

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 2984

FISCAL
NOTE

BY DELEGATES STATLER, HANSEN, PHILLIPS, ROHRBACH,

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HAMRICK AND ZATEZALO

[Introduced March 08, 2021; Referred to the

Committee on Finance]

1 A BILL to amend and reenact §7-11B-3, §7-11B-7, §7-11B-8, §7-11B-9, §7-11B-10, §7-11B-16,
 2 §7-11B-17, §7-11B-18 and §7-11B-22 of the Code of West Virginia, 1931, as amended;
 3 to amend and reenact §7-22-15 and §7-22-16 of said code; and to amend and reenact
 4 §11-6-13, §11-6-19, §11-6-21 and §11-6-22 of said code, all relating to property tax
 5 increment financing districts and real property of public service businesses situated within
 6 such districts; modifying definitions of base assessed value, current assessed value, and
 7 payment in lieu of taxes; defining public service business; authorizing payment in lieu of
 8 tax agreements for property located within property tax increment financing districts;
 9 authorizing a county commission or municipality to extend the length of existence of
 10 certain districts; extending the length of existence of certain districts from 30 to 40 years;
 11 removing the requirement that a copy of the proposed project plan for tax increment
 12 financing be provided to other levying bodies with the power to levy taxes prior to any
 13 public hearing to consider the project; clarifying base assessed value and termination date
 14 when two or more tax increment financing districts have been combined; modifying
 15 language related to the discharge of any tax increment financing obligations outstanding
 16 on the termination date of a property tax district; eliminating certain limitations on the terms
 17 of property tax increment financing obligations issued to refund existing obligations;
 18 requiring Auditor to apportion and certify the value of real property owned by a public
 19 service business within a development or redevelopment district; and requiring sheriff to
 20 properly allocate taxes and levies apportioned by the Auditor.

Be it enacted by the Legislature of West Virginia:

ARTICLE 11B. WEST VIRGINIA TAX INCREMENT FINANCING ACT.

§7-11B-3. Definitions.

1 (a) General. — When used in this article, words and phrases defined in this section have
 2 the meanings ascribed to them in this section unless a different meaning is clearly required either
 3 by the context in which the word or phrase is used or by specific definition in this article.

4 (b) Words and phrases defined. —

5 “Agency” includes a municipality, a county or municipal development agency established
6 pursuant to authority granted in §7-12-1 of this code, a port authority, an airport authority or any
7 other entity created by this state or an agency or instrumentality of this state that engages in
8 economic development activity or the Division of Highways.

9 “Base assessed value” means the taxable assessed value of all real and tangible personal
10 property, excluding personal motor vehicles, having a tax situs within a development or
11 redevelopment district as shown upon the land books and personal property books of the
12 assessor on July 1 of the calendar year preceding the effective date of the order or ordinance
13 creating and establishing the development or redevelopment district and any real property,
14 including improvements and fixtures thereon, owned by a public service business having a tax
15 situs within a development or redevelopment district as shown upon the books kept by the Auditor
16 pursuant to §11-6-16 of this code on December 31 of the calendar year preceding the effective
17 date of the order or ordinance creating and establishing such district: *Provided*, That for any
18 development or redevelopment district approved after the effective date of the amendments to
19 this section enacted during the regular session of the Legislature in 2014, personal trailers,
20 personal boats, personal campers, personal motor homes, personal ATVs and personal
21 motorcycles having a tax situs within a development or redevelopment district are excluded from
22 the base assessed value.

23 “Blighted area” means an area within the boundaries of a development or redevelopment
24 district located within the territorial limits of a municipality or county in which the structures,
25 buildings or improvements, by reason of dilapidation, deterioration, age or obsolescence,
26 inadequate provision for access, ventilation, light, air, sanitation, open spaces, high density of
27 population and overcrowding or the existence of conditions which endanger life or property, are
28 detrimental to the public health, safety, morals or welfare. “Blighted area” includes any area which,
29 by reason of the presence of a substantial number of substandard, slum, deteriorated or

30 deteriorating structures, predominance of defective or inadequate street layout, faulty lot layout in
31 relation to size, adequacy, accessibility or usefulness, unsanitary or unsafe conditions,
32 deterioration of site or other improvements, diversity of ownership, defective or unusual conditions
33 of title or the existence of conditions which endanger life or property by fire and other causes, or
34 any combination of such factors, substantially impairs or arrests the sound growth of a
35 municipality, retards the provision of housing accommodations or constitutes an economic or
36 social liability and is a menace to the public health, safety, morals or welfare in its present
37 condition and use, or any area which is predominantly open and which because of lack of
38 accessibility, obsolete platting, diversity of ownership, deterioration of structures or of site
39 improvements, or otherwise, substantially impairs or arrests the sound growth of the community.

40 "Commissioner of Highways" means the Commissioner of the Division of Highways.

41 "Conservation area" means any improved area within the boundaries of a development or
42 redevelopment district located within the territorial limits of a municipality or county in which fifty
43 percent or more of the structures in the area have an age of thirty-five years or more. A
44 conservation area is not yet a blighted area but is detrimental to the public health, safety, morals
45 or welfare and may become a blighted area because of any one or more of the following factors:
46 Dilapidation; obsolescence; deterioration; illegal use of individual structures; presence of
47 structures below minimum code standards; abandonment; excessive vacancies; overcrowding of
48 structures and community facilities; lack of ventilation, light or sanitary facilities; inadequate
49 utilities; excessive land coverage; deleterious land use or layout; depreciation of physical
50 maintenance; and lack of community planning. A conservation area shall meet at least three of
51 the factors provided in this subdivision.

52 "County commission" means the governing body of a county of this state and, for purposes
53 of this article only, includes the governing body of a Class I, Class II or Class III municipality in
54 this state.

55 "Current assessed value" means the annual taxable assessed value of all real and tangible

56 personal property, excluding personal motor vehicles, having a tax situs within a development or
57 redevelopment district as shown upon the land book and personal property records of the
58 assessor and any real property, including improvements and fixtures thereon, owned by a public
59 service business having a tax situs within a development or redevelopment district as shown upon
60 the books kept by the Auditor pursuant to §11-6-16 of this code: *Provided*, That for any
61 development or redevelopment district approved after the effective date of the amendments to
62 this section enacted during the regular session of the Legislature in 2014, personal trailers,
63 personal boats, personal campers, personal motor homes, personal ATVs and personal
64 motorcycles having a tax situs within a development or redevelopment district are excluded from
65 the current assessed value.

66 “Development office” means the West Virginia Development Office created in §5B-2-1 of
67 this code.

68 “Development project” or “redevelopment project” means a project undertaken in a
69 development or redevelopment district for eliminating or preventing the development or spread of
70 slums or deteriorated, deteriorating or blighted areas, for discouraging the loss of commerce,
71 industry or employment, for increasing employment or for any combination thereof in accordance
72 with a tax increment financing plan. A development or redevelopment project may include one or
73 more of the following:

74 (A) The acquisition of land and improvements, if any, within the development or
75 redevelopment district and clearance of the land so acquired; or

76 (B) The development, redevelopment, revitalization or conservation of the project area
77 whenever necessary to provide land for needed public facilities, public housing or industrial or
78 commercial development or revitalization, to eliminate unhealthful, unsanitary or unsafe
79 conditions, to lessen density, mitigate or eliminate traffic congestion, reduce traffic hazards,
80 eliminate obsolete or other uses detrimental to public welfare or otherwise remove or prevent the
81 spread of blight or deterioration;

82 (C) The financial or other assistance in the relocation of persons and organizations
83 displaced as a result of carrying out the development or redevelopment project and other
84 improvements necessary for carrying out the project plan, together with those site improvements
85 that are necessary for the preparation of any sites and making any land or improvements acquired
86 in the project area available, by sale or lease, for public housing or for development,
87 redevelopment or rehabilitation by private enterprise for commercial or industrial uses in
88 accordance with the plan;

89 (D) The construction of capital improvements within a development or redevelopment
90 district designed to increase or enhance the development of commerce, industry or housing within
91 the development project area; or

92 (E) Any other projects the county commission or the agency deems appropriate to carry
93 out the purposes of this article.

