. Ordinance Order to create district as approved by
Development Office and authorized by the Legisla-
ture.**

1 (a) *General.* — If an economic opportunity development
2 district project has been approved by the executive director
3 of the development office and the levying of a special district
4 excise tax for the district has been authorized by the Legis-
5 lature, all in accordance with this article, the county com-
6 mission may create the district by order entered of record as
7 provided in article one of this chapter: *Provided*, That the

8 county commission may not amend, alter or change in any
9 manner the boundaries of the economic opportunity develop-
10 ment district authorized by the Legislature. In addition to
11 all other requirements, the order shall contain the following:

12 (1) The name of the district and a description of its bound-
13 aries;

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

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

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

27 (A) To make and adopt all necessary bylaws and rules for
28 its organization and operations not inconsistent with any
29 applicable laws;

30 (B) To elect its own officers, to appoint committees and to
31 employ and fix compensation for personnel necessary for its
32 operations;

33 (C) To enter into contracts with any person, agency,
34 government entity, agency or instrumentality, firm, partner-
35 ship, limited partnership, limited liability company or
36 corporation, including both public and private corporations,
37 and for-profit and not-for-profit organizations and generally
38 to do any and all things necessary or convenient for the
39 purpose of promoting, developing and advancing the pur-
40 poses described in section two of this article;

41 (D) To amend or supplement any contracts or leases or to
42 enter into new, additional or further contracts or leases upon
43 the terms and conditions for consideration and for any term
44 of duration, with or without option of renewal, as agreed
45 upon by the district board and any person, agency, govern-
46 ment entity, agency or instrumentality, firm, partnership,
47 limited partnership, limited liability company or corpora-
48 tion;

49 (E) To, unless otherwise provided in, and subject to the
50 provisions of any contracts or leases to operate, repair,
51 manage and maintain buildings and structures and provide
52 adequate insurance of all types and in connection with the
53 primary use thereof and incidental thereto to provide
54 services, such as retail stores and restaurants, and to effectu-
55 ate incidental purposes, grant leases, permits, concessions or
56 other authorizations to any person or persons upon the terms
57 and conditions for consideration and for the term of duration
58 as agreed upon by the district board and any person, agency,
59 governmental department, firm or corporation;

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

62 (G) To apply for, receive and use grants-in-aid, donations
63 and contributions from any source or sources and to accept
64 and use bequests, devises, gifts and donations from any
65 person, firm or corporation;

66 (H) To acquire real property by gift, purchase or construc-
67 tion or in any other lawful manner and hold title thereto in
68 its own name and to sell, lease or otherwise dispose of all or
69 part of any real property which it may own, either by
70 contract or at public auction, upon the approval by the
71 district board;

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

75 (J) Pursuant to a determination by the district board that
76 there exists a continuing need for development expenditures
77 and that moneys or funds of the district are necessary
78 therefor, to borrow money and execute and deliver the
79 district's negotiable notes and other evidences of indebted-
80 ness therefor, on the terms as the district shall determine,
81 and give security therefor as is requisite, including, without
82 limitation, a pledge of the district's rights in its subaccount
83 of the economic opportunity development district fund;

84 (K) To acquire (either directly or on behalf of the county an
85 interest in any entity or entities that own any real property
86 situate in the district, to contribute capital to any entity or
87 entities and to exercise the rights of an owner with respect
88 thereto; and

89 (L) To expend its funds in the execution of the powers and
90 authority given in this section, which expenditures, by the
91 means authorized in this section, are hereby determined and
92 declared as a matter of legislative finding to be for a public
93 purpose and use, in the public interest and for the general
94 welfare of the people of West Virginia, to alleviate and
95 prevent economic deterioration and to relieve the existing
96 critical condition of unemployment existing within the state.

97 (b) *Additional contents of order.* — The county commis-
98 sion's order shall also state the general intention of the
99 county commission to develop and increase services and to
100 make capital improvements within the district.

101 (c) *Mailing of certified copies of order.* — Upon entry of an
102 order establishing an economic opportunity development
103 district excise tax, a certified copy of the order shall be
104 mailed to the State Auditor, as ex officio the chief inspector
105 and supervisor of public offices, the State Treasurer and the
106 Tax Commissioner.

