

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 439**

4 (By Senators Fitzsimmons, Kessler (Mr. President), Beach, Edgell
5 and Yost)

6 _____
7 [Originating in the Committee on Finance;
8 reported February 21, 2014.]
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12 A BILL to amend and reenact §7-22-9 and §7-22-15 of the Code of
13 West Virginia, 1931, as amended, all relating to permitting
14 the Ohio county commission to levy a special district excise
15 tax; increasing the Fort Henry economic opportunity
16 development project district from three hundred to five
17 hundred contiguous acres of land; specifying that the Fort
18 Henry Economic Opportunity Development District shall not be
19 abolished until the year 2044, unless sooner abolished by
20 the county commission after notice of public hearing;
21 specifying that any district for which legislative
22 authorization of the county commission to levy special

1 district excise taxes was enacted after December 31, 2013,
2 shall cease to exist and be abolished by operation of law on
3 December 31 of the thirtieth calendar year subsequent to the
4 year of enactment of such legislative authorization to levy
5 special district excise taxes in the district; specifying
6 that any district for which legislative authorization of the
7 county commission to levy special district excise taxes was
8 enacted prior to December 31, 2013, shall cease to exist and
9 be abolished by operation of law on December 31 of the
10 thirtieth calendar year subsequent to the initial year of
11 enactment of such legislative authorization to levy special
12 district excise taxes in the district, if an amendment to
13 the district boundary, size or acreage is authorized, or
14 other amendment relating to the district is authorized,
15 after December 31, 2013; specifying that special district
16 excise tax may not be levied, imposed or collected in or
17 from an abolished district or from or on any business
18 located therein or on any transaction occurring therein
19 after the cessation and abolishment of the district;
20 specifying that nothing in this code shall not be
21 interpreted to abrogate or hinder the authority of the Tax
22 Commissioner to collect, receive, process or administer any

1 special district excise tax accrued, due or payable for any
2 tax period prior to the cessation and abolishment of the
3 district, or to audit and issue assessments of tax,
4 interest, additions to tax and penalties for the collection,
5 remittance and enforcement thereof; specifying that upon
6 cessation and abolishment of a district, the consumers sales
7 and service tax and use tax and municipal consumers sales
8 and service tax and use tax, if applicable, shall be
9 imposed, collected, levied and remitted, as provided by law
10 for sales and uses in the previously authorized district;
11 and providing definitions.

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

13 That §7-22-9 and §7-22-15 of the Code of West Virginia,
14 1931, as amended, be amended and reenacted, all to read as
15 follows:

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

17 **§7-22-9. Authorization to levy special district excise tax.**

18 (a) *General.* -- County commissions have no inherent
19 authority to levy taxes and have only that authority expressly
20 granted to them by the Legislature. The Legislature is
21 specifically extended, and intends by this article, to exercise
22 certain relevant powers expressed in section six-a, article X of

1 the Constitution of this state as follows: (1) The Legislature
2 may appropriate state funds for use in matching or maximizing
3 grants-in-aid for public purposes from the United States or any
4 department, bureau, commission or agency thereof, or any other
5 source, to any county, municipality or other political
6 subdivision of the state, under such circumstances and subject to
7 such terms, conditions and restrictions as the Legislature may
8 prescribe by law; and (2) the Legislature may impose a state tax
9 or taxes or dedicate a state tax or taxes or any portion thereof
10 for the benefit of and use by counties, municipalities or other
11 political subdivisions of the state for public purposes, the
12 proceeds of any such imposed or dedicated tax or taxes or portion
13 thereof to be distributed to such counties, municipalities or
14 other political subdivisions of the state under such
15 circumstances and subject to such terms, conditions and
16 restrictions as the Legislature may prescribe.

17 Because a special district excise tax would have the effect
18 of diverting, for a specified period of years, tax dollars which
19 to the extent, if any, are not essentially incremental to tax
20 dollars currently paid into the General Revenue Fund of the
21 state, the Legislature finds that in order to substantially
22 ensure that such special district excise taxes will not adversely

1 impact the current level of the General Revenue Fund of the
2 state, it is necessary for the Legislature to separately consider
3 and act upon each and every economic development district which
4 is proposed, including the unique characteristics of location,
5 current condition and activity of and within the area included in
6 such proposed economic opportunity development district and that
7 for such reasons a statute more general in ultimate application
8 is not feasible for accomplishment of the intention and purpose
9 of the Legislature in enacting this article. Therefore, no
10 economic opportunity development district excise tax may be
11 levied by a county commission until after the Legislature
12 expressly authorizes the county commission to levy a special
13 district excise tax on sales of tangible personal property and
14 services made within district boundaries approved by the
15 Legislature.