94 "Development or redevelopment district" means an area proposed by one or more
95 agencies as a development or redevelopment district which may include one or more counties,
96 one or more municipalities or any combination thereof, that has been approved by the county
97 commission of each county in which the project area is located if the project is located outside the
98 corporate limits of a municipality, or by the governing body of a municipality if the project area is
99 located within a municipality, or by both the county commission and the governing body of the
100 municipality when the development or redevelopment district is located both within and without a
101 municipality.

102 "Division of Highways" means the state Department of Transportation, Division of
103 Highways.

104 "Economic development area" means any area or portion of an area within the boundaries
105 of a development or redevelopment district located within the territorial limits of a municipality or
106 county that is neither a blighted area nor a conservation area and for which the county commission
107 finds that development or redevelopment will not be solely used for development of commercial

108 businesses that will unfairly compete in the local economy and that development or
109 redevelopment is in the public interest because it will:

110 (A) Discourage commerce, industry or manufacturing from moving their operations to
111 another state;

112 (B) Result in increased employment in the municipality or county, whichever is applicable;
113 or

114 (C) Result in preservation or enhancement of the tax base of the county or municipality.

115 "Governing body of a municipality" means the city council of a Class I, Class II or Class III
116 municipality in this state.

117 "Incremental value", for any development or redevelopment district, means the difference
118 between the base assessed value and the current assessed value. The incremental value will be
119 positive if the current value exceeds the base value and the incremental value will be negative if
120 the current value is less than the base assessed value.

121 "Includes" and "including", when used in a definition contained in this article, shall not
122 exclude other things otherwise within the meaning of the term being defined.

123 "Intergovernmental agreement" means any written agreement that may be entered into by
124 and between two or more county commissions, or between two or more municipalities, or between
125 a county commission and a municipality, in the singular and the plural, or between two or more
126 government entities and the Commissioner of Highways: *Provided*, That any intergovernmental
127 agreement shall not be subject to provisions governing intergovernmental agreements set forth
128 in other provisions of this code, including, but not limited to, §8-23-1 *et seq.* of this code, but shall
129 be subject to the provisions of this article.

130 "Local levying body" means the county board of education and the county commission
131 and includes the governing body of a municipality when the development or redevelopment district
132 is located, in whole or in part, within the boundaries of the municipality.

133 "Obligations" or "tax increment financing obligations" means bonds, loans, debentures,

134 notes, special certificates or other evidences of indebtedness issued by a county commission or
135 municipality pursuant to this article to carry out a development or redevelopment project or to
136 refund outstanding obligations under this article.

137 “Order” means an order of the county commission adopted in conformity with the
138 provisions of this article and as provided in this chapter.

139 “Ordinance” means a law adopted by the governing body of a municipality in conformity
140 with the provisions of this article and as provided in §8-1-1 *et seq.* of this code.

141 “Payment in lieu of taxes” means ~~those estimated revenues from real property and~~
142 ~~tangible personal property having a tax situs in the area selected for a development or~~
143 ~~redevelopment project which revenues, according to the development or redevelopment project~~
144 ~~or plan, are to be used for a private use, which levying bodies would have received had a county~~
145 ~~or municipality not adopted one or more tax increment financing plans and which would result~~
146 ~~from levies made after the date of adoption of a tax increment financing plan during the time the~~
147 ~~current assessed value of all taxable real and tangible personal property in the area selected for~~
148 ~~the development or redevelopment project exceeds the total base assessed value of all taxable~~
149 ~~real and tangible personal property in the development or redevelopment district until the~~
150 ~~designation is terminated as provided in this article~~ a payment with respect to real and personal
151 property located in a development or redevelopment district which is owned in title by this state,
152 a political subdivision of this state or an agency or instrumentality thereof and made by the lessee
153 of such property pursuant to a written payment in lieu of taxes agreement, whether in effect as of,
154 or subsequent to, the date of creation of the development or redevelopment district. The real and
155 personal property subject to the payment in lieu of taxes agreement is deemed public property
156 and shall be exempt from ad valorem property taxation by this state, a political subdivision of this
157 state, an agency or instrumentality thereof or other levying body, so long as it is owned in title by
158 this state, a political subdivision of this state or an agency or instrumentality thereof, and the
159 exemption from ad valorem property taxation is applicable to this leasehold or similar interest held

160 by persons other than this state, a political subdivision of this state or an agency or instrumentality
161 thereof if acquired or constructed with the written agreement of the county school board, county
162 commission and any municipal authority within whose jurisdiction the real and personal property
163 is physically situated.

164 “Person” means any natural person, and any corporation, association, partnership, limited
165 partnership, limited liability company or other entity, regardless of its form, structure or nature,
166 other than a government agency or instrumentality.

167 “Private project” means any project that is subject to ad valorem property taxation in this
168 state or to a payment in lieu of tax agreement that is undertaken by a project developer in
169 accordance with a tax increment financing plan in a development or redevelopment district.

170 “Project” means any capital improvement, facility or both, as specifically set forth and
171 defined in the project plan, requiring an investment of capital including, but not limited to,
172 extensions, additions or improvements to existing facilities, including water or wastewater
173 facilities, and the remediation of contaminated property as provided for in §22-22-1 et seq. of this
174 code, but does not include performance of any governmental service by a county or municipal
175 government.

176 “Project area” means an area within the boundaries of a development or redevelopment
177 district in which a development or redevelopment project is undertaken as specifically set forth
178 and defined in the project plan.

179 “Project costs” means expenditures made in preparation of the development or
180 redevelopment project plan and made, or estimated to be made, or monetary obligations incurred,
181 or estimated to be incurred, by the county commission which are listed in the project plan as
182 capital improvements within a development or redevelopment district, plus any costs incidental
183 thereto. “Project costs” include, but are not limited to:

184 (A) Capital costs, including, but not limited to, the actual costs of the construction of public
185 works or improvements, capital improvements and facilities, new buildings, structures and

186 fixtures, the demolition, alteration, remodeling, repair or reconstruction of existing buildings,
187 structures and fixtures, environmental remediation, parking and landscaping, the acquisition of
188 equipment and site clearing, grading and preparation;

189 (B) Financing costs, including, but not limited to, an interest paid to holders of evidences
190 of indebtedness issued to pay for project costs, all costs of issuance and any redemption
191 premiums, credit enhancement or other related costs;

192 (C) Real property assembly costs, meaning any deficit incurred resulting from the sale or
193 lease as lessor by the county commission of real or personal property having a tax situs within a
194 development or redevelopment district for consideration that is less than its cost to the county
195 commission;

196 (D) Professional service costs including, but not limited to, those costs incurred for
197 architectural planning, engineering and legal advice and services;

198 (E) Imputed administrative costs including, but not limited to, reasonable charges for time
199 spent by county employees or municipal employees in connection with the implementation of a
200 project plan;

201 (F) Relocation costs including, but not limited to, those relocation payments made
202 following condemnation and job training and retraining;

203 (G) Organizational costs including, but not limited to, the costs of conducting
204 environmental impact and other studies and the costs of informing the public with respect to the
205 creation of a development or redevelopment district and the implementation of project plans;

206 (H) Payments made, in the discretion of the county commission or the governing body of
207 a municipality, which are found to be necessary or convenient to creation of development or
208 redevelopment districts or the implementation of project plans; and

209 (I) That portion of costs related to the construction of environmental protection devices,
210 storm or sanitary sewer lines, water lines, amenities or streets or the rebuilding or expansion of
211 streets, or the construction, alteration, rebuilding or expansion of which is necessitated by the

212 project plan for a development or redevelopment district, whether or not the construction,
213 alteration, rebuilding or expansion is within the area or on land contiguous thereto.

