

FILED

2003 JUN 26 P 4: 29

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**

*Second Extraordinary Session, 2003*

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**ENROLLED**

**SENATE BILL NO.** 2010

*(By Senators Tomblin, Mr. President, and Sprouse, +  
By Request of the Executive)*

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**PASSED** June 14, 2003

**In Effect** from **Passage**

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**Senate Bill No. 2010**

(BY SENATORS TOMBLIN, MR. PRESIDENT, AND SPROUSE,

BY REQUEST OF THE EXECUTIVE)

[Passed June 14, 2003; in effect from passage.]

AN ACT to amend and reenact section two, article two, chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections two, three, six, seven, eight, nine, ten, twelve, fourteen, fifteen, seventeen and nineteen, article twenty-two, chapter seven of said code; to amend and reenact sections two, three, six, seven, eight, nine, ten, eleven, twelve, fourteen, fifteen, sixteen, seventeen and nineteen, article thirty-eight, chapter eight of said code; to amend and reenact section eleven-a, article ten, chapter eleven of said code; to amend and reenact section thirty-two, article fifteen-b of said chapter; and to further amend said article by adding thereto four new sections, designated sections thirty-three, thirty-four, thirty-five and thirty-six, all relating generally to creation and administration of economic opportunity districts by county commissions and Class I and II municipalities and the imposition, administration and collection of special district excise taxes to finance district economic

development projects approved by council for community and economic development.

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

That section two, article two, chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections two, three, six, seven, eight, nine, ten, twelve, fourteen, fifteen, seventeen and nineteen, article twenty-two, chapter seven of said code be amended and reenacted; that sections two, three, six, seven, eight, nine, ten, eleven, twelve, fourteen, fifteen, sixteen, seventeen and nineteen, article thirty-eight, chapter eight of said code be amended and reenacted; that section eleven-a, article ten, chapter eleven of said code be amended and reenacted; that section thirty-two, article fifteen-b of said chapter be amended and reenacted; and that said article be further amended by adding thereto four new sections, designated sections thirty-three, thirty-four, thirty-five and thirty-six, all to read as follows:

## **CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.**

### **ARTICLE 2. WEST VIRGINIA DEVELOPMENT OFFICE.**

#### **§5B-2-2. Council for community and economic development; members, appointment and expenses; meetings; appointment and compensation of director.**

1 (a) The council for community and economic develop-  
2 ment, within the West Virginia development office, is a  
3 body corporate and politic, constituting a public corpora-  
4 tion and government instrumentality. Membership on the  
5 council consists of:

6 (1) No less than nine nor more than eleven members to be  
7 appointed by the governor, with the advice and consent of  
8 the Senate, representing community or regional interests,  
9 including economic development, commerce, banking,  
10 manufacturing, the utility industry, the mining industry,  
11 the telecommunications/data processing industry, small  
12 business, labor, tourism or agriculture: *Provided*, That one

13 member appointed pursuant to this subsection shall be a  
14 member of a regional planning and development council.  
15 Of the members representing community or regional  
16 interests, there shall be at least three members from each  
17 congressional district of the state and they shall be ap-  
18 pointed in such a manner as to provide a broad geograph-  
19 ical distribution of members of the council;

20 (2) Four at-large members to be appointed by the  
21 governor with the advice and consent of the Senate;

22 (3) One member to be appointed by the governor from a  
23 list of two persons recommended by the speaker of the  
24 House of Delegates: *Provided*, That on and after the  
25 effective date of the amendment and reenactment of this  
26 section in the year two thousand three, this subdivision  
27 shall be of no force or effect and the term of the member  
28 previously appointed pursuant to this subdivision shall  
29 expire;

30 (4) One member to be appointed by the governor from a  
31 list of two persons recommended by the president of the  
32 Senate: *Provided*, That on and after the effective date of  
33 the amendment and reenactment of this section in the year  
34 two thousand three, this subdivision shall be of no force or  
35 effect and the term of the member previously appointed  
36 pursuant to this subdivision shall expire;

37 (5) The president of the West Virginia economic develop-  
38 ment council; and

39 (6) The chair, or his or her designee, of the tourism  
40 commission created pursuant to the provisions of section  
41 eight of this article.

42 In addition, the president of the Senate and the speaker  
43 of the House of Delegates, or his or her designee, shall  
44 serve as ex officio nonvoting members.

