

H. B. 2508

(By Mr. Speaker, (Mr. Thompson) and Delegate Armstead)
[By Request of the Executive]
[Introduced February 15, 2013; referred to the
Committee on Finance.]

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10 A Bill to amend and reenact §7-22-7 of the Code of West Virginia,
11 1931, as amended; and to amend and reenact §8-38-7 of said
12 code, all relating to the amount of capital investment
13 required as a prerequisite to approval of an economic
14 opportunity development district project; increasing the
15 capital investment threshold amount from more than \$25 million
16 to more than \$75 million for development expenditures proposed
17 to be made in county economic opportunity development
18 districts and in municipal economic opportunity development
19 districts in the first twenty-four months following their
20 creation; and increasing the capital investment threshold
21 amount from more than \$25 million to more than \$75 million for
22 development expenditures in a project involving remediation to
23 be made in county economic opportunity development districts
24 and in municipal economic opportunity development districts in

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 ~~\$25~~ \$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 ~~\$25~~ \$75 million in the district.
11 In 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 ~~\$25~~ \$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 ~~\$25~~ \$75 million in the district.
18 In 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.

NOTE: The purpose of this bill is to increase the minimum capital investment threshold from more than \$25 million to more than \$75 million for sales tax increment financing in county and municipal economic opportunity development districts.

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

Committee Recommended Title Amendment: A Bill to amend and reenact §7-22-7 of the Code of West Virginia, 1931, as amended; and to amend and reenact §8-38-7 of said code, all relating to the amount of capital investment required as a prerequisite to approval of an economic opportunity development district project; increasing the capital investment threshold amount from more than \$25 million to more than \$75 million for development expenditures proposed to be made in county economic opportunity development districts and in municipal economic opportunity development districts in the first twenty-four months following their creation; and increasing the capital investment threshold amount

from more than \$25 million to more than \$75 million for development expenditures in a project involving remediation to be made in county economic opportunity development districts and in municipal economic opportunity development districts in the first forty-eight months following their creation."