214 “Project developer” means any person who engages in the development of projects in the
215 state.

216 “Project plan” means the plan for a development or redevelopment project that is adopted
217 by a county commission or governing body of a municipality in conformity with the requirements
218 of this article and this chapter or §8-1-1 *et seq.* of this code.

219 “Public service business” means entities which own property assessed by the board of
220 public works pursuant to §11-6-1 *et seq.* of this code.

221 “Real property” means all lands, including improvements and fixtures on them and
222 property of any nature appurtenant to them or used in connection with them and every estate,
223 interest and right, legal or equitable, in them, including terms of years and liens by way of
224 judgment, mortgage or otherwise, and indebtedness secured by the liens.

225 “Redevelopment area” means an area designated by a county commission or the
226 governing body of a municipality in respect to which the commission or governing body has made
227 a finding that there exist conditions which cause the area to be classified as a blighted area, a
228 conservation area, an economic development area or a combination thereof, which area includes
229 only those parcels of real property directly and substantially benefitted by the proposed
230 redevelopment project located within the development or redevelopment district or land
231 contiguous thereto.

232 “Redevelopment plan” means the comprehensive program under this article of a county
233 or municipality for redevelopment intended by the payment of redevelopment costs to reduce or
234 eliminate those conditions, the existence of which qualified the redevelopment area as a blighted
235 area, conservation area, economic development area or combination thereof, and to thereby
236 enhance the tax bases of the levying bodies which extend into the redevelopment area. Each
237 redevelopment plan shall conform to the requirements of this article.

238 “Tax increment” means the amount of regular levy property taxes attributable to the
239 amount by which the current assessed value of real and tangible personal property having a tax
240 situs in a development or redevelopment district exceeds the base assessed value of the property.

241 “Tax increment financing fund” means a separate fund for a development or
242 redevelopment district established by the county commission or governing body of the
243 municipality into which all tax increment revenues and other pledged revenues are deposited and
244 from which projected project costs, debt service and other expenditures authorized by this article
245 are paid.

246 “This code” means the Code of West Virginia, 1931, as amended by the Legislature.

247 “Total ad valorem property tax regular levy rate” means the aggregate levy rate of all
248 levying bodies on all taxable property having a tax situs within a development or redevelopment
249 district in a tax year but does not include excess levies, levies for general obligation bonded
250 indebtedness or any other levies that are not regular levies.

§7-11B-7. Creation of a development or redevelopment area or district.

1 (a) County commissions and the governing bodies of Class I, Class II or Class III
2 municipalities, upon their own initiative or upon application of an agency or a developer, may
3 propose creation of a development or redevelopment district and designate the boundaries of the
4 district: *Provided*, That a district may not include noncontiguous land.

5 (b) The county commission or municipality proposing creation of a development or
6 redevelopment district shall then hold a public hearing at which interested parties are afforded a
7 reasonable opportunity to express their views on the proposed creation of a development or
8 redevelopment district and its proposed boundaries.

9 (1) Notice of the hearing shall be published as a Class II legal advertisement in accordance
10 with §59-3-2 of this code.

11 (2) The notice shall include the time, place and purpose of the public hearing, describe in
12 sufficient detail the tax increment financing plan, the proposed boundaries of the development or

13 redevelopment district and, when a development or redevelopment project plan is being
14 proposed, the proposed tax increment financing obligations to be issued to finance the
15 development or redevelopment project costs.

16 (3) Prior to the first day of publication, a copy of the notice shall be sent by first-class mail
17 to the director of the Development Office and to the chief executive officer of all other local levying
18 bodies having the power to levy taxes on real and tangible personal property located within the
19 proposed development or redevelopment district.

20 (4) All parties who appear at the hearing shall be afforded an opportunity to express their
21 views on the proposal to create the development or redevelopment district and, if applicable, the
22 development or redevelopment project plan and proposed tax increment financing obligations.

23 (c) After the public hearing, the county commission, or the governing body of the
24 municipality, shall finalize the boundaries of the development or redevelopment district, the
25 development or redevelopment project plan, or both, and submit the same to the director of the
26 Development Office for his or her review and approval. The director, within sixty days after receipt
27 of the application, shall approve the application as submitted, reject the application or return the
28 application to the county commission or governing body of the municipality for further
29 development or review in accordance with instructions of the director of the Development Office.
30 A development or redevelopment district or development or redevelopment project plan may not
31 be adopted by the county commission or the governing body of a municipality until after it has
32 been approved by the executive director of the Development Office.

33 (d) Upon approval of the application by the Development Office, the county commission
34 may enter an order and the governing body of the municipality proposing the district or
35 development or redevelopment project plan may adopt an ordinance, that:

36 (1) Describes the boundaries of a development or redevelopment district sufficiently to
37 identify with ordinary and reasonable certainty the territory included in the district, which
38 boundaries shall create a contiguous district;

39 (2) Creates the development or redevelopment district as of a date provided in the order
40 or ordinance;

41 (3) Assigns a name to the development or redevelopment district for identification
42 purposes.

43 (A) The name may include a geographic or other designation, shall identify the county or
44 municipality authorizing the district and shall be assigned a number, beginning with the number
45 one.

46 (B) Each subsequently created district in the county or municipality shall be assigned the
47 next consecutive number;

48 (4) Contains findings that the real property within the development or redevelopment
49 district will be benefitted by eliminating or preventing the development or spread of slums or
50 blighted, deteriorated or deteriorating areas, discouraging the loss of commerce, industry or
51 employment, increasing employment or any combination thereof;

52 (5) Approves the development or redevelopment project plan, if applicable;

53 (6) Establishes a tax increment financing fund as a separate fund into which all tax
54 increment revenues and other revenues designated by the county commission, or governing body
55 of the municipality, for the benefit of the development or redevelopment district shall be deposited,
56 and from which all project costs shall be paid, which may be assigned to and held by a trustee for
57 the benefit of bondholders if tax increment financing obligations are issued by the county
58 commission or the governing body of the municipality; and

59 (7) Provides that ad valorem property taxes on real and tangible personal property having
60 a tax situs in the development or redevelopment district shall be assessed, collected and allocated
61 in the following manner, commencing upon the date of adoption of such order or ordinance and
62 continuing for so long as any tax increment financing obligations are payable from the tax
63 increment financing fund, hereinafter authorized, are outstanding and unpaid:

64 (A) For each tax year, the county assessor shall record in the land and personal property

65 books both the base assessed value and the current assessed value of the real and tangible
66 personal property having a tax situs in the development or redevelopment district;

67 (B) Ad valorem taxes collected from regular levies upon real and tangible personal
68 property having a tax situs in the district that are attributable to the lower of the base assessed
69 value or the current assessed value of real and tangible personal property located in the
70 development project area shall be allocated to the levying bodies in the same manner as
71 applicable to the tax year in which the development or redevelopment project plan is adopted by
72 order of the county commission or by ordinance adopted by the governing body of the
73 municipality;

74 (C) The tax increment with respect to real and tangible personal property in the
75 development or redevelopment district shall be allocated and paid into the tax increment financing
76 fund and shall be used to pay the principal of and interest on tax increment financing obligations
77 issued to finance the costs of the development or redevelopment projects in the development or
78 redevelopment district. Any levying body having a development or redevelopment district within
79 its taxing jurisdiction shall not receive any portion of the annual tax increment except as otherwise
80 provided in this article; and

81 (D) In no event shall the tax increment include any taxes collected from excess levies,
82 levies for general obligation bonded indebtedness or any levies other than the regular levies
83 provided for in §11-8-1 *et seq.* of this code.