45 (b) The governor shall appoint the appointed members of  
46 the council to four-year terms. Any member whose term

47 has expired shall serve until his or her successor has been  
48 duly appointed and qualified. Any person appointed to fill  
49 a vacancy shall serve only for the unexpired term. Except  
50 as otherwise provided in this section, any member is  
51 eligible for reappointment. In cases of any vacancy in the  
52 office of a member, the vacancy shall be filled by the  
53 governor in the same manner as the original appointment.

54 (c) Members of the council are not entitled to compensa-  
55 tion for services performed as members, but are entitled to  
56 reimbursement for all reasonable and necessary expenses  
57 actually incurred in the performance of their duties. A  
58 majority of the voting members constitute a quorum for  
59 the purpose of conducting business. The council shall elect  
60 its chair for a term to run concurrent with the term of  
61 office of the member elected as chair. The chair is eligible  
62 for successive terms in that position.

63 (d) The council shall employ an executive director of the  
64 West Virginia development office who is qualified for the  
65 position by reason of his or her extensive education and  
66 experience in the field of professional economic develop-  
67 ment. The executive director shall serve at the will and  
68 pleasure of the council. The salary of the director shall be  
69 fixed by the council. The director shall have overall  
70 management responsibility and administrative control and  
71 supervision within the West Virginia development office.  
72 It is the intention of the Legislature that the director  
73 provide professional and technical expertise in the field of  
74 professional economic and tourism development in order  
75 to support the policy-making functions of the council, but  
76 that the director not be a public officer, agent, servant or  
77 contractor within the meaning of section thirty-eight,  
78 article VI of the constitution of West Virginia and not be  
79 a statutory officer within the meaning of section one,  
80 article two, chapter five-f of this code. Subject to the  
81 provisions of the contract provided in section four of this  
82 article, the director may hire and fire economic develop-

83 ment representatives employed pursuant to the provisions  
84 of section five of this article.

## **CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.**

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

#### **§7-22-2. Legislative findings and declaration of purpose.**

1 The Legislature finds that many significant business  
2 opportunities initiated within the counties of this state  
3 face financial and other economic obstacles. This ad-  
4 versely affects the economic and general well-being of the  
5 citizens of those counties.

6 The Legislature further finds that there are undeveloped,  
7 underdeveloped or seriously deteriorated development  
8 areas within certain counties of this state which are  
9 uniquely situated relative to large populations in other  
10 states or to other specific economic recreational or cultural  
11 activities or facilities which will attract large populations  
12 from this state and other states who would be likely to  
13 make substantial retail purchases of tangible personal  
14 property and services offered in modern and modernized  
15 structures and facilities constructed, supplemented,  
16 reconstructed or repaired in such undeveloped, underde-  
17 veloped or seriously deteriorated areas within certain  
18 counties of this state. The Legislature further finds that  
19 economic inducements provided by the state are necessary  
20 and appropriate to enable the construction,  
21 supplementation, reconstruction and repair of such  
22 modern and modernized structures and facilities in such  
23 undeveloped, underdeveloped or seriously deteriorated  
24 areas within certain counties of this state. Establishment  
25 of economic opportunity development districts within  
26 counties of the state, in accordance with the purpose and  
27 powers set forth in this article, will serve a public purpose  
28 and promote the health, safety, prosperity, security and  
29 general welfare of all citizens in the state. It will also  
30 promote the establishment and vitality of significant

31 business opportunities within counties while serving as an  
32 effective means for developing or restoring and promoting  
33 retail and other business activity within the economic  
34 opportunity development districts created herein. This  
35 will be of special benefit to the tax base of the counties  
36 within which any economic development district is created  
37 pursuant to this article and will specifically generate  
38 substantial incremental increases in excise taxes on sales  
39 within such economic opportunity development districts  
40 of tangible personal property and services and thereby and  
41 otherwise will stimulate economic growth and job cre-  
42 ation.

**§7-22-3. Definitions.**

1 For purposes of this article, the term:

2 (1) "Council" means the council for community and  
3 economic development established in section two, article  
4 two, chapter five-b of this code;

5 (2) "County commission" means the governing body of  
6 a county of this state;

7 (3) "Development expenditures" means payments for  
8 governmental functions, programs, activities, facility  
9 construction, improvements and other goods and services  
10 which a district board is authorized to perform or provide  
11 under section five of this article;

12 (4) "District" means an economic opportunity develop-  
13 ment district created pursuant to this article;

14 (5) "District board" means a district board created  
15 pursuant to section ten of this article; and

16 (6) "Eligible property" means any taxable or exempt real  
17 property located in a district established pursuant to this  
18 article.

