

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Originating

Senate Bill 627

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JEFFRIES, SMITH, SWOPE, BALDWIN, CLEMENTS, AND
FERNES

[Originating in the Committee on the Judiciary;

Reported on February 21, 2018]

1 A BILL to amend and reenact §7-22-7a of the Code of West Virginia, 1931, as amended; and to
2 amend and reenact §8-38-12 of said code, all relating to permitting local governments to
3 access certain tax records related to local economic opportunity development projects;
4 requiring a bond trustee to share certain tax information related to an economic
5 opportunity development district with the county or municipality that established the
6 district; requiring the Tax Commissioner to share certain tax information related to an
7 economic opportunity development district with the county or municipality that established
8 the district; and requiring the Tax Commissioner to share certain tax information related
9 to a potential economic opportunity district within the county or municipality that submitted
10 an application for the creation of the district.

Be it enacted by the Legislature of West Virginia:

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 22. COUNTY ECONOMIC OPPORTUNITY DEVELOPMENT DISTRICTS.

§7-22-7a. Base tax revenue amount.

1 (a) *Recalculation of base tax revenue amount.* –
2 (1) If the base tax revenue amount determined under §7-22-7 of this code is greater than
3 \$1 million for a given district, then, upon written request of the county commission that has
4 established the economic opportunity development district pursuant to this article, filed with the
5 Executive Director of the Development Office not later than April 30, 2015, the base tax revenue
6 amount for that district shall be recalculated by the Tax Commissioner as the aggregate annual
7 amount of special district excise tax due and owing and remitted to the Tax Commissioner by all
8 business locations located in the district with respect to sales made and services rendered from
9 business locations in the district, for the 12 full calendar months next succeeding the date the
10 special district excise tax was first collected in the district.
11 (2) *Limitation.* – If the base tax revenue amount determined under §7-22-7 of this code

12 exceeds the amount determined under §7-22-7a(a)(1) of this code by more than \$1 million, then
13 the recalculated base tax revenue amount for purposes of this article is the base tax revenue
14 amount previously determined under §7-22-7 of this code minus \$1 million.

15 (3) *Effective date.* –

16 (A) The recalculated base tax revenue amount determined under this section shall be the
17 amount used to determine the net annual district tax revenue amount for the district beginning on
18 July 1, 2015. For purposes of this article, “net annual district tax revenue amount” means the
19 gross annual district tax revenue amount minus the base tax revenue amount. For purposes of
20 this article, “gross annual district tax revenue amount” means the amount of special district excise
21 tax, net of refunds and adjustments, collected from the district before subtraction of the base tax
22 revenue amount.

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

30 (b) *Base tax revenue amount carry forward, recovery, recovery limitation.* –

31 (1) Notwithstanding any provision of §7-22-12 of this code to the contrary, and
32 notwithstanding the provisions of §11-10-11a of this code, if the amount of special district excise
33 tax due and owing and collected in a calendar month is less than one twelfth of the base tax
34 revenue amount, the State Treasurer shall deposit the full amount of special district excise tax
35 collections for that month into the General Revenue Fund of this state. In order to account for
36 deficient special district excise tax collections in prior months for an economic opportunity
37 development district, the State Treasurer shall deposit the full amount of special district excise

38 tax collections into the General Revenue Fund in subsequent months during the fiscal year in
 39 which the deficiencies occurred, in amounts that may exceed one twelfth of the base tax revenue
 40 amount, until past monthly deficiencies for that fiscal year are satisfied in full. Upon payment in
 41 full of past monthly deficiencies for such fiscal year, only one twelfth of the base tax revenue
 42 amount shall be transferred to the General Revenue Fund for each month. Any monthly
 43 deficiencies shall be carried forward and accounted for in subsequent months only during the
 44 fiscal year in which such deficiencies occurred. On the first day of each fiscal year, any monthly
 45 deficiencies for an economic opportunity development district remaining from the prior fiscal year
 46 shall be discharged and shall not be taken into consideration by the State Treasurer when the
 47 monthly deposits are made to the General Revenue Fund pursuant to this section. For purposes
 48 of this section, fiscal year refers to the July 1 to June 30 fiscal year for the State of West Virginia.

49 (2) Notwithstanding the provisions of §11-10-11a(d)(2) and §11-10-11a(d)(3) of this code,
 50 the provisions of this subsection apply to, and are limited to, the circumstance where the amount
 51 of special district excise tax due and owing and collected in a calendar month is less than
 52 one-twelfth of the base tax revenue amount. All other corrections of, or relating to, any erroneous
 53 distribution, transfer, allocation, overpayment, or underpayment of moneys or any adjustments
 54 otherwise necessary with relation to erroneous distributions, transfers, allocations, overpayments,
 55 or underpayments of moneys, deposits, collections, or payments of special district excise tax shall
 56 be made in accordance with the provisions of §11-10-26 of this code.

