

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 2562**

4 (By Mr. Speaker, (Mr. Armstead) and Delegate Miley)  
5 [By Request of the Executive]

6 (Originating in the Committee on Finance)

7 [February 18, 2015]

8  
9  
10 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,  
11 designated §7-22-7a, relating to sales tax increment financing; authorizing recalculation of  
12 the base tax revenue amount, subject to specified limitations; specifying that, upon written  
13 request of the county commission, filed not later than April 30, 2015, with the Development  
14 Office, base tax revenue amounts greater than \$1 million for a given district may be  
15 recalculated; specifying limitations on changes to the base tax revenue amount; specifying  
16 that the recalculated base tax revenue amount shall be used to determine the net annual  
17 district tax revenue amount for the district beginning on July 1, 2015; specifying that  
18 decrease to base tax revenue amount upon recalculation is limited to \$1 million dollars;  
19 specifying that no adjustment, refund, payment or repayment of special district excise tax,  
20 or consumers sales and service tax and use tax, or net annual district tax revenue amount, or  
21 accrual thereof, attributable to periods prior to July 1, 2015, shall change the base tax revenue  
22 amount as recalculated; providing for the sharing of certain information respecting the  
23 district; defining terms; specifying that, if tax revenues in a sales tax increment financing  
24 district are deficient, such that the amount withheld in any month is insufficient to fully

1 recover the base tax revenue amount attributable to that month, that such deficit shall be  
2 carried forward to subsequent months until the base tax revenue amount deficit is paid; and  
3 specifying that any unpaid deficit carried forward shall be discharged and set at zero on the  
4 first day of each fiscal year.

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

6 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new  
7 section, designated §7-22-7a, to read as follows:

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

9 **§7-22-7a. Base tax revenue amount.**

10 (a) Recalculation of base tax revenue amount. --

11 (1) If the base tax revenue amount determined under section seven of this article is greater  
12 than \$1 million for a given district, then, upon written request of the county commission that has  
13 established the economic opportunity development district pursuant to this article, filed with the  
14 Executive Director of the Development Office not later than April 30, 2015, the base tax revenue  
15 amount for that district shall be recalculated by the Tax Commissioner as the aggregate annual  
16 amount of special district excise tax due and owing and remitted to the Tax Commissioner by all  
17 business locations located in the district with respect to sales made and services rendered from  
18 business locations in the district, for the twelve full calendar months next succeeding the date the  
19 special district excise tax was first collected in the district.

20 (2) Limitation -- If the base tax revenue amount determined under section seven of this article

21 exceeds the amount determined under subdivision (1) of this subsection by more than \$1 million,  
22 then the recalculated base tax revenue amount for purposes of this article is the base tax revenue  
23 amount previously determined under section seven of this article minus \$1 million.

1           (3) Effective date. –

2           (A) The recalculated base tax revenue amount determined under this section shall be the  
3 amount used to determine the net annual district tax revenue amount for the district beginning on  
4 July 1, 2015. For purposes of this article, “net annual district tax revenue amount” means the gross  
5 annual district tax revenue amount minus the base tax revenue amount. For purposes of this article,  
6 “gross annual district tax revenue amount” means the amount of special district excise tax, net of  
7 refunds and adjustments, collected from the district before subtraction of the base tax revenue  
8 amount.

9           (B) The recalculated base tax revenue amount shall only be applicable to determine the net  
10 annual district tax revenue amount for periods beginning on and after July 1, 2015. The recalculated  
11 base tax revenue amount determined pursuant to this section is prospective in operation, and no  
12 adjustment, refund, payment or repayment of special district excise tax, or consumers sales and  
13 service tax and use tax, or net annual district tax revenue amount, or accrual thereof, attributable to  
14 periods prior to July 1, 2015, shall affect recalculation of the base tax revenue amount.

15           (b) Base tax revenue amount carry forward, recovery, recovery limitation.

16           (1) Notwithstanding any provision of section twelve of this article to the contrary, and  
17 notwithstanding the provisions of section eleven-a, article ten, chapter eleven of this code, if the  
18 amount of special district excise tax due and owing and collected in a calendar month is less than  
19 one-twelfth of the base tax revenue amount, the State Treasurer shall deposit the full amount of  
20 special district excise tax collections for that month into the General Revenue Fund of this state. In  
21 order to account for deficient special district excise tax collections in prior months for an economic  
22 opportunity development district, the State Treasurer shall deposit the full amount of special district  
23 excise tax collections into the General Revenue Fund in subsequent months during the fiscal year

1 in which the deficiencies occurred, in amounts that may exceed one-twelfth of the base tax revenue  
2 amount, until past monthly deficiencies for that fiscal year are satisfied in full. Upon payment in full  
3 of past monthly deficiencies for such fiscal year, only one-twelfth of the base tax revenue amount  
4 shall be transferred to the General Revenue Fund for each month. Any monthly deficiencies shall  
5 be carried forward and accounted for in subsequent months only during the fiscal year in which such  
6 deficiencies occurred. On the first day of each fiscal year, any monthly deficiencies for an economic  
7 opportunity development district remaining from the prior fiscal year shall be discharged and shall  
8 not be taken into consideration by the State Treasurer when the monthly deposits are made to the  
9 General Revenue Fund pursuant to this section. For purposes of this section, fiscal year refers to the  
10 July 1 to June 30 fiscal year for the State of West Virginia.