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

1 (a) *General.* — The county commission of a county,
2 authorized by the Legislature to levy a special district excise

3 tax for the benefit of an economic opportunity development
4 district, may, by order entered of record, impose that tax on
5 the privilege of selling tangible personal property and
6 rendering select services in the district in accordance with
7 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
10 base of the consumers sales and service tax imposed pursu-
11 ant to article fifteen, chapter eleven of this code on sales
12 made and services rendered within the boundaries of the
13 district. Sales of gasoline and special fuel are not subject to
14 special district excise tax but remain subject to the tax
15 levied by article fifteen, chapter eleven of this code. Except
16 for the exemption provided in section nine-f of that article,
17 all exemptions and exceptions from the consumers sales and
18 service tax also apply to the special district excise tax.

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

25 (d) *Collection by Tax Commissioner.* — The order of the
26 county commission imposing a special district excise tax
27 shall provide for the tax to be collected by the Tax Commis-
28 sioner in the same manner as the tax levied by section three,
29 article fifteen, chapter eleven of this code is administered,
30 assessed, collected and enforced.

31 (1) The Tax Commissioner may require the electronic filing
32 of returns related to the special district excise tax imposed
33 pursuant to this section, and also may require the electronic
34 payment of the special district excise tax imposed pursuant
35 to this section. The Tax Commissioner may prescribe by
36 rules adopted or proposed pursuant to article three, chapter
37 twenty-nine-a of this code, administrative notices, and forms
38 and instructions, the procedures and criteria to be followed

39 to electronically file those returns and to electronically pay
40 the special district excise tax imposed pursuant to this
41 section.

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

45 (A) Acceptable indicia of timely payment;

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

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

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

52 (E) Procedures for making voluntary or mandatory elec-
53 tronic payments or both; and

54 (F) Any other provisions necessary to ensure the timely
55 electronic filing of returns related to the special district
56 excise tax and the making of payments electronically of the
57 special district excise tax imposed pursuant to this section.

58 (3)(A) Notwithstanding the provisions of section five-d,
59 article ten, chapter eleven of this code: (i) So long as bonds
60 are outstanding pursuant to this article, the Tax Commis-
61 sioner shall provide on a monthly basis to the trustee for
62 bonds issued pursuant to this article information on returns
63 submitted pursuant to this article; and (ii) the trustee may
64 share the information so obtained with the county commis-
65 sion that established the economic opportunity development
66 district that issued the bonds pursuant to this article and
67 with the bondholders and with bond counsel for bonds issued
68 pursuant to this article. The Tax Commissioner and the
69 trustee may enter into a written agreement in order to
70 accomplish exchange of the information.

71 (B) Any confidential information provided pursuant to this
72 subdivision shall be used solely for the protection and
73 enforcement of the rights and remedies of the bondholders of
74 bonds issued pursuant to this article. Any person or entity
75 that is in possession of information disclosed by the Tax
76 Commissioner or shared by the trustee pursuant to subdivi-
77 sion (a) of this subsection is subject to the provisions of
78 section five-d, article ten, chapter eleven of this code as if the
79 person or entity that is in possession of the tax information
80 is an officer, employee, agent or representative of this state
81 or of a local or municipal governmental entity or other
82 governmental subdivision.

83 (e) *Deposit of net tax collected.* —

84 (1) The order of the county commission imposing a special
85 district excise tax shall provide that the Tax Commissioner
86 deposit the net amount of tax collected in the Special
87 Economic Opportunity Development District Fund to the
88 credit of the county commission's subaccount therein for the
89 economic opportunity development district and that the
90 money in the subaccount may only be used to pay for
91 development expenditures as provided in this article except
92 as provided in subsection (f) of this section.

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

101 (f) *Effective date of special district excise tax.* — Any taxes
102 imposed pursuant to the authority of this section are effec-
103 tive on the first day of the calendar month that begins sixty
104 days after the date of adoption of an order entered of record
105 imposing the tax or the first day of any later calendar month
106 expressly designated in the order.