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

58 Except pursuant to a lawful recalculation of the base tax revenue amount under this
 59 section, or a lawful modification of geographical area included in a district under this article, the
 60 base tax revenue amount may not be modified, increased, or decreased by reason of any change
 61 in law or fact relating to the consumers sales and service tax and use tax or to the base tax
 62 revenue amount determined under this article. No current, retrospective, or prospective tax
 63 reporting anomaly, permutation of tax filing configuration, failure of tax payment, failure of tax

64 filing, tax adjustment, claim for a tax refund, issuance of a tax refund, entitlement to a tax refund,
65 claim for a tax credit, issuance of a tax credit, or entitlement to a tax credit, relating to, or affecting,
66 consumers sales and service tax or use tax paid or payable in the district or special district excise
67 tax paid or payable in the district, either prior to the date upon which the base tax revenue amount
68 was determined under this article or subsequent to the date upon which the base tax revenue
69 amount was determined under this article, changes in any way the base tax revenue amount.

70 (d) *Sharing of district information.* –

71 (1) Notwithstanding the provisions of §11-10-5d of this code:

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

75 (B) The trustee ~~may~~ shall share the information so obtained with the county commission
76 that established the economic opportunity development district that issued the bonds pursuant to
77 this article; with financial advisors registered or licensed with the appropriate oversight agency to
78 act in such capacity; with underwriters and placement agents registered or licensed with the
79 appropriate oversight agency to act in such capacity, that have been engaged by the county
80 commission; ~~and~~ with the bondholders; and with bond counsel for bonds issued pursuant to this
81 article. The Tax Commissioner and the trustee may enter into a written agreement in order to
82 accomplish exchange of the information;

83 (C) If bonds are not outstanding pursuant to this article, the Tax Commissioner shall
84 provide on a monthly basis, to the county commission that has established the economic
85 opportunity development district pursuant to this article, information on or derived from special
86 district excise tax returns submitted pursuant to this article; ~~and~~

87 (D) The Tax Commissioner shall, upon the written request of a county commission that
88 has established an economic opportunity development district pursuant to this article, allow the
89 duly authorized agent of the county to inspect and make copies of all records of the Tax

90 Commissioner related to the collection of tax in that district pursuant to this article, including, but
91 not limited to, special district excise tax returns;

92 (E) The Tax Commissioner shall, upon the written request of a county commission that
93 has applied to establish an economic opportunity development district pursuant to §7-22-7 of this
94 code, allow the duly authorized agent of the county to inspect and make copies of all records of
95 the Tax Commissioner related to the base tax revenue amount certified by the Tax Commissioner
96 to the Development Office with regard to the proposed district; and

97 ~~(D)~~ (F) The county commission may share the information so obtained with legal counsel
98 for the county commission; ~~and~~ with financial advisors registered or licensed with the appropriate
99 oversight agency to act in such capacity; and with underwriters and placement agents registered
100 or licensed with the appropriate oversight agency to act in such capacity, that have been engaged
101 by the county commission. The Tax Commissioner and the county commission may enter into a
102 written agreement in order to accomplish exchange of the information.

103 (2) Any confidential information provided pursuant to this subsection shall be used solely
104 for the protection and enforcement of the rights and remedies of the bondholders of bonds issued
105 pursuant to this article, or, if there be none such, then, the district board of the district, or, if there
106 be none such, then, the county commission that established the economic opportunity
107 development district pursuant to this article. Any person or entity that is in possession of
108 information disclosed by the Tax Commissioner, including, but not limited to, the trustee and the
109 county commission, and any person or entity that is in possession of information disclosed by or
110 shared by the trustee pursuant to this subsection, or disclosed by or shared by the county
111 commission pursuant to this subsection, is subject to the provisions of §11-10-5d of this code with
112 relation to further disclosure of such information, as if the person or entity that is in possession of
113 the tax information is an officer, employee, agent, or representative of this state or of a local or
114 municipal governmental entity or other governmental subdivision. This section does not prohibit
115 the publication or release of statistics so classified as to prevent the identification of particular

116 returns and the items thereof and the identity of specific taxpayers. For purposes of this article,
117 the term “confidential information” means information subject to the confidentiality restrictions of
118 §11-10-5d of this code.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 38. MUNICIPAL ECONOMIC OPPORTUNITY DEVELOPMENT DISTRICTS.

