



1 the first forty-eight months following their creation.

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

3 That §7-22-7 of the Code of West Virginia, 1931, as amended,  
4 be amended and reenacted; and that §8-38-7 of said code be amended  
5 and reenacted, all to read as follows:

6 **CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.**

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

8 **§7-22-7. Application to Development Office for approval of an**  
9 **economic opportunity development district project.**

10 (a) *General.* -- The Development Office shall receive and act  
11 on applications filed with it by county commissions pursuant to  
12 section six of this article. Each application must include:

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

15 (2) The total cost of the project;

16 (3) A reasonable estimate of the number of months needed to  
17 complete the project;

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

21 (5) A description of the proposed method of financing the  
22 development expenditures, together with a description of the  
23 reserves to be established for financing ongoing development

1 expenditures necessary to permanently maintain the optimum economic  
2 viability of the district following its inception: *Provided*, That  
3 the amounts of the reserves may not exceed the amounts that would  
4 be required by prevailing commercial capital market considerations;

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

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

12 (8) Identification of any businesses that the county  
13 commission expects to relocate their business locations from the  
14 district to another place in the state in connection with the  
15 establishment of the district or from another place in this state  
16 to the district: *Provided*, That for purposes of this article, any  
17 entities shall be designated "relocated entities";

18 (9) Identification of any businesses currently conducting  
19 business in the proposed economic opportunity development district  
20 that the county commission expects to continue doing business there  
21 after the district is created;

22 (10) A good faith estimate of the aggregate amount of  
23 consumers sales and service tax that was actually remitted to the  
24 Tax Commissioner by all business locations identified as provided

1 in subdivisions (8) and (9) of this subsection with respect to  
2 their sales made and services rendered from their then current  
3 business locations that will be relocated from, or to, or remain in  
4 the district, for the twelve full calendar months next preceding  
5 the date of the application: *Provided*, That for purposes of this  
6 article, the aggregate amount is designated as "the base tax  
7 revenue amount";

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

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

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

24 (14) Any additional information the Development Office may

1 require.

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

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

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

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

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

19       (5) Whether there is substantial and credible evidence that  
20 the project is likely to be started and completed in a timely  
21 fashion;

22       (6) Whether the project will, directly or indirectly, improve  
23 the opportunities in the area where the project will be located for  
24 the successful establishment or expansion of other industrial or

1 commercial businesses;

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

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

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

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

13 (11) Whether the project is consistent with the goals of this  
14 article;

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

17 (13) (A) The ability of the county commission and the project  
18 developer or project team to carry out the project: *Provided*, That  
19 no project may be approved by the Development Office unless the  
20 amount of all development expenditures proposed to be made in the  
21 first twenty-four months following the creation of the district  
22 results in capital investment of more than \$75 million in the  
23 district and the county submits clear and convincing information,  
24 to the satisfaction of the Development Office, that the investment

1 will be made if the Development Office approves the project and the  
2 Legislature authorizes the county commission to levy an excise tax  
3 on sales of goods and services made within the economic opportunity  
4 district as provided in this article.

5 (B) Notwithstanding any provision of paragraph (A) of this  
6 subdivision to the contrary, no project involving remediation may  
7 be approved by the Development Office unless the amount of all  
8 development expenditures proposed to be made in the first  
9 forty-eight months following the creation of the district results  
10 in capital investment of more than \$75 million in the district. In  
11 addition to the remaining provisions of paragraph (A) of this  
12 subdivision the Development Office may not approve a project  
13 involving remediation authorized under section five of this article  
14 unless the county commission submits clear and convincing  
15 information, to the satisfaction of the Development Office, that  
16 the proposed remediation expenditures to be financed by the  
17 issuance of bonds or notes pursuant to section sixteen of this  
18 article do not constitute more than twenty-five percent of the  
19 total development expenditures associated with the project.

20 (c) *Additional criteria.* -- The Development Office may  
21 establish other criteria for consideration when approving the  
22 applications.

23 (d) *Action on the application.* -- The Executive Director of  
24 the Development Office shall act to approve or not approve any

1 application within thirty days following the receipt of the  
2 application or the receipt of any additional information requested  
3 by the Development Office, whichever is the later.

4 (e) *Certification of project.* -- If the Executive Director of  
5 the Development Office approves a county's economic opportunity  
6 district project application, he or she shall issue to the county  
7 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



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

1 subsection (a) of this section.

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

9                   **CHAPTER 8. MUNICIPAL CORPORATIONS.**

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

11 **§8-38-7. Application to Development Office for approval of an**  
12                   **economic opportunity development district project.**

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

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

18       (2) The total cost of the project;

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

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

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

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

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

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

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

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

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

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

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

1 months after the month in which the Tax Commissioner would first  
2 begin to collect that tax; and

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

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

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

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

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

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

22 (5) Whether there is substantial and credible evidence that  
23 the project is likely to be started and completed in a timely  
24 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: *Provided*, That the Development Office should  
12 consider whether the economic development project is large enough  
13 to require that it contain a mixed use development provision  
14 consisting of a housing component with at least ten percent of  
15 housing units in the district allocated for affordable housing;

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

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

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

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

24           (13) (A) The ability of the municipality and the project

1 developer or project team to carry out the project: *Provided, That*  
2 no project may be approved by the Development Office unless the  
3 amount of all development expenditures proposed to be made in the  
4 first twenty-four months following the creation of the district  
5 results in capital investment of more than \$75 million in the  
6 district and the municipality submits clear and convincing  
7 information, to the satisfaction of the Development Office, that  
8 the investment will be made if the Development Office approves the  
9 project and the Legislature authorizes the municipality to levy an  
10 excise tax on sales of goods and services made within the economic  
11 opportunity development district as provided in this article.

12 (B) Notwithstanding any provision of paragraph (A) of this  
13 subdivision to the contrary, no project involving remediation may  
14 be approved by the Development Office unless the amount of all  
15 development expenditures proposed to be made in the first  
16 forty-eight months following the creation of the district results  
17 in capital investment of more than \$75 million in the district. In  
18 addition to the remaining provisions of paragraph (A) of this  
19 subdivision the Development Office may not approve a project  
20 involving remediation authorized under section five of this article  
21 unless the municipality submits clear and convincing information,  
22 to the satisfaction of the Development Office, that the proposed  
23 remediation expenditures to be financed by the issuance of bonds or  
24 notes pursuant to section sixteen of this article do not constitute

1 more than twenty-five percent of the total development expenditures  
2 associated with the project.

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

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

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

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



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

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

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

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

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