107 (g) *Copies of order.* — Upon entry of an order levying a
108 special district excise tax, a certified copy of the order shall
109 be mailed to the State Auditor, as ex officio the chief
110 inspector and supervisor of public offices, the State Treas-
111 urer and the Tax Commissioner.

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

1 (a) *General.* — The order creating an economic opportu-
2 nity development district may not be amended to include
3 additional contiguous property until after the amendment is
4 approved by the executive director of the Development
5 Office in the same manner as an application to approve the
6 establishment of the district is acted upon under section
7 seven of this article and the amendment is authorized by the
8 Legislature.

9 (b) *Limitations.* — Additional property may not be
10 included in the district unless it is situated within the
11 boundaries of the county and is contiguous to the then
12 current boundaries of the district.

13 (c) *Public hearing required.* —

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

19 (2) At the time and place set forth in the notice, the county
20 commission shall afford the opportunity to be heard to any
21 owners of real property either currently included in or
22 proposed to be added to the existing district and to any other
23 residents of the county.

24 (d) *Application to West Virginia Development Office.* —
25 Following the hearing, the county commission may, by
26 resolution, apply to the Development Office to approve
27 inclusion of the additional property in the district.

28 (e) *Consideration by the Executive Director of the Develop-*
29 *ment Office.* — Before the executive director of the Develop-
30 ment Office approves inclusion of the additional property in
31 the district, the Development Office shall determine the
32 amount of taxes levied by article fifteen, chapter eleven of
33 this code that were collected by businesses located in the
34 area the county commission proposes to add to the district in
35 the same manner as the base amount of tax was determined
36 when the district was first created. The State Treasurer shall
37 also deposit one twelfth of this additional tax base amount
38 into the General Revenue Fund each month, as provided in
39 section twelve of this article.

40 (f) *Legislative action required.* — After the Executive
41 Director of the Development Office approves amending the
42 boundaries of the district, the Legislature must amend
43 section nine of this article to allow levy of the special district
44 excise tax on business located in geographic area to be
45 included in the district. After the Legislature amends said
46 section, the county commission may then amend its order:
47 *Provided*, That the order may not be effective any earlier
48 than the first day of the calendar month that begins sixty
49 days after the effective date of the act of the Legislature
50 authorizing the levy on the special district excise tax on
51 businesses located in the geographic area to be added to the
52 boundaries of the district for which the tax is levied or a
53 later date as set forth in the order of the county commission.

54 (g) *Collection of special district excise tax.* — All busi-
55 nesses included in a district because of the boundary amend-
56 ment shall on the effective date of the order, determined as
57 provided in subsection (f) of this section, collect the special
58 district excise tax on all sales on tangible property or
59 services made from locations in the district on or after the
60 effective date of the county commission's order or a later
61 date as set forth in the order.

62 (h) *Minor Modifications.* Notwithstanding any provision
63 of this article to contrary, a county commission may amend
64 the order creating an economic opportunity development

65 district to make, and may make, modifications to the bound-
66 aries of the economic opportunity development district
67 without holding a public hearing or receiving approval of the
68 executive director of the West Virginia Development Office
69 or authorization by the Legislature if the modifications do
70 not increase the total acreage of the economic opportunity
71 development district or result in a change to the base tax
72 revenue amount. The county commission is authorized to
73 levy special district excise taxes on sales of tangible personal
74 property and services made from business locations within
75 the modified boundaries of the economic opportunity
76 development district.

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

1 (a) *General.* — Except upon the express written consent of
2 the executive director of the development office and of all
3 the holders or obligees of any indebtedness or other instru-
4 ments the proceeds of which were applied to any develop-
5 ment expenditures or any indebtedness the payment of
6 which is secured by revenues payable into the fund provided
7 under section eight of this article or by any public property,
8 a district may only be abolished by the county commission
9 when there is no outstanding indebtedness, the proceeds of
10 which were applied to any development expenditures or the
11 payment of which is secured by revenues payable into the
12 fund provided under section eight of this article, or by any
13 public property, and following a public hearing upon the
14 proposed abolishment.