84 (e) Proceeds from tax increment financing obligations issued under this article may only
85 be used to pay for costs of development and redevelopment projects to foster economic
86 development in the development or redevelopment district or land contiguous thereto.

87 (f) Notwithstanding subsection (d) of this section, a county commission may not enter an
88 order approving a development or redevelopment project plan unless the county commission
89 expressly finds and states in the order that the development or redevelopment project is not
90 reasonably expected to occur without the use of tax increment financing.

91 (g) Notwithstanding subsection (d) of this section, the governing body of a municipality
92 may not adopt an ordinance approving a development or redevelopment project plan unless the
93 governing body expressly finds and states in the ordinance that the development or
94 redevelopment project is not reasonably expected to occur without the use of tax increment
95 financing.

96 (h) No county commission shall establish a development or redevelopment district any
97 portion of which is within the boundaries of a Class I, II, III or IV municipality without the formal
98 consent of the governing body of such municipality.

99 (i) A tax increment financing plan that has been approved by a county commission or the
100 governing body of a municipality may be amended by following the procedures set forth in this
101 article for adoption of a new development or redevelopment project plan.

102 (j) The county commission may modify the boundaries of the development or
103 redevelopment district, from time to time, by entry of an order modifying the order creating the
104 development or redevelopment district.

105 (k) The governing body of a municipality may modify the boundaries of the development
106 or redevelopment district, from time to time, or extend the length of existence of the development
107 or redevelopment district as set forth in §7-11B-10 of this code, by amending the ordinance
108 ~~establishing the boundaries of the district~~ creating the development or redevelopment district.

109 (l) Before a county commission or the governing body of a municipality may amend such
110 an order or ordinance, the county commission or municipality shall give the public notice, hold a
111 public hearing and obtain the approval of the director of the Development Office, following the
112 procedures for establishing a new development or redevelopment district. In the event any tax
113 increment financing obligations are outstanding with respect to the development or
114 redevelopment district, any change in the boundaries shall not reduce the amount of tax increment
115 available to secure the outstanding tax increment financing obligations.

§7-11B-8. Project plan — approval.

1 (a) The county commission or municipality creating the district shall cause the preparation
2 of a project plan for each development or redevelopment district and the project plan shall be
3 adopted by order of the county commission, or ordinance adopted by the governing body of the
4 municipality, after it is approved by the executive director of the Development Office. This process
5 shall conform to the procedures set forth in this section.

6 (b) Each project plan shall include:

7 (1) A statement listing the kind, number and location of all proposed public works or other
8 improvements within the district and on land outside but contiguous to the district;

9 (2) A cost-benefit analysis showing the economic impact of the plan on each levying body
10 that is at least partially within the boundaries of the development or redevelopment district. This
11 analysis shall show the impact on the economy if the project is not built and is built pursuant to
12 the development or redevelopment plan under consideration. The cost-benefit analysis shall
13 include a fiscal impact study on every affected levying body and sufficient information from the
14 developer for the agency, if any proposing the plan, the county commission be asked to approve
15 the project and the Development Office to evaluate whether the project as proposed is financially
16 feasible;

17 (3) An economic feasibility study;

18 (4) A detailed list of estimated project costs;

19 (5) A description of the methods of financing all estimated project costs, including the
20 issuance of tax increment obligations and the time when the costs or monetary obligations related
21 thereto are to be incurred;

22 (6) A certification by the county assessor of the base assessed value of real and tangible
23 personal property having a tax situs in a development or redevelopment district: *Provided*, That if
24 such certification is made during the months of January or February of each year, the county
25 assessor may certify an estimated base assessed value of real and tangible personal property
26 having a tax situs in a development or redevelopment district: *Provided, however*, That prior to

27 issuance of tax increment obligations, the county assessor shall certify a final base assessed
28 value for the estimated base assessed value permitted by this section;

29 (7) The type and amount of any other revenues that are expected to be deposited to the
30 tax increment financing fund of the development or redevelopment district;

31 (8) A map showing existing uses and conditions of real property in the development or
32 redevelopment district;

33 (9) A map of proposed improvements and uses in the district;

34 (10) Proposed changes of zoning ordinances, if any;

35 (11) Appropriate cross-references to any master plan, map, building codes and municipal
36 ordinances or county commission orders affected by the project plan;

37 (12) A list of estimated nonproject costs;

38 (13) A statement of the proposed method for the relocation of any persons, businesses or
39 organizations to be displaced;

40 (14) A certificate from the executive director of the workers' compensation commission,
41 the commissioner of the Bureau of Employment Programs and the State Tax Commissioner that
42 the project developer is in good standing with the workers' compensation commission, the Bureau
43 of Employment Programs and the state Tax Division; and

44 (15) A certificate from the sheriff of the county or counties in which the development or
45 redevelopment district is located that the project developer is not delinquent on payment of any
46 real and personal property taxes in such county.

47 (c) If the project plan is to include tax increment financing, the tax increment financing
48 portion of the plan shall set forth:

49 (1) The amount of indebtedness to be incurred pursuant to this article;

50 (2) An estimate of the tax increment to be generated as a result of the project;

51 (3) The method for calculating the tax increment, which shall be in conformance with the
52 provisions of this article, together with any provision for adjustment of the method of calculation;

53 (4) Any other revenues, such as payment in lieu of tax revenues, to be used to secure the
54 tax increment financing; and

55 (5) Any other provisions as may be deemed necessary in order to carry out any tax
56 increment financing to be used for the development or redevelopment project.

57 (d) If less than all of the tax increment is to be used to fund a development or
58 redevelopment project or to pay project costs or retire tax increment financing, the project plan
59 shall set forth the portion of the tax increment to be deposited in the tax increment financing fund
60 of the development or redevelopment district and provide for the distribution of the remaining
61 portion of the tax increment to the levying bodies in whose jurisdiction the district lies.

62 (e) The county commission or governing body of the municipality that established the tax
63 increment financing fund shall hold a public hearing at which interested parties shall be afforded
64 a reasonable opportunity to express their views on the proposed project plan being considered
65 by the county commission or the governing body of the municipality.

66 (1) Notice of the hearing shall be published as a Class II legal advertisement in accordance
67 with section two, article three, chapter fifty-nine of this code.

68 (2) ~~At least 30 days prior to this publication~~ Prior to publication, a copy of the notice ~~and a~~
69 ~~copy of the proposed project plan~~ shall be sent by first-class mail to the chief executive officer of
70 all other levying bodies having the power to levy taxes on property located within the proposed
71 development or redevelopment district.