**§7-22-6. Notice; hearing.**

1 (a) *General.* – A county commission desiring to create an  
2 economic opportunity development district shall conduct  
3 a public hearing.

4 (b) *Notice of hearing.* – Notice of the public hearing shall  
5 be published as a Class I-0 legal advertisement in compli-  
6 ance with article three, chapter fifty-nine of this code at  
7 least twenty days prior to the scheduled hearing. In  
8 addition to the time and place of the hearing, the notice  
9 must also state:

10 (1) The purpose of the hearing;

11 (2) The name of the proposed district;

12 (3) The general purpose of the proposed district;

13 (4) The geographic boundaries of the property proposed  
14 to be included in the district; and

15 (5) The proposed method of financing any costs involved,  
16 including the base and rate of special district excise tax  
17 that may be imposed upon sales of tangible personal  
18 property and taxable services from business locations  
19 situated within the proposed district.

20 (c) *Opportunity to be heard.* – At the time and place set  
21 forth in the notice, the county commission shall afford the  
22 opportunity to be heard to any owner of real property  
23 situated in the proposed district and any residents of the  
24 county.

25 (d) *Application to council.* – If the county commission,  
26 following the public hearing, determines it advisable and  
27 in the public interest to establish an economic opportunity  
28 development district, it shall apply to the council for  
29 community and economic development for approval of the  
30 economic opportunity development district project  
31 pursuant to the procedures provided in section seven of  
32 this article.



**§7-22-7. Application to council for community and economic development for approval of an economic opportunity development district project.**

1 (a) *General.* — The council for community and economic  
2 development shall receive and act on applications filed  
3 with it by county commissions pursuant to section six of  
4 this article. Each application must include:

5 (1) A true copy of the notice described in section six of  
6 this article;

7 (2) The total cost of the project;

8 (3) A reasonable estimate of the number of months  
9 needed to complete the project;

10 (4) A general description of the capital improvements,  
11 additional or extended services and other proposed  
12 development expenditures to be made in the district as  
13 part of the project;

14 (5) A description of the proposed method of financing the  
15 development expenditures, together with a description of  
16 the reserves to be established for financing ongoing  
17 development or redevelopment expenditures necessary to  
18 permanently maintain the optimum economic viability of  
19 the district following its inception: *Provided*, That the  
20 amounts of the reserves shall not exceed the amounts that  
21 would be required by ordinary commercial capital market  
22 considerations;

23 (6) A description of the sources and anticipated amounts  
24 of all financing, including, but not limited to, proceeds  
25 from the issuance of any bonds or other instruments,  
26 revenues from the special district excise tax and enhanced  
27 revenues from property taxes and fees;

28 (7) A description of the financial contribution of the  
29 county commission to the funding of development expen-  
30 ditures;

31 (8) Identification of any businesses that the county  
32 commission expects to relocate their business locations  
33 from the district to another place in the state in connection  
34 with the establishment of the district or from another  
35 place in this state to the district: *Provided*, That for  
36 purposes of this article, any entities shall be designated  
37 “relocated entities”;

38 (9) Identification of any businesses currently conducting  
39 business in the proposed economic opportunity develop-  
40 ment district that the county commission expects to  
41 continue doing business there after the district is created;

42 (10) A good faith estimate of the aggregate amount of  
43 consumers sales and service tax that was actually remitted  
44 to the tax commissioner by all business locations identified  
45 as provided in subdivisions (8) and (9) of this subsection  
46 with respect to their sales made and services rendered  
47 from their then current business locations that will be  
48 relocated from, or to, or remain in the district, for the  
49 twelve full calendar months next preceding the date of the  
50 application: *Provided*, That for purposes of this article,  
51 the aggregate amount is designated as “the base tax  
52 revenue amount”;

53 (11) A good faith estimate of the gross annual district tax  
54 revenue amount;

55 (12) The proposed application of any surplus from all  
56 funding sources to further the objectives of this article;

57 (13) The tax commissioner’s certification of: (i) The  
58 amount of consumers sales and service taxes collected  
59 from businesses located in the economic opportunity  
60 district during the twelve calendar months preceding the  
61 calendar quarter during which the application will be  
62 submitted to the council; (ii) the estimated amount of  
63 economic opportunity district excise tax that will be  
64 collected during the first twelve months after the month in  
65 which the tax commissioner would first begin to collect  
66 that tax; and (iii) the estimated amount of economic

67 opportunity district excise tax that will be collected  
68 during the first thirty-six months after the month in which  
69 the tax commissioner would first begin to collect that tax;  
70 and

71 (14) Any additional information the council may require.