§8-38-12. Special district excise tax authorized.

1 (a) *General.* – The council of a municipality, authorized by the Legislature to levy a special
2 district excise tax for the benefit of an economic opportunity development district, may, by
3 ordinance, impose that tax on the privilege of selling tangible personal property and rendering
4 select services in the district in accordance with this section.

5 (b) *Tax base.* – The base of a special district excise tax imposed pursuant to this section
6 shall be identical to the base of the consumers sales and service tax imposed pursuant to
7 §11-15-1 *et seq.* of this code on sales made and services rendered within the boundaries of the
8 district. Sales of gasoline and special fuel are not subject to special district excise tax, but remain
9 subject to the tax levied by §11-15-1 *et seq.* of this code. Except for the exemption provided in
10 §11-15-9f of this code, all exemptions and exceptions from the consumers sales and service tax
11 also apply to the special district excise tax.

12 (c) *Tax rate.* – The rate or rates of a special district excise tax levied pursuant to this
13 section shall be stated in an ordinance enacted by the municipality and identical to the rate or
14 rates of the consumers sales and service tax imposed pursuant to §11-15-1 *et seq.* of this code
15 on sales rendered within the boundaries of the district authorized by this section.

16 (d) *Collection by Tax Commissioner.* – The ordinance of the municipality imposing a
17 special district excise tax shall provide for the tax to be collected by the Tax Commissioner in the
18 same manner as the tax levied by §11-15-3 of this code is administered, assessed, collected, and
19 enforced.

20 (1) The State Tax Commissioner may require the electronic filing of returns related to the
21 special district excise tax imposed pursuant to this section and may require the electronic payment
22 of the special district excise tax imposed pursuant to this section. The State Tax Commissioner
23 may prescribe by rules adopted or proposed pursuant to §23A-3-1 *et seq.* of this code
24 administrative notices, and forms and instructions, the procedures and criteria to be followed to
25 electronically file those returns and to electronically pay the special district excise tax imposed
26 pursuant to this section.

27 (2) Any rules filed by the State Tax Commissioner relating to the special district excise tax
28 imposed pursuant to this section shall set forth the following:

29 (A) Acceptable indicia of timely payment;

30 (B) Which type of electronic filing method or methods a particular type of taxpayer may or
31 may not use;

32 (C) What type of electronic payment method or methods a particular type of taxpayer may
33 or may not use;

34 (D) What, if any, exceptions are allowable and alternative methods of payment that may
35 be used for any exceptions;

36 (E) Procedures for making voluntary or mandatory electronic payments or both;

37 (F) Procedures for ensuring that taxpayers new to an economic opportunity development
38 district are included within the Tax Commissioner's database;

39 (G) Procedures for ensuring that taxpayers with multiple locations properly allocate their
40 special district excise taxes to the appropriate economic opportunity development district and
41 reflect the allocation of their returns; and

42 (H) Any other provisions necessary to ensure the timely electronic filing of returns related
43 to the special district excise tax and the making of payments electronically of the special district
44 excise tax imposed pursuant to this section.

45 (3)~~(A)~~ *Sharing of district information.* – Notwithstanding the provisions of §11-10-5d of this

46 code: (i)

47 (A) So long as bonds are outstanding pursuant to this article, the Tax Commissioner shall
48 provide on a monthly basis, to the trustee for bonds issued pursuant to this article, information on
49 returns submitted pursuant to this article. ~~and (ii)~~ The trustee ~~may~~ shall share the information so
50 obtained with the municipality that established the economic opportunity development district that
51 issued the bonds pursuant to this article, ~~and~~ with the bondholders, and with bond counsel for
52 bonds issued pursuant to this article. The Tax Commissioner and the trustee may enter into a
53 written agreement ~~in order to~~ accomplish exchange of the information;

54 (B) The Tax Commissioner shall, upon the written request of the mayor or the governing
55 body of a municipality that has established an economic opportunity development district pursuant
56 to this article, allow the duly authorized agent of the municipality to inspect and make copies of
57 all records of the Tax Commissioner related to the collection of tax in that district pursuant to this
58 article, including, but not limited to, special district excise tax returns;

59 (C) The Tax Commissioner shall, upon the written request of the mayor or governing body
60 of a municipality that has applied to establish an economic opportunity development district,
61 pursuant to §8-38-7 of this code, allow the duly authorized agent of the municipality to inspect
62 and make copies of all records of the Tax Commissioner related to the base tax revenue amount
63 certified by the Tax Commissioner to the Development Office with regard to the proposed district;