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

22 (c) *Transfer of district assets and funds.* — Upon the
23 abolishment of any economic opportunity development
24 district, any funds or other assets, contractual rights or
25 obligations, claims against holders of indebtedness or other
26 financial benefits, liabilities or obligations existing after full
27 payment has been made on all existing contracts, bonds,
28 notes or other obligations of the district are transferred to
29 and assumed by the county commission. Any funds or other
30 assets transferred shall be used for the benefit of the area
31 included in the district being abolished.

32 (d) *Reinstatement of district.* — Following abolishment of
33 a district pursuant to this section, its reinstatement requires
34 compliance with all requirements and procedures set forth in
35 this article for the initial development, approval, establish-
36 ment and creation of an economic opportunity development
37 district.

§7-22-17. Security for bonds.

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

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

18 (c) *Trust indenture.* —

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

25 (2) The resolution order authorizing the bonds or notes and
26 fixing the details thereof may provide that the trust inden-
27 ture may contain provisions for the protection and enforcing
28 the rights and remedies of the bondholders as are reasonable
29 and proper, not in violation of law, including covenants
30 setting forth the duties of the county commission in relation
31 to the construction, acquisition or financing of an economic
32 opportunity development district project, or part thereof or
33 an addition thereto, and the improvement, repair, mainte-
34 nance and insurance thereof and for the custody, safeguard-
35 ing and application of all moneys and may provide that the
36 economic opportunity development district project shall be
37 constructed and paid for under the supervision and approval
38 of the consulting engineers or architects employed and
39 designated by the county commission or, if directed by the
40 county commission in the resolution order, by the district
41 board, and satisfactory to the purchasers of the bonds or
42 notes, their successors, assigns or nominees who may require
43 the security given by any contractor or any depository of the
44 proceeds of the bonds or notes or the revenues received from
45 the district project be satisfactory to the purchasers, their
46 successors, assigns or nominees.

47 (3) The indenture may set forth the rights and remedies of
48 the bondholders, the county commission or trustee and the
49 indenture may provide for accelerating the maturity of the
50 revenue bonds, at the option of the bondholders or the
51 county commission issuing the bonds, upon default in the
52 payment of the amounts due under the bonds.

53 (4) The county commission may also provide by resolution
54 and in the trust indenture for the payment of the proceeds of
55 the sale of the bonds or notes and the revenues from the

56 economic opportunity development district project to any
57 depository it determines, for the custody and investment
58 thereof and for the method of distribution thereof, with
59 safeguards and restrictions it determines to be necessary or
60 advisable for the protection thereof and upon the filing of a
61 certified copy of the resolution or of the indenture for record
62 in the office of the clerk of the county commission of the
63 county in which the economic opportunity development
64 project is located, the resolution has the same effect, as to
65 notice, as the recordation of a deed of trust or other record-
66 able instrument.

67 (5) In the event that more than one certified resolution or
68 indenture is recorded, the security interest granted by the
69 first recorded resolution or indenture has priority in the
70 same manner as an earlier filed deed of trust except to the
71 extent the earlier recorded resolution or indenture provides
72 otherwise.

73 (d) *Mortgage or deed of trust.* —

74 (1) In addition to or in lieu of the indenture provided in
75 subsection (c) of this section, the principal of and interest on
76 the bonds or notes may, but need not, be secured by a
77 mortgage or deed of trust covering all or any part of the
78 economic opportunity development district project from
79 which the revenues pledged are derived and the same may be
80 secured by an assignment or pledge of the income received
81 from the economic opportunity development district project.