72 (b) *Review of applications.* — The council shall review all  
73 project proposals for conformance to statutory and  
74 regulatory requirements, the reasonableness of the pro-  
75 ject's budget and timetable for completion, and the  
76 following criteria:

77 (1) The quality of the proposed project and how it  
78 addresses economic problems in the area in which the  
79 project will be located;

80 (2) The merits of the project determined by a cost-benefit  
81 analysis that incorporates all costs and benefits, both  
82 public and private;

83 (3) Whether the project is supported by significant  
84 private sector investment and substantial credible evi-  
85 dence that but for the existence of sales tax increment  
86 financing the project would not be feasible;

87 (4) Whether the economic opportunity district excise tax  
88 dollars will leverage or be the catalyst for the effective use  
89 of private, other local government, state or federal funding  
90 that is available;

91 (5) Whether there is substantial and credible evidence  
92 that the project is likely to be started and completed in a  
93 timely fashion;

94 (6) Whether the project will, directly or indirectly,  
95 improve the opportunities, in the area where the project  
96 will be located, for the successful establishment or expan-  
97 sion of other industrial or commercial businesses;

98 (7) Whether the project will, directly or indirectly, assist  
99 in the creation of additional long-term employment  
100 opportunities in the area and the quality of jobs created in

101 all phases of the project, to include, but not be limited to,  
102 wages and benefits;

103 (8) Whether the project will fulfill a pressing need for the  
104 area, or part of the area, in which the economic opportu-  
105 nity district is located;

106 (9) Whether the county commission has a strategy for  
107 economic development in the county and whether the  
108 project is consistent with that strategy;

109 (10) Whether the project helps to diversify the local  
110 economy;

111 (11) Whether the project is consistent with the goals of  
112 this article;

113 (12) Whether the project is economically and fiscally  
114 sound using recognized business standards of finance and  
115 accounting; and

116 (13) The ability of the county commission and the project  
117 developer or project team to carry out the project: *Pro-*  
118 *vided*, That no project may be approved by the council  
119 unless the amount of all development expenditures  
120 proposed to be made in the first twenty-four months  
121 following the creation of the district results in capital  
122 investment of more than fifty million dollars in the district  
123 and the county submits clear and convincing information,  
124 to the satisfaction of the council, that such investment will  
125 be made if the council approves the project and the  
126 Legislature authorizes the county commission to levy an  
127 excise tax on sales of goods and services made within the  
128 economic opportunity district as provided in this article.

129 (c) *Additional criteria.* – The council for community and  
130 economic development may establish other criteria for  
131 consideration when approving the applications.

132 (d) *Action on the application.* – The council for commu-  
133 nity and economic development shall act to approve or not  
134 approve any application within thirty days following the

135 receipt of the application or the receipt of any additional  
136 information requested by the council, whichever is the  
137 later.

138 (e) *Certification of project.* — If the council for commu-  
139 nity and economic development approves a county's  
140 economic opportunity district project application, it shall  
141 issue to the county commission a written certificate  
142 evidencing the approval.

143 The certificate shall expressly state a base tax revenue  
144 amount, the gross annual district tax revenue amount and  
145 the estimated net annual district tax revenue amount  
146 which, for purposes of this article, is the difference  
147 between the gross annual district tax revenue amount and  
148 the base tax revenue amount, all of which the council has  
149 determined with respect to the district's application based  
150 on any investigation it considers reasonable and necessary,  
151 including, but not limited to, any relevant information the  
152 council for community and economic development re-  
153 quests from the tax commissioner and the tax commis-  
154 sioner provides to the council: *Provided*, That in deter-  
155 mining the net annual district tax revenue amount, the  
156 council may not use a base tax revenue amount less than  
157 that amount certified by the tax commissioner but, in lieu  
158 of confirmation from the tax commissioner of the gross  
159 annual district tax revenue amount, the council may use  
160 the estimate of the gross annual district tax revenue  
161 amount provided by the county commission pursuant to  
162 subsection (a) of this section.

163 (f) *Certification of enlargement of geographic boundaries*  
164 *of previously certified district.* — If the council for commu-  
165 nity and economic development approves a county's  
166 economic opportunity district project application to  
167 expand the geographic boundaries of a previously certified  
168 district, it shall issue to the county commission a written  
169 certificate evidencing the approval.