72 (f) Approval by the county commission or the governing body of a municipality of an initial
73 development or redevelopment project plan must be within one year after the date of the county
74 assessor's certification required by subdivision (6), subsection (b) of this section: *Provided*, That
75 additional development or redevelopment project plans may be approved by the county
76 commission or the governing body of a municipality in subsequent years, so long as the
77 development or redevelopment district continues to exist. The approval shall be by order of the
78 county commission or ordinance of the municipality, which shall contain a finding that the plan is

79 economically feasible.

§7-11B-9. Project plan – amendment.

1 (a) The county commission may by order, or the governing body of a municipality by
2 ordinance, adopt an amendment to a project plan.

3 (b) Adoption of an amendment to a project plan shall be preceded by a public hearing held
4 by the county commission, or governing body of the municipality, at which interested parties shall
5 be afforded a reasonable opportunity to express their views on the amendment.

6 (1) Notice of the hearing shall be published as a Class II legal advertisement in accordance
7 with §59-3-2 of this code.

8 (2) Prior to publication, a copy of the notice shall be sent by first-class mail to the chief
9 executive officer of all other local levying bodies having the power to levy taxes on property within
10 the development or redevelopment district.

11 (3) Copies of the proposed plan amendments shall be made available to the public at the
12 county clerk's office or municipal clerk's office at least 15 days prior to the hearing.

13 (c) One or more existing development or redevelopment districts may be combined
14 pursuant to lawfully adopted amendments to the original plans for each district: *Provided*, That
15 the county commission, or governing body of the municipality, finds that the combination of the
16 districts will not impair the security for any tax increment financing obligations previously issued
17 pursuant to this article.

18 (1) The base assessed value of the real and tangible personal property located in the
19 combined development or redevelopment district following such combination shall be the same
20 base assessed value as existed for such real and tangible personal property in each of the
21 separate development or redevelopment districts prior to such combination.

22 (2) The termination date for the combined development or redevelopment district which
23 results from the combination of two or more previously created districts shall be the termination
24 date as provided pursuant to §7-11B-10 of this code of the development or redevelopment district

25 which had the latest termination date prior to the combination of such districts.

§7-11B-10. Termination of development or redevelopment district.

1 (a) No development or redevelopment district may be in existence for a period longer than
2 thirty years and no tax increment financing obligations may have a final maturity date later than
3 the termination date of the area or district: Provided, That for any existing development or
4 redevelopment district for which tax increment financing obligations have been issued by a county
5 commission, or the governing body of a municipality, prior to December 31, 2020, that existing
6 development or redevelopment district may be in existence until December 31, 2050.

7 (b) The county commission or governing body of the municipality creating the development
8 or redevelopment district may set a shorter period for the existence of the district. In this event,
9 no tax increment financing obligations may have a final maturity date later than the termination
10 date of the district. The county commission or the governing body of the municipality which
11 created the development or redevelopment district may not take action to terminate a district prior
12 to the time otherwise provided in its official action creating the district if the county commission or
13 the governing body of the municipality has tax increment revenue obligations which remain
14 outstanding and unpaid.

15 (c) Upon termination of the district, no further ad valorem tax revenues shall be distributed
16 to the tax increment financing fund of the district.

17 (d) Upon termination of the district, other than early termination by the county commission
18 or the governing body of the municipality creating the district prior to the date scheduled for its
19 termination by this Act or the official action taken by the county commission or the governing body
20 of the municipality creating the district, any tax increment financing obligations which remain
21 outstanding and unpaid following their maturity date, together with any interest, premium or other
22 charges associated therewith shall be deemed to be discharged and satisfied, and no longer due
23 and payable following such termination date.

24 ~~(d)~~(e) The county commission shall adopt, upon the expiration of the time periods set forth

25 in this section, an order terminating the development or redevelopment district created by the
26 county commission. ~~Provided, That no district shall be terminated so long as bonds with respect~~
27 ~~to the district remain outstanding~~

28 ~~(e)~~ (f) The governing body of the ~~county commission~~ municipality shall repeal, upon the
29 expiration of the time periods set forth in this section, the ordinance establishing the development
30 or redevelopment district. ~~Provided, That no district shall be terminated so long as bonds with~~
31 ~~respect to the district remain outstanding.~~

§7-11B-16. Valuation of real property.

1 (a) Upon and after the effective date of the creation of a development or redevelopment
2 district, the county assessor of the county in which the district is located shall transmit to the
3 county clerk a certified statement of the base assessed value, total ad valorem regular levy rate,
4 total general obligation bond debt service ad valorem rate and total excess levy rate applicable
5 for the development or redevelopment district.

6 (1) The assessor shall undertake, upon request of the county commission, or the
7 governing body of the municipality, creating the development or redevelopment district, an
8 investigation, examination and inspection of the taxable real and tangible personal property
9 having a tax situs in the district and shall reaffirm or revalue the base value for assessment of the
10 property in accordance with the findings of the investigation, examination and inspection.

11 (2) The county assessor shall determine, according to his or her best judgment from all
12 sources available to him or her, the full aggregate assessed value of the taxable property in the
13 district, which aggregate assessed valuation, upon certification thereof by the assessor to the
14 clerk, constitutes the base value of the development or redevelopment district.

15 (b) The county assessor shall give notice annually to the designated finance officer of
16 each levying body having the power to levy taxes on property within each district of the current

17 value and the incremental value of the property in the development or redevelopment district.

18 (c) The assessor shall also determine the tax increment by applying the applicable ad
19 valorem regular levy rates to the incremental value.

20 (d) The notice shall also explain that the entire amount of the tax increment allocable to
21 property within the development or redevelopment district will be paid to the tax increment
22 financing fund of the development or redevelopment district until it is terminated.

23 (e) The assessor shall identify upon the landbooks those parcels of property that are within
24 each existing development or redevelopment district, specifying on landbooks the name of each
25 district.

26 (f) Upon and after the effective date of the creation of a development or redevelopment
27 district, the Auditor shall apportion to the county commission or the governing body of the
28 municipality which created such development or redevelopment district the value of real property,
29 including improvements and fixtures thereon, owned by a public service business within such
30 development or redevelopment district and shall certify to such county commission or municipal
31 governing body the values so apportioned.

§7-11B-17. Division of ad valorem real property tax revenue.

1 (a) For so long as the development or redevelopment district exists, the county sheriff shall
2 divide the ad valorem tax revenue collected, with respect to taxable property in the district, as
3 follows:

4 (1) The assessor shall determine for each tax year:

5 (A) The amount of ad valorem property tax revenue that should be generated by
6 multiplying the assessed value of the property for the then current tax year by the aggregate of
7 applicable levy rates for the tax year;

8 (B) The amount of ad valorem tax revenue that should be generated by multiplying the

9 base assessed value of the property by the applicable regular ad valorem levy rates for the tax
10 year;

11 (C) The amount of ad valorem tax revenue that should be generated by multiplying the
12 assessed value of the property for the current tax year by the applicable levy rates for general
13 obligation bond debt service for the tax year;

14 (D) The amount of ad valorem property tax revenue that should be generated by
15 multiplying the assessed value of the property for the current tax year by the applicable excess
16 levy rates for the tax year; and

17 (E) The amount of ad valorem property tax revenue that should be generated by
18 multiplying the incremental value by the applicable regular levy rates for the tax year.