82 (2) The proceedings under which bonds or notes are
83 authorized to be issued, when secured by a mortgage or deed
84 of trust, may contain the same terms, conditions and provi-
85 sions provided herein when an indenture is entered into
86 between the county commission and a trustee and any
87 mortgage or deed of trust may contain any agreements and
88 provisions customarily contained in instruments securing
89 bonds or notes, including, without limiting the generality of
90 the foregoing, provisions respecting the fixing and collection
91 of revenues from the economic opportunity development

92 district project covered by the proceedings or mortgage, the
93 terms to be incorporated in any lease, sale or financing
94 agreement with respect to the economic opportunity devel-
95 opment district project, the improvement, repair, mainte-
96 nance and insurance of the economic opportunity district
97 project, the creation and maintenance of special funds from
98 the revenues received from the economic opportunity
99 development district project and the rights and remedies
100 available in event of default to the bondholders or note
101 holders, the county commission, or to the trustee under an
102 agreement, indenture, mortgage or deed of trust, all as the
103 county commission body considers advisable and shall not be
104 in conflict with the provisions of this article or any existing
105 law: *Provided*, That in making any agreements or provisions,
106 a county commission shall not have the power to incur
107 original indebtedness by indenture, order, resolution,
108 mortgage or deed of trust except with respect to the eco-
109 nomic opportunity development district project and the
110 application of the revenues therefrom and shall not have the
111 power to incur a pecuniary liability or a charge upon its
112 general credit or against its taxing powers unless approved
113 by the voters in accordance with article one, chapter thirteen
114 of this code or as otherwise permitted by the Constitution of
115 this state.

116 (e) *Enforcement of obligations.* —

117 (1) The proceedings authorizing any bonds and any
118 indenture, mortgage or deed of trust securing the bonds may
119 provide that, in the event of default in payment of the
120 principal or of the interest on the bonds, or notes, or in the
121 performance of any agreement contained in the proceedings,
122 indenture, mortgage or deed of trust, payment and perfor-
123 mance may be enforced by the appointment of a receiver in
124 equity with power to charge and collect rents or other
125 amounts and to apply the revenues from the economic
126 opportunity development district project in accordance with
127 the proceedings or the provisions of the agreement, inden-
128 ture, mortgage or deed of trust.

129 (2) Any agreement, indenture, mortgage or deed of trust
130 may provide also that, in the event of default in payment or
131 the violation of any agreement contained in the mortgage or
132 deed of trust, the agreement, indenture, mortgage or deed of
133 trust may be foreclosed either by sale at public outcry or by
134 proceedings in equity and may provide that the holder or
135 holders of any of the bonds secured thereby may become the
136 purchaser at any foreclosure sale, if the highest bidder
137 therefor.

138 (f) *No pecuniary liability.* — No breach of any agreement,
139 indenture, mortgage or deed of trust may impose any pecuni-
140 ary liability upon a county or any charge upon its general
141 credit or against its taxing powers.

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

1 (a) *General.* — The proceeds from the sale of any bonds
2 issued under authority of this article shall be applied only for
3 the purpose for which the bonds were issued: *Provided*, That
4 any accrued interest received in any sale shall be applied to
5 the payment of the interest on the bonds sold: *Provided*,
6 *however*, That if for any reason any portion of the proceeds
7 may not be needed for the purpose for which the bonds were
8 issued, then the unneeded portion of the proceeds may be
9 applied to the purchase of bonds for cancellation or payment
10 of the principal of or the interest on the bonds, or held in
11 reserve for the payment thereof.

12 (b) *Payment of costs.* — The costs that may be paid with
13 the proceeds of the bonds include all development expendi-
14 tures described in section five of this article and may also
15 include, but not be limited to, the following:

16 (1) The cost of acquiring any real estate determined
17 necessary;

18 (2) The actual cost of the construction of any part of an
19 economic opportunity development district project which

20 may be constructed, including architects', engineers',
21 financial or other consultants' and legal fees;

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

25 (4) All expenses incurred in connection with the authoriza-
26 tion, sale and issuance of the bonds to finance the acquisition
27 and the interest on the bonds for a reasonable time prior to
28 construction during construction and for not exceeding
29 twelve months after completion of construction; and

30 (5) Any other costs and expenses reasonably necessary in
31 the establishment and acquisition of an economic opportu-
32 nity development district project and the financing thereof.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

.....
Chairman Senate Committee

.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

.....
Clerk of the Senate

.....
Clerk of the House of Delegates

.....
Acting President of the Senate

.....
Speaker of the House of Delegates

The within this the
Day of, 2011.

.....
Governor