170 The certificate shall expressly state a base tax revenue  
171 amount, the gross annual district tax revenue amount and

172 the estimated net annual district tax revenue amount  
173 which, for purposes of this article, is the difference  
174 between the gross annual district tax revenue amount and  
175 the base tax revenue amount, all of which the council has  
176 determined with respect to the district's application based  
177 on any investigation it considers reasonable and necessary,  
178 including, but not limited to, any relevant information the  
179 council requests from the tax commissioner and the tax  
180 commissioner provides to the council: *Provided, That* in  
181 determining the net annual district tax revenue amount,  
182 the council may not use a base tax revenue amount less  
183 than that amount certified by the tax commissioner but, in  
184 lieu of confirmation from the tax commissioner of the  
185 gross annual district tax revenue amount, the council may  
186 use the estimate of the gross annual district tax revenue  
187 amount provided by the county commission pursuant to  
188 subsection (a) of this section.

189 (g) *Promulgation of rules.* — The council for community  
190 and economic development may promulgate rules to  
191 implement the economic opportunity development district  
192 project application approval process and to describe the  
193 criteria and procedures it has established in connection  
194 therewith. These rules are not subject to the provisions of  
195 chapter twenty-nine-a of this code but shall be filed with  
196 the secretary of state.

**§7-22-8. Establishment of the economic opportunity develop-  
ment district fund.**

1 (a) *General.* — There is hereby created a special revenue  
2 account in the state treasury designated the “economic  
3 opportunity development district fund” which is an  
4 interest-bearing account and shall be invested in the  
5 manner described in section nine-c, article six, chapter  
6 twelve of this code with the interest income a proper credit  
7 to the fund.

8 (b) *District subaccount.* — A separate and segregated  
9 subaccount within the account shall be established for

10 each economic opportunity development district that is  
11 approved by the council. In addition to the economic  
12 opportunity district excise tax levied and collected as  
13 provided in this article, funds paid into the account for the  
14 credit of any subaccount may also be derived from the  
15 following sources:

16 (1) All interest or return on the investment accruing to  
17 the subaccount;

18 (2) Any gifts, grants, bequests, transfers, appropriations  
19 or donations which are received from any governmental  
20 entity or unit or any person, firm, foundation or corpora-  
21 tion; and

22 (3) Any appropriations by the Legislature which are  
23 made for this purpose.

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

1 (a) *General.* — County commissions have no inherent  
2 authority to levy taxes and have only that authority  
3 expressly granted to them by the Legislature. The Legisla-  
4 ture is specifically extended, and intends by this article, to  
5 exercise certain relevant powers expressed in section six-a,  
6 article X of the constitution of this state as follows: (1)  
7 The Legislature may appropriate state funds for use in  
8 matching or maximizing grants-in-aid for public purposes  
9 from the United States or any department, bureau, com-  
10 mission or agency thereof, or any other source, to any  
11 county, municipality or other political subdivision of the  
12 state, under such circumstances and subject to such terms,  
13 conditions and restrictions as the Legislature may pre-  
14 scribe by law; and (2) the Legislature may impose a state  
15 tax or taxes or dedicate a state tax or taxes or any portion  
16 thereof for the benefit of and use by counties, municipali-  
17 ties or other political subdivisions of the state for public  
18 purposes, the proceeds of any such imposed or dedicated  
19 tax or taxes or portion thereof to be distributed to such  
20 counties, municipalities or other political subdivisions of

21 the state under such circumstances and subject to such  
22 terms, conditions and restrictions as the Legislature may  
23 prescribe.

24 Because a special district excise tax would have the  
25 effect of diverting, for a specified period of years, tax  
26 dollars which to the extent, if any, are not essentially  
27 incremental to tax dollars currently paid into the general  
28 revenue fund of the state, the Legislature finds that in  
29 order to substantially ensure that such special district  
30 excise taxes will not adversely impact the current level of  
31 the general revenue fund of the state, it is necessary for the  
32 Legislature to separately consider and act upon each and  
33 every economic development district which is proposed,  
34 including the unique characteristics of location, current  
35 condition and activity of and within the area included in  
36 such proposed economic opportunity development district  
37 and that for such reasons a statute more general in ulti-  
38 mate application is not feasible for accomplishment of the  
39 intention and purpose of the Legislature in enacting this  
40 article. Therefore, no economic opportunity development  
41 district excise tax may be levied by a county commission  
42 until after the Legislature expressly authorizes the county  
43 commission to levy a special district excise tax on sales of  
44 tangible personal property and services made within  
45 district boundaries approved by the Legislature.