64 ~~(B)~~ (D) Any confidential information provided pursuant to this subdivision shall be used
65 solely for the protection and enforcement of the rights and remedies of the bondholders of bonds
66 issued pursuant to this article. Any person or entity that is in possession of information disclosed
67 by the Tax Commissioner or shared by the trustee pursuant to §8-38-12(d)(3)(A) of this code is
68 subject to the provisions of §11-10-5d of this code as if the person or entity that is in possession
69 of the tax information is an officer, employee, agent, or representative of this state or of a local or
70 municipal governmental entity or other governmental subdivision; and

71 ~~(C)~~ (E) Notwithstanding any provision of this code to the contrary, so long as bonds are

72 outstanding pursuant to this article, the Tax Commissioner shall allow a designated representative
73 of the municipality that established the economic opportunity development district for which the
74 bonds were issued to audit the returns filed by the taxpayers in the economic opportunity
75 development district no less often than once each quarter of the fiscal year. The Tax
76 Commissioner may require the audit to be conducted at the Tax Commissioner's office, may
77 prohibit copying of any returns, and may require the representatives to enter into a written
78 confidentiality agreement. The Tax Commissioner shall promptly investigate any questions raised
79 by an audit, shall promptly take all actions required to correct any errors, and shall report to the
80 applicable municipality the results of its investigation and actions.

81 *(e) Deposit of net tax collected. –*

82 (1) The ordinance of the municipality imposing a special district excise tax shall provide
83 that the Tax Commissioner deposit the net amount of tax collected in the special Economic
84 Opportunity Development District Fund to the credit of the municipality's subaccount therein for
85 the economic opportunity development district and that the money in the subaccount may only be
86 used to pay for development expenditures as provided in this article except as provided in §8-38-
87 12(f) of this code.

88 (2)(A) The State Treasurer shall withhold from the municipality's subaccount in the
89 Economic Opportunity Development District Fund and shall deposit in the General Revenue Fund
90 of this state, on or before the twentieth day of each calendar month next following the effective
91 date of a special district excise tax, a sum equal to one twelfth of the base tax revenue amount
92 last certified by the Development Office pursuant to §8-38-7 of this code.

93 (B) In addition to the amounts described in §8-38-12(e)(2)(A) of this code, the Tax
94 Commissioner shall deposit in the General Revenue Fund of this state on the dates specified in
95 §8-38-12(e)(2)(A) of this code not less than 20 percent nor more than 50 percent of the excess of
96 the special district excise taxes collected during the preceding month above one twelfth of the
97 base tax revenue, said percentage to be fixed by the Development Office in conjunction with its

98 approval of an application in accordance with §8-38-7 of this code based on the amount of state
99 funds, if any, to be expended in conjunction with the respective economic opportunity
100 development district project for items including, but not limited to, the acquisition, construction,
101 reconstruction, improvement, enlargement or extension of roadways, rights-of-way, sidewalks,
102 traffic signals, water or sewer lines and other public infrastructure and such other expenditures of
103 state funds identified by the Development Office: *Provided*, That the Development Office has the
104 discretion to reduce the minimum percentage of the excess special district excise taxes deposited
105 by the Tax Commissioner in the General Revenue Fund as outlined above from 20 percent to 10
106 percent in conjunction with its approval of an application in accordance with §8-38-7 of this code
107 based on its determination that:

108 (i) The economic development project provides for expenditures in excess of \$100 million;

109 (ii) The economic opportunity development district project does not require the state to
110 expend any additional state funds for items within the district including, but not limited to, the
111 acquisition, construction, reconstruction, improvement, enlargement or extension of roadways,
112 rights-of-way, sidewalks, traffic signals, water or sewer lines and other public infrastructure; and

113 (iii) The economic development project contains a provision for a mixed use development
114 with a housing component with at least 10 percent of housing units in the district allocated as
115 affordable housing.

116 (f) *Effective date of special district excise tax.* – Any taxes imposed pursuant to the
117 authority of this section are effective on the first day of the calendar month that begins at least 60
118 days after the date of enactment of the ordinance imposing the tax or at any later date expressly
119 designated in the ordinance that begins on the first day of a calendar month.

120 (g) *Copies of ordinance.* – Upon enactment of an ordinance levying a special district excise
121 tax, a certified copy of the ordinance shall be mailed to the State Auditor, as ex officio the chief
122 inspector and supervisor of public offices, the State Treasurer, and the Tax Commissioner.

NOTE: The purpose of this bill is to permit local governments to access certain tax records relating to local development projects.