

Senate Bill No. 463

(By Senator Tucker)

[Introduced January 31, 2012; referred to the Committee on
Government Organization; and then to the Committee on Finance.]

**FISCAL
NOTE**

A BILL to amend and reenact §7-11B-3 of the Code of West Virginia,
1931, as amended, relating to tax increment financing; and
adding items to those which are excluded from base assessed
value and current assessed value of real and personal
property.

Be it enacted by the Legislature of West Virginia:

That §7-11B-3 of the Code of West Virginia, 1931, as amended,
be amended and reenacted to read as follows:

ARTICLE 11B. WEST VIRGINIA TAX INCREMENT FINANCING ACT.

§7-11B-3. Definitions.

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

1 definition in this article.

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

3 (1) "Agency" includes a municipality, a county or municipal
4 development agency established pursuant to authority granted in
5 section one, article twelve of this chapter, a port authority, an
6 airport authority or any other entity created by this state or an
7 agency or instrumentality of this state that engages in economic
8 development activity.

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

18 (3) "Blighted area" means an area within the boundaries of a
19 development or redevelopment district located within the
20 territorial limits of a municipality or county in which the
21 structures, buildings or improvements, by reason of dilapidation,
22 deterioration, age or obsolescence, inadequate provision for
23 access, ventilation, light, air, sanitation, open spaces, high
24 density of population and overcrowding or the existence of

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

20 (4) "Conservation area" means any improved area within the
21 boundaries of a development or redevelopment district located
22 within the territorial limits of a municipality or county in which
23 ~~fifty~~ 50 percent or more of the structures in the area have an age
24 of thirty-five years or more. A conservation area is not yet a

1 blighted area but is detrimental to the public health, safety,
2 morals or welfare and may become a blighted area because of any one
3 or more of the following factors: Dilapidation; obsolescence;
4 deterioration; illegal use of individual structures; presence of
5 structures below minimum code standards; abandonment; excessive
6 vacancies; overcrowding of structures and community facilities;
7 lack of ventilation, light or sanitary facilities; inadequate
8 utilities; excessive land coverage; deleterious land use or layout;
9 depreciation of physical maintenance; and lack of community
10 planning. A conservation area shall meet at least three of the
11 factors provided in this subdivision.

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

15 (6) "Current assessed value" means the annual taxable assessed
16 value of all real and tangible personal property, excluding
17 personal motor vehicles, personal trailers, personal boats,
18 personal campers, personal motor homes, personal ATVs and personal
19 motorcycles having a tax situs within a development or
20 redevelopment district as shown upon the landbook and personal
21 property records of the assessor.

22 (7) "Development office" means the West Virginia Development
23 Office created in section one, article two, chapter five-b of this
24 code.

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

9 (A) The acquisition of land and improvements, if any, within
10 the development or redevelopment district and clearance of the land
11 so acquired; or

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

20 (C) The financial or other assistance in the relocation of
21 persons and organizations displaced as a result of carrying out the
22 development or redevelopment project and other improvements
23 necessary for carrying out the project plan, together with those
24 site improvements that are necessary for the preparation of any

1 sites and making any land or improvements acquired in the project
2 area available, by sale or lease, for public housing or for
3 development, redevelopment or rehabilitation by private enterprise
4 for commercial or industrial uses in accordance with the plan;

5 (D) The construction of capital improvements within a
6 development or redevelopment district designed to increase or
7 enhance the development of commerce, industry or housing within the
8 development project area; or

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

11 (9) "Development or redevelopment district" means an area
12 proposed by one or more agencies as a development or redevelopment
13 district which may include one or more counties, one or more
14 municipalities or any combination thereof, that has been approved
15 by the county commission of each county in which the project area
16 is located if the project is located outside the corporate limits
17 of a municipality, or by the governing body of a municipality if
18 the project area is located within a municipality, or by both the
19 county commission and the governing body of the municipality when
20 the development or redevelopment district is located both within
21 and without a municipality.

22 (10) "Economic development area" means any area or portion of
23 an area within the boundaries of a development or redevelopment
24 district located within the territorial limits of a municipality or

1 county that does not meet the requirements of subdivisions (3) and
2 (4) of this subsection and for which the county commission finds
3 that development or redevelopment will not be solely used for
4 development of commercial businesses that will unfairly compete in
5 the local economy and that development or redevelopment is in the
6 public interest because it will:

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

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

11 (C) Result in preservation or enhancement of the tax base of
12 the county or municipality.

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

15 (12) "Incremental value", for any development or redevelopment
16 district, means the difference between the base assessed value and
17 the current assessed value. The incremental value will be positive
18 if the current value exceeds the base value and the incremental
19 value will be negative if the current value is less than the base
20 assessed value.

21 (13) "Includes" and "including", when used in a definition
22 contained in this article, shall not ~~be deemed to~~ exclude other
23 things otherwise within the meaning of the term being defined.

24 (14) "Local levying body" means the county board of education

1 and the county commission and includes the governing body of a
2 municipality when the development or redevelopment district is
3 located, in whole or in part, within the boundaries of the
4 municipality.