16 (b) *Authorizations.* -- The Legislature authorizes the
17 following county commissions to levy special district excise
18 taxes on sales of tangible personal property and services made
19 from business locations in the following economic opportunity
20 development districts:

21 (1) The Ohio County Commission may levy a special district
22 excise tax for the benefit of the Fort Henry Economic Opportunity

1 Development ~~project~~ District which comprises ~~three~~ five hundred
2 contiguous acres of land. Notwithstanding the time limitations
3 provisions of subdivision two, subsection (a), section fifteen of
4 this article, the Fort Henry Economic Opportunity Development
5 District shall not be abolished under subdivision two, subsection
6 (a), section fifteen of this article until the year 2044, unless
7 sooner abolished and terminated in accordance with the provisions
8 of subdivision one, subsection (a), section fifteen of this
9 article or any other provision of this code, or sooner abolished
10 for any other reason: *Provided*, That on December 31, 2044, the
11 provisions of subdivision two, subsection (a), section fifteen of
12 this article shall apply to abolish the Fort Henry Economic
13 Opportunity Development District, if the district has not been
14 abolished prior to that date.

15 (2) The Harrison County commission may levy a special
16 district excise tax for the benefit of the Charles Pointe
17 Economic Opportunity Development District which comprises four
18 hundred thirty-seven acres of land; and

19 (3) The Monongalia County commission may levy a special
20 district excise tax for the benefit of the University Town Centre
21 Economic Opportunity District which comprises approximately one
22 thousand four hundred fifty contiguous acres of land.

1 §7-22-15. **Abolishment and dissolution of district; notice;**
2 **hearing.**

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

16 (2) *Thirty-year limitations.* --

17 (A) *Thirty-year limitation on new districts.* --
18 Notwithstanding subdivision (1) of this subsection, and
19 notwithstanding any other provision of this code to the contrary,
20 any district for which the date of initial enactment was after
21 December 31, 2013, shall cease to exist and shall be abolished by
22 operation of law, at 11:59 P.M., United States eastern time zone,

1 on December 31 of the thirtieth calendar year subsequent to the
2 initial year of enactment. Special district excise tax may not be
3 levied, imposed or collected in or from the district so abolished
4 or from or on any business located therein or any transaction
5 occurring therein after the cessation and abolishment of the
6 district.

7 (B) *Thirty-year limitation on preexisting districts*
8 *receiving authorization for boundary changes or other changes*
9 *after December 31, 2013.* -- Notwithstanding subdivision (1) of
10 this subsection, notwithstanding any other provision of this Code
11 to the contrary and notwithstanding a date of initial enactment
12 for a district that is prior to December 31, 2013, if legislative
13 authorization is enacted after December 31, 2013, to expand or
14 amend the previously authorized boundary, size or acreage of the
15 district, or make any other amendment or change relating to the
16 district, such district shall cease to exist and shall be
17 abolished by operation of law, at 11:59 P.M., United States
18 eastern time zone, on December 31 of the thirtieth calendar year
19 subsequent to the initial year of enactment. Special district
20 excise tax may not be levied, imposed or collected in or from the
21 district so abolished or from or on any business located therein

1 or any transaction occurring therein after the cessation and
2 abolishment of the district.

3 (C) Definitions. -- For purposes of this subdivision:

4 (i) The term "date of initial enactment" means the date of
5 passage of legislation whereby legislative authorization was
6 first enacted for the county commission to levy special district
7 excise taxes for a district, and prior to enactment of any
8 legislative authorization to expand or amend the authorized
9 boundary, size or acreage of the district, or make any other
10 amendment or change relating to the district as originally
11 authorized.

12 (ii) The term "initial year of enactment" means the calendar
13 year during which the date of initial enactment occurred.

14 (D) This section shall not be interpreted to abrogate or
15 hinder the authority of the Tax Commissioner to collect, receive,
16 process or administer any special district excise tax accrued,
17 due or payable for any tax period prior to the cessation and
18 abolishment of the district, or to audit and issue assessments of
19 tax, interest, additions to tax and penalties for the collection,
20 remittance and enforcement thereof.

21 (E) Upon cessation and abolishment of a district under this
22 section or any provision of this code, or any cessation or

1 abolishment of a district for any reason, the consumers sales and
2 service tax and use tax and municipal consumers sales and service
3 tax and use tax, if applicable, shall be imposed, collected,
4 levied and remitted, as provided by law for sales and uses in the
5 previously authorized district.

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

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

1 (d) *Reinstatement of district.* -- Following abolishment of a
2 district pursuant to this section, its reinstatement requires
3 compliance with all requirements and procedures set forth in this
4 article for the initial development, approval, establishment and
5 creation of an economic opportunity development district.