19 (2) The sheriff shall determine from the calculations set forth in subdivision (1) of this
20 subsection the percentage share of total ad valorem revenue for each levying body according to
21 paragraphs (B) through (D), inclusive, of said subdivision by dividing each of such amounts by
22 the total ad valorem revenue figure determined by the calculation in paragraph (A) of said
23 subdivision; and

24 (3) On each date on which ad valorem tax revenue is to be distributed to the levying
25 bodies, such revenue shall be distributed by:

26 (A) Applying the percentage share determined according to paragraph (B), subdivision (1)
27 of this subsection to the revenues received and distributing such share to the levying bodies
28 entitled to such distribution pursuant to current law;

29 (B) Applying the percentage share determined according to paragraph (C), subdivision (1)
30 of this subsection to the revenues received and distributing such share to the levying bodies
31 entitled to such distribution by reason of having general obligation bonds outstanding;

32 (C) Applying the percentage share determined according to paragraph (D), subdivision (1)

33 of this subsection to the revenues received and distributing such share to the levying bodies
34 entitled to such distribution by reason of having excess levies in effect for the tax year; and

35 (D) Applying the percentage share determined according to paragraph (E), subdivision (1)
36 of this subsection to the revenues received and distributing such share to the tax increment
37 financing fund of the development or redevelopment district.

38 (b) In each year for which there is a positive tax increment, the county sheriff shall remit
39 to the tax increment financing fund of the development or redevelopment district that portion of
40 the ad valorem property taxes collected that consists of the tax increment.

41 (c) Any additional moneys appropriated to the development or redevelopment district
42 pursuant to an appropriation by the county commission that created the district and any additional
43 moneys dedicated to the fund from other sources shall be deposited to the tax increment financing
44 fund for the development or redevelopment district by the sheriff.

45 (d) Any funds deposited into the tax increment financing fund of the development or
46 redevelopment district may be used to pay project costs, principal and interest on bonds and the
47 cost of any other improvements in the development or redevelopment district deemed proper by
48 the county commission.

49 (e) Unless otherwise directed pursuant to any agreement with the holders of tax increment
50 financing obligations, moneys in the tax increment financing fund may be temporarily invested in
51 the same manner as other funds of the county commission, or the municipality, that established
52 the fund.

53 (f) If less than all of the tax increment is to be used for project costs or pledged to secure
54 tax increment financing as provided in the plan for the development or redevelopment district, the
55 sheriff shall account for that fact in distributing the ad valorem property tax revenues.

56 (g) If taxes and levies due to a county, a school district or a municipal corporation pursuant

57 to §11-6-1 et seq. of this code are apportioned by the Auditor to a development or redevelopment
58 district, the sheriff shall allocate such taxes and levies as provided in this section.

§7-11B-18. Payments in lieu of taxes and other revenues.

1 ~~(a) The county commission or municipality that created the development or redevelopment~~
2 ~~district shall deposit in the tax increment financing fund of the development or redevelopment~~
3 ~~district all payments in lieu of taxes received pursuant to any agreement entered into on or~~
4 ~~subsequent to the date of creation of a development or redevelopment district on tax exempt~~
5 ~~property located within the development or redevelopment district.~~

6 ~~(b) The lessee of property that is exempt from property taxes because it is owned by this~~
7 ~~state, a political subdivision of this state or an agency or instrumentality thereof, which is the~~
8 ~~lessee of any facilities financed, in whole or in part, with tax increment financing obligations, shall~~
9 ~~execute a payment in lieu of tax agreement that shall remain in effect until the tax increment~~
10 ~~financing obligations are paid, during which period of time the lessee agrees to pay to the county~~
11 ~~sheriff an amount equal to the amount of ad valorem property taxes that would have been levied~~
12 ~~against the assessed value of the property were it owned by the lessee rather than a tax exempt~~
13 ~~entity. The portion of the payment in lieu of taxes attributable to the incremental value shall be~~
14 ~~deposited in the tax increment financing fund. The remaining portion of the in lieu payment shall~~
15 ~~be distributed among the levying bodies as follows~~

16 (a) Where the real or personal property that is exempt from property taxes because it is
17 owned by this state, a political subdivision of this state or an agency or instrumentality thereof,
18 which seeks to execute a payment in lieu of tax agreement that results in payments in lieu of taxes
19 with respect to the leasehold estate that are less than the amount of ad valorem property taxes
20 that would have been levied were the property not exempt from property taxes or were the
21 property not subject to a payment in lieu of tax agreement, the owner of the property and the

22 lessee of the property must first obtain the formal consent of the county commission or
 23 municipality that created the development or redevelopment district. Any portion of a payment in
 24 lieu of taxes which is attributable in the payment in lieu of tax agreement to the incremental value
 25 shall be deposited in the tax increment financing fund. The remaining portion of the in lieu of
 26 payment, if any, shall be distributed among the levying bodies as follows:

27 (1) The portion of the in lieu tax payment attributable in the payment in lieu of tax
 28 agreement to the base value of the property shall be distributed to the levying bodies in the same
 29 manner as taxes attributable to the base value of other property in the district are distributed; and

30 (2) The portions of the in lieu tax payment attributable in the payment in lieu of tax
 31 agreement to levies for bonded indebtedness and excess levies shall be distributed in the same
 32 manner as those levies on other property in the district are distributed.

33 ~~(e)~~ (b) Other revenues to be derived from the development or redevelopment district may
 34 also be deposited in the tax increment financing fund at the direction of the county commission.

§7-11B-22. Tax increment financing obligations -- terms, conditions.

1 (a) Tax increment financing obligations may not be issued in an amount exceeding the
 2 estimated aggregate project costs, including all costs of issuance of the tax increment financing
 3 obligations.

4 (b) Tax increment financing obligations shall not be included in the computation of the
 5 Constitutional debt limitation of the county commission or municipality issuing the tax increment
 6 financing obligations.

7 (c) Tax increment financing obligations shall mature over a period not exceeding 30 years
 8 ~~from the date of entry of the county commission's order, or the effective date of the municipal~~
 9 ~~ordinance, creating the development or redevelopment district and approving the development or~~
 10 ~~redevelopment plan~~ their issue date, or a period terminating with the date of termination of the
 11 development or redevelopment district, whichever period terminates earlier.

12 (d) Tax increment financing obligations may contain a provision authorizing their

13 redemption, in whole or in part, at stipulated prices, at the option of the county commission or
14 municipality issuing the obligations, and, if so, the obligations shall provide the method of selecting
15 the tax increment financing obligations to be redeemed.

16 (e) The principal and interest on tax increment financing obligations may be payable at
17 any place set forth in the resolution, trust indenture or other document governing the obligations.

18 (f) Bonds or notes shall be issued in registered form.

19 (g) Bonds or notes may be issued in any denomination.

20 (h) Each tax increment financing obligation issued under this article is declared to be a
21 negotiable instrument.

22 (i) The tax increment financing obligations may be sold at public or private sale.

23 (j) Insofar as they are consistent with subsections (a), (b) and (c) of this section, the
24 procedures for issuance, form, contents, execution, negotiation and registration of county and
25 municipal industrial or commercial revenue bonds set forth in §13-2C-1 *et seq.* of this code are
26 incorporated by reference herein.

27 (k) The bonds may be refunded or refinanced and refunding bonds may be issued in any
28 principal amount: *Provided*, That the last maturity of the refunding bonds shall not be later than
29 ~~the last maturity of the bonds being refunded~~ termination date of the district as set forth in §7-
30 11B-10 of this code.

ARTICLE 22. COUNTY ECONOMIC OPPORTUNITY DEVELOPMENT DISTRICTS.

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

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

7 development expenditures or the payment of which is secured by revenues payable into the fund
8 provided under section eight of this article, or by any public property, and following a public
9 hearing upon the proposed abolishment.