5 (15) "Obligations" or "tax increment financing obligations"
6 means bonds, loans, debentures, notes, special certificates or
7 other evidences of indebtedness issued by a county commission or
8 municipality pursuant to this article to carry out a development or
9 redevelopment project or to refund outstanding obligations under
10 this article.

11 (16) "Order" means an order of the county commission adopted
12 in conformity with the provisions of this article and as provided
13 in this chapter.

14 (17) "Ordinance" means a law adopted by the governing body of
15 a municipality in conformity with the provisions of this article
16 and as provided in chapter eight of this code.

17 (18) "Payment in lieu of taxes" means those estimated revenues
18 from real property and tangible personal property having a tax
19 situs in the area selected for a development or redevelopment
20 project which revenues, according to the development or
21 redevelopment project or plan, are to be used for a private use,
22 which levying bodies would have received had a county or
23 municipality not adopted one or more tax increment financing plans
24 and which would result from levies made after the date of adoption

1 of a tax increment financing plan during the time the current
2 assessed value of all taxable real and tangible personal property
3 in the area selected for the development or redevelopment project
4 exceeds the total base assessed value of all taxable real and
5 tangible personal property in the development or redevelopment
6 district until the designation is terminated as provided in this
7 article.

8 (19) "Person" means any natural person, and any corporation,
9 association, partnership, limited partnership, limited liability
10 company or other entity, regardless of its form, structure or
11 nature, other than a government agency or instrumentality.

12 (20) "Private project" means any project that is subject to ad
13 valorem property taxation in this state or to a payment in lieu of
14 tax agreement that is undertaken by a project developer in
15 accordance with a tax increment financing plan in a development or
16 redevelopment district.

17 (21) "Project" means any capital improvement, facility or
18 both, as specifically set forth and defined in the project plan,
19 requiring an investment of capital including, but not limited to,
20 extensions, additions or improvements to existing facilities,
21 including water or wastewater facilities, and the remediation of
22 contaminated property as provided for in article twenty-two,
23 chapter twenty-two of this code, but does not include performance
24 of any governmental service by a county or municipal government.

1 (22) "Project area" means an area within the boundaries of a
2 development or redevelopment district in which a development or
3 redevelopment project is undertaken as specifically set forth and
4 defined in the project plan.

5 (23) "Project costs" means expenditures made in preparation of
6 the development or redevelopment project plan and made, or
7 estimated to be made, or monetary obligations incurred, or
8 estimated to be incurred, by the county commission which are listed
9 in the project plan as capital improvements within a development or
10 redevelopment district, plus any costs incidental thereto.
11 "Project costs" include, but are not limited to:

12 (A) Capital costs, including, but not limited to, the actual
13 costs of the construction of public works or improvements, capital
14 improvements and facilities, new buildings, structures and
15 fixtures, the demolition, alteration, remodeling, repair or
16 reconstruction of existing buildings, structures and fixtures,
17 environmental remediation, parking and landscaping, the acquisition
18 of equipment and site clearing, grading and preparation;

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

23 (C) Real property assembly costs, meaning any deficit incurred
24 resulting from the sale or lease as lessor by the county commission

1 of real or personal property having a tax situs within a
2 development or redevelopment district for consideration that is
3 less than its cost to the county commission;

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

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

11 (F) Relocation costs including, but not limited to, those
12 relocation payments made following condemnation and job training
13 and retraining;

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

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

23 (I) That portion of costs related to the construction of
24 environmental protection devices, storm or sanitary sewer lines,

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

7 (24) "Project developer" means any person who engages in the
8 development of projects in the state.

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

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

20 (27) "Redevelopment area" means an area designated by a county
21 commission or the governing body of a municipality in respect to
22 which the commission or governing body has made a finding that
23 there exist conditions which cause the area to be classified as a
24 blighted area, a conservation area, an economic development area or

1 a combination thereof, which area includes only those parcels of
2 real property directly and substantially benefitted by the proposed
3 redevelopment project located within the development or
4 redevelopment district or land contiguous thereto.

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

14 (29) "Tax increment" means the amount of regular levy property
15 taxes attributable to the amount by which the current assessed
16 value of real and tangible personal property having a tax situs in
17 a development or redevelopment district exceeds the base assessed
18 value of the property.

19 (30) "Tax increment financing fund" means a separate fund for
20 a development or redevelopment district established by the county
21 commission or governing body of the municipality into which all tax
22 increment revenues and other pledged revenues are deposited and
23 from which projected project costs, debt service and other
24 expenditures authorized by this article are paid.

1 (31) "This code" means the Code of West Virginia, 1931, as
2 amended by the Legislature.

3 (32) "Total ad valorem property tax regular levy rate" means
4 the aggregate levy rate of all levying bodies on all taxable
5 property having a tax situs within a development or redevelopment
6 district in a tax year but does not include excess levies, levies
7 for general obligation bonded indebtedness or any other levies that
8 are not regular levies.

NOTE: The purpose of this bill is to add items to those which
are excluded from base assessed value and current assessed of real
and personal property in the tax increment financing article.

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