11 (2) Notwithstanding the provisions of subdivisions (2) and (3), subsection (d) section eleven-  
12 a, article ten, chapter eleven of this code, the provisions of this subsection apply to, and are limited  
13 to, the circumstance where the amount of special district excise tax due and owing and collected in  
14 a calendar month is less than one-twelfth of the base tax revenue amount. All other corrections of,  
15 or relating to, any erroneous distribution, transfer, allocation, overpayment or underpayment of  
16 moneys or any adjustments otherwise necessary with relation to erroneous distributions, transfers,  
17 allocations, overpayments or underpayments of moneys, deposits, collections, or payments of special  
18 district excise tax shall be made in accordance with the provisions of section twenty-six, article ten,  
19 chapter eleven of this code.

20 (c) *Limitation on changes to base tax revenue amount.*

21 Except pursuant to a lawful recalculation of the base tax revenue amount under this section,  
22 or a lawful modification of geographical area included in a district under this article, the base tax  
23 revenue amount may not be modified, increased or decreased by reason of any change in law or fact

1 relating to the consumers sales and service tax and use tax or to the base tax revenue amount  
2 determined under this article. No current, retrospective or prospective tax reporting anomaly,  
3 permutation of tax filing configuration, failure of tax payment, failure of tax filing, tax adjustment,  
4 claim for a tax refund, issuance of a tax refund, entitlement to a tax refund, claim for a tax credit,  
5 issuance of a tax credit, or entitlement to a tax credit, relating to, or affecting, consumers sales and  
6 service tax or use tax paid or payable in the district or special district excise tax paid or payable in  
7 the district, either prior to the date upon which the base tax revenue amount was determined under  
8 this article or subsequent to the date upon which the base tax revenue amount was determined under  
9 this article, changes in any way the base tax revenue amount.

10 (d) *Sharing of District Information.*

11 (1) Notwithstanding the provisions of section five-d, article ten, chapter eleven of this code:

12 (A) So long as bonds are outstanding pursuant to this article, the Tax Commissioner shall  
13 provide on a monthly basis to the trustee for bonds issued pursuant to this article information on or  
14 derived from special district excise tax returns submitted pursuant to this article; and

15 (B) The trustee may share the information so obtained with the county commission that  
16 established the economic opportunity development district that issued the bonds pursuant to this  
17 article, with financial advisors registered or licensed with the appropriate oversight agency to act in  
18 such capacity and with underwriters and placement agents registered or licensed with the appropriate  
19 oversight agency to act in such capacity, that have been engaged by the county commission, and with  
20 the bondholders and with bond counsel for bonds issued pursuant to this article. The Tax  
21 Commissioner and the trustee may enter into a written agreement in order to accomplish exchange  
22 of the information.

23 (C) If bonds are not outstanding pursuant to this article, the Tax Commissioner shall provide

1 on a monthly basis to the county commission that has established the economic opportunity  
2 development district pursuant to this article, information on or derived from special district excise  
3 tax returns submitted pursuant to this article; and

4 (D) The county commission may share the information so obtained with legal counsel for the  
5 county commission and with financial advisors registered or licensed with the appropriate oversight  
6 agency to act in such capacity and with underwriters and placement agents registered or licensed with  
7 the appropriate oversight agency to act in such capacity, that have been engaged by the county  
8 commission. The Tax Commissioner and the county commission may enter into a written agreement  
9 in order to accomplish exchange of the information.

10 (2) Any confidential information provided pursuant to this subsection shall be used solely  
11 for the protection and enforcement of the rights and remedies of the bondholders of bonds issued  
12 pursuant to this article, or, if there be none such, then, the district board of the district, or, if there  
13 be none such, then, the county commission that established the economic opportunity development  
14 district pursuant to this article. Any person or entity that is in possession of information disclosed  
15 by the Tax Commissioner, including but not limited to, the trustee and the county commission, and  
16 any person or entity that is in possession of information disclosed by or shared by the trustee  
17 pursuant to this subdivision, or disclosed by or shared by the county commission pursuant to this  
18 subdivision, is subject to the provisions of section five-d, article ten, chapter eleven of this code with  
19 relation to further disclosure of such information, as if the person or entity that is in possession of  
20 the tax information is an officer, employee, agent or representative of this state or of a local or  
21 municipal governmental entity or other governmental subdivision. This section does not prohibit the  
22 publication or release of statistics so classified as to prevent the identification of particular returns  
23 and the items thereof and the identity of specific taxpayers. For purposes of this article the term

- 1 “confidential information” means information subject to the confidentiality restrictions of section
- 2 five-d, article ten, chapter eleven of this code.