10 (2) ~~Thirty~~ Forty-year limitations. --

11 (A) ~~Thirty~~ Forty-year limitation on new districts. -- Notwithstanding subdivision (1) of this
12 subsection, and notwithstanding any other provision of this code to the contrary, any district for
13 which the date of initial enactment was after December 31, ~~2013~~ 2020, shall cease to exist and
14 shall be abolished by operation of law, at 11:59 P.M., United States eastern time zone, on
15 December 31 of the ~~thirtieth~~ fortieth calendar year subsequent to the initial year of enactment.
16 Special district excise tax may not be levied, imposed or collected in or from the district so
17 abolished or from or on any business located therein or any transaction occurring therein after
18 the cessation and abolishment of the district.

19 (B) ~~Thirty~~ Forty-year limitation on preexisting districts ~~receiving authorization for boundary~~
20 ~~changes or other changes after December 31, 2013.~~ -- Notwithstanding subdivision (1) of this
21 subsection, notwithstanding any other provision of this code to the contrary and notwithstanding
22 a date of initial enactment for a district that is prior to December 31, ~~2013~~ 2020, if legislative
23 authorization is enacted after December 31, 2013, to expand or amend the previously authorized
24 boundary, size or acreage of the district, or make any other amendment or change relating to the
25 ~~district~~, such district shall cease to exist and shall be abolished by operation of law, at 11:59 P.M.,
26 United States eastern time zone, on December 31 of the ~~thirtieth~~ fortieth calendar year
27 subsequent to the initial year of enactment. Special district excise tax may not be levied, imposed
28 or collected in or from the district so abolished or from or on any business located therein or any
29 transaction occurring therein after the cessation and abolishment of the district.

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

31 (i) The term "date of initial enactment" means the date of passage of legislation whereby
32 legislative authorization was first enacted for the county commission to levy special district excise

33 taxes for a district, and prior to enactment of any legislative authorization to expand or amend the
34 authorized boundary, size or acreage of the district, or make any other amendment or change
35 relating to the district as originally authorized.

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

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

43 (E) Upon cessation and abolishment of a district under this section or any provision of this
44 code, or any cessation or abolishment of a district for any reason, the consumers sales and
45 service tax and use tax and municipal consumers sales and service tax and use tax, if applicable,
46 shall be imposed, collected, levied and remitted, as provided by law for sales and uses in the
47 previously authorized district.

48 (b) *Notice of public hearing.* -- Notice of the public hearing required by subsection (a) of
49 this section shall be provided by first-class mail to all owners of real property within the district
50 and shall be published as a Class I-0 legal advertisement in compliance with §59-3-1 *et seq.* of
51 this code at least 20 days prior to the public hearing.

52 (c) *Transfer of district assets and funds.* -- Upon the abolishment of any economic
53 opportunity development district, any funds or other assets, contractual rights or obligations,
54 claims against holders of indebtedness or other financial benefits, liabilities or obligations existing
55 after full payment has been made on all existing contracts, bonds, notes or other obligations of
56 the district are transferred to and assumed by the county commission. Any funds or other assets
57 transferred shall be used for the benefit of the area included in the district being abolished.

58 (d) *Reinstatement of district.* -- Following abolishment of a district pursuant to this section,

59 its reinstatement requires compliance with all requirements and procedures set forth in this article
60 for the initial development, approval, establishment and creation of an economic opportunity
61 development district.

§7-22-16. Bonds issued to finance economic opportunity development district projects.

1 (a) *General.* — The county commission that established the economic opportunity
2 development district may issue bonds or notes for the purpose of financing development
3 expenditures, as described in §7-22-5 of this code, with respect to one or more projects within the
4 economic opportunity development district.

5 (b) *Limited obligations.* — All bonds and notes issued by a county commission under the
6 authority of this article are limited obligations of the county.

7 (c) *Term of obligations.* — No county commission may issue notes, bonds or other
8 instruments for funding district projects or improvements that exceed a repayment schedule of
9 thirty 40 years.

10 (d) *Debt service.* — The principal and interest on the bonds shall be payable out of the
11 funds on deposit in the subaccount established for the economic opportunity development district
12 pursuant to §7-22-8 of this code, including, without limitation, any funds derived from the special
13 district excise tax imposed by §7-22-12 of this code or other revenues derived from the economic
14 opportunity development district to the extent pledged for the purpose by the county commission
15 in the resolution authorizing the bonds.

16 (e) *Surplus funds.* — To the extent that the average daily amount on deposit in the
17 subaccount established for a district pursuant to section eight of this article exceeds, for more
18 than six consecutive calendar months, the sum of: (1) One hundred thousand dollars; plus (2) the
19 amount required to be kept on deposit pursuant to the documents authorizing, securing or
20 otherwise relating to the bonds or notes issued under this section, then the excess shall be used
21 by the district either to redeem the bonds or notes previously issued or remitted to the General
22 Fund of this state.

23 (f) *Debt not general obligation of county.* -- Neither the notes or bonds and any interest
24 coupons issued under the authority of this article shall ever constitute an indebtedness of the
25 county commission issuing the notes or bonds within the meaning of any Constitutional provision
26 or statutory limitation and shall never constitute or give rise to a pecuniary liability of the county
27 commission issuing the notes or bonds.

28 (g) *Debt not a charge general credit or taxing powers of county.* -- Neither the bonds or
29 notes, nor interest thereon, is a charge against the general credit or taxing powers of the county
30 commission and that fact shall be plainly stated on the face of each bond or note.

31 (h) *Issuance of bonds or notes.* --

32 (1) Bonds or notes allowed under this section may be executed, issued and delivered at
33 any time and from time to time, may be in a form and denomination, may be of a tenor, must be
34 negotiable but may be registered as to the principal thereof or as to the principal and interest
35 thereof, may be payable in any amounts and at any time or times, may be payable at any place
36 or places, may bear interest at any rate or rates payable at any place or places and evidenced in
37 any manner and may contain any provisions therein not inconsistent herewith, all as provided in
38 the order or orders of the county commission whereunder the bonds or notes are authorized to
39 be issued or in any trust indenture executed and delivered in connection with the issuance of such
40 bonds or notes.

41 (2) The bonds may be sold by the county commission at public or private sale at, above
42 or below par as the county commission authorizes.

43 (3) Bonds and notes issued pursuant to this article shall be signed by the president of the
44 county commission, or other chief officer thereof, and attested by the county clerk and be under
45 the seal of the county.

46 (4) Any coupons attached to the bonds shall bear the facsimile signature of the president

47 of the commission or other chief officer thereof. In case any of the officials whose signatures
48 appear on the bonds, notes or coupons cease to be officers before the delivery of the bonds or
49 notes, their signatures shall, nevertheless, be valid and sufficient for all purposes to the same
50 extent as if they had remained in office until the delivery.

51 (i) *Additional bonds or notes.* -- If the proceeds of the bonds or notes, by error of
52 calculation or otherwise, are less than the cost of the economic opportunity development district
53 project, or if additional real or personal property is to be added to the district project or if it is
54 determined that financing is needed for additional development or redevelopment expenditures,
55 additional bonds or notes may, in like manner, be issued to provide the amount of the deficiency
56 or to defray the cost of acquiring or financing any additional real or personal property or
57 development or redevelopment expenditures and, unless otherwise provided for in the trust
58 agreement, mortgage or deed of trust, are considered to be of the same issue and shall be entitled
59 to payment from the same fund, without preference or priority, and shall be of equal priority as to
60 any security.

CHAPTER 11. TAXATION.

ARTICLE 6. ASSESSMENT OF PUBLIC SERVICE BUSINESSES.

§11-6-13. Apportionment of value among counties, districts and municipalities.

1 In case the list and valuation of the property filed with the Tax Commissioner be
2 satisfactory to the board of public works, or upon assessment of the property of such owner or
3 operator being made by the board of public works the Auditor shall immediately apportion to each
4 county, in which any part of such property is situated, the value of the property therein of every
5 such owner or operator as valued or assessed hereunder and the relative value of such operating
6 property within each county compared to the value of the total operating property within the state,
7 to be determined upon such factors as the Auditor shall deem proper; and further shall apportion

8 such values among the several districts, being school districts, and a proportional valuation to
9 each municipality therein, in which any part of such property is situated, according to the value
10 thereof, as near as may be, and forthwith shall certify to the county commission of such county
11 the values so apportioned. The clerk of the county commission shall forthwith certify such values
12 to the school district and to the several municipalities, respectively, in such county. If such
13 property includes real property, including improvements and fixtures thereon, situated within a
14 development or redevelopment district created by a county commission or municipality pursuant
15 to §7-11B-1 et seq. of this code, the Auditor shall apportion to the county commission or
16 municipality which created such development or redevelopment district the value of such real
17 property, including improvements and fixtures thereon, and shall certify the same to the county
18 commission, the school district and to each municipality in which such development or
19 redevelopment district is located.

20 Inasmuch as there was litigation challenging the long term apportionment method
21 consistently used by the State Auditor under the provisions of this section by which distribution
22 was made of the ad valorem tax values of the operable properties and assets of public service
23 businesses attributable to more than one county, and with the Legislature subsequently
24 approving, codifying and ordering the continuance of such method of apportionment; and
25 inasmuch as the Legislature having changed such apportionment method and having vested the
26 authority to accomplish such and to issue assessments under this article through actions of the
27 State Tax Commissioner rather than assessment by the board of public works and apportionment
28 by the State Auditor, pursuant to chapter one hundred fifty-nine, acts of the Legislature, 1985
29 regular session,; and in light of the Legislature being unaware of the dramatic shifting of valuations
30 among counties as a result of application or use of such new apportionment method and thus
31 desiring to return to the former method of apportionment and that the same be performed by the

32 State Auditor, as formerly and that final assessment activity, as such, and hearings in respect
33 thereof be performed by the board of public works, as formerly; therefore, the Legislature finds
34 and determines that apportionment and distribution of ad valorem tax valuations hereunder should
35 and are to be performed by the State Auditor promptly and for current periods and on the basis
36 of the above-mentioned long-term apportionment method used consistently by the State Auditor
37 and with the valuations as determined by the application of such apportionment method to be
38 certified forthwith to the county commissions. Specifically, as to the true and actual values of the
39 property of public service businesses reported on their tax returns required to be filed by May 1,
40 1985 and as thereafter determined by tentative assessment and final assessment by the Tax
41 Commissioner or by court decision for tax fiscal year 1986, the State Auditor shall, by March 1,
42 1986, or as soon as may be practicable, apportion and distribute such values, as required, to the
43 respective levying bodies and on the basis of his or her using the long-term, consistent
44 apportionment method of his or her office as long engaged in the applied under the provisions of
45 this section and article.

§11-6-19. Accounting by sheriff for district and municipal taxes from public service corporations.

1 When the district and independent school district taxes and levies are collected by the
2 sheriff, he or she shall account for and pay the same as treasurer of such district. When such
3 taxes and levies due to a municipal corporation are collected by the sheriff he or she shall pay
4 the same to the proper collecting officer, or treasurer, of such municipal corporation, or otherwise,
5 as the council or other proper authority thereof may direct. If taxes and levies due to a county, a
6 school district or a municipality under this article are allocated to the county commission or
7 municipality which created a development or redevelopment district pursuant to §7-11B-1 et seq.
8 of this code, the sheriff shall allocate such taxes and levies as provided in §7-11B-17 of this code.

§11-6-21. Accounting for levies against public service corporations.

1 When such taxes and levies are paid into the treasury, as herein provided, the Auditor
2 shall account to the sheriff of each of the counties, to which any sum so paid in for county levies
3 belongs, for the amount due such county, and may arrange the same with such sheriff in any
4 settlement for state taxes in such a way as may be most convenient; and the sheriff shall account
5 to the county court of his or her county for the amount so received by him or her, in the same
6 manner as for other county levies. The amount so paid for each district and independent school
7 district shall be added to the distributable share of the school fund payable to such district, and
8 shall be paid upon the requisition of the county superintendent of free schools in like manner as
9 other school moneys are paid. The Auditor shall account to the sheriff the amount of such taxes
10 and levies due for real property, including improvements and fixtures thereon, situated within a
11 development or redevelopment district created by a county commission or municipality pursuant
12 to §7-11B-1 et seq. of this code, and the sheriff shall account the same to the county commission,
13 the school district and each municipality in which such development or district is located.

§11-6-22. Certification by Auditor of amount chargeable to sheriff from levies against public service corporations; payment of amount due municipality.

1 The Auditor shall certify to the county court and the county superintendent of schools of
2 every such county, on or before February 1 in each year, the respective amounts with which the
3 sheriff thereof is chargeable on account of the various levies upon the property of such owner or
4 operator. The amount so paid in for each municipal corporation shall, as soon as received by the
5 Auditor, be paid over to the sheriff, or the treasurer of such municipal corporation, or to such other
6 officer of the municipality as the council may designate, and the Auditor shall report such payment
7 to the council. But the failure of the clerk of any county court, or the secretary of any Board of
8 Education, or the proper officer of any municipal corporation, to certify the levies to the Auditor

9 within the time herein prescribed shall not invalidate or prevent the assessment required by this
10 article, but the Auditor shall make the assessment and proceed to collect or certify the same to
11 the sheriff as soon as practicable after he or she shall have obtained the information necessary
12 to make such assessment. If such property includes real property, including improvements and
13 fixtures thereon, situated within a development or redevelopment district created by a county
14 commission or municipality pursuant to §7-11B-1 et seq. of this code, the Auditor shall certify to
15 the county commission, the county superintendent of schools and each municipality in which such
16 development or redevelopment district is located, on or before February 1 in each year, the
17 respective amounts with which the sheriff thereof is chargeable on account of the various levies
18 upon the real property. If such property includes real property, including improvements and
19 fixtures thereon, of such owner or operator situated within such development or redevelopment
20 district the amount so paid in shall, as soon as received by the Auditor, be paid over to the sheriff,
21 and the sheriff shall allocate such taxes and levies as provided in §7-11B-17 of this code.

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NOTE: The purpose of this bill is to amend the code as it relates to property tax increment financing districts and real property of public service businesses situated within such districts. The bill amends the definitions of base assessed value, current assessed value, and payment in lieu of taxes, and adds a definition for public service business. It also authorizes payment in lieu of tax agreements for property located within property tax increment financing districts. The bill authorizes a county commission or municipality to extend the length of existence of certain districts and extends the length of existence of certain districts from 30 to 40 years. It removes the requirement that a copy of the proposed project plan for tax increment financing be provided to other levying bodies with the power to levy taxes prior to any public hearing to consider the project. It clarifies the base assessed value and termination date when two or more tax increment financing districts have been combined and modifies language related to the discharge of any tax increment financing obligations outstanding on the termination date of a property tax district. It also eliminates certain limitations on the terms of property tax increment financing obligations issued to refund existing obligations. The bill requires the Auditor to apportion and certify the value of real property owned by a public service business within a development or redevelopment district to the county commission and municipality that created such district, and requires a sheriff to properly allocate taxes and levies apportioned by the Auditor.

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