46 (b) *Authorizations.* — The Legislature authorizes the  
47 following county commission to levy special district excise  
48 taxes on sales of tangible personal property and services  
49 made from business locations in the following economic  
50 opportunity development districts:

51 The Ohio County commission may levy a special district  
52 excise tax for the benefit of the “Fort Henry” economic  
53 opportunity development project district which comprises  
54 three hundred contiguous acres of land.

**§7-22-10. Ordinance to create district as approved by council  
and authorized by the Legislature.**



1 (a) *General.* — If an economic opportunity development  
2 district project has been approved by the council and the  
3 levying of a special district excise tax for the district has  
4 been authorized by the Legislature, all in accordance with  
5 this article, the county commission may create the district  
6 by order entered of record as provided in article one of this  
7 chapter: *Provided*, That the county commission may not  
8 amend, alter or change in any manner the boundaries of  
9 the economic opportunity development district authorized  
10 by the Legislature. In addition to all other requirements,  
11 the order shall contain the following:

12 (1) The name of the district and a description of its  
13 boundaries;

14 (2) A summary of any proposed services to be provided  
15 and capital improvements to be made within the district  
16 and a reasonable estimate of any attendant costs;

17 (3) The base and rate of any special district excise tax  
18 that may be imposed upon sales by businesses for the  
19 privilege of operating within the district, which tax shall  
20 be passed on to and paid by the consumer, and the manner  
21 in which the taxes will be imposed, administered and  
22 collected, all of which shall be in conformity with the  
23 requirements of this article; and

24 (4) The district board members' terms, their method of  
25 appointment and a general description of the district  
26 board's powers and duties, which powers may include the  
27 authority:

28 (A) To make and adopt all necessary bylaws and rules for  
29 its organization and operations not inconsistent with any  
30 applicable laws;

31 (B) To elect its own officers, to appoint committees and  
32 to employ and fix compensation for personnel necessary  
33 for its operations;

34 (C) To enter into contracts with any person, agency,  
35 government entity, agency or instrumentality, firm,

36 partnership, limited partnership, limited liability company  
37 or corporation, including both public and private corpora-  
38 tions, and for-profit and not-for-profit organizations and  
39 generally to do any and all things necessary or convenient  
40 for the purpose of promoting, developing and advancing  
41 the purposes described in section two of this article;

42 (D) To amend or supplement any contracts or leases or to  
43 enter into new, additional or further contracts or leases  
44 upon the terms and conditions for consideration and for  
45 any term of duration, with or without option of renewal,  
46 as agreed upon by the district board and any person,  
47 agency, government entity, agency or instrumentality,  
48 firm, partnership, limited partnership, limited liability  
49 company or corporation;

50 (E) To, unless otherwise provided in, and subject to the  
51 provisions of any contracts or leases to operate, repair,  
52 manage and maintain buildings and structures and  
53 provide adequate insurance of all types and in connection  
54 with the primary use thereof and incidental thereto to  
55 provide services, such as retail stores and restaurants, and  
56 to effectuate incidental purposes, grant leases, permits,  
57 concessions or other authorizations to any person or  
58 persons upon the terms and conditions for consideration  
59 and for the term of duration as agreed upon by the district  
60 board and any person, agency, governmental department,  
61 firm or corporation;

62 (F) To delegate any authority given to it by law to any of  
63 its officers, committees, agents or employees;

64 (G) To apply for, receive and use grants-in-aid, dona-  
65 tions and contributions from any source or sources and to  
66 accept and use bequests, devises, gifts and donations from  
67 any person, firm or corporation;

68 (H) To acquire real property by gift, purchase or con-  
69 struction or in any other lawful manner and hold title  
70 thereto in its own name and to sell, lease or otherwise  
71 dispose of all or part of any real property which it may

72 own, either by contract or at public auction, upon the  
73 approval by the district board;

74 (I) To purchase or otherwise acquire, own, hold, sell,  
75 lease and dispose of all or part of any personal property  
76 which it may own, either by contract or at public auction;

77 (J) Pursuant to a determination by the district board that  
78 there exists a continuing need for redevelopment expendi-  
79 tures and that moneys or funds of the district are neces-  
80 sary therefor, to borrow money and execute and deliver  
81 the district's negotiable notes and other evidences of  
82 indebtedness therefor, on the terms as the district shall  
83 determine, and give security therefor as is requisite,  
84 including, without limitation, a pledge of the district's  
85 rights in its subaccount of the economic opportunity  
86 development district fund;

87 (K) To acquire (either directly or on behalf of the munic-  
88 ipality) an interest in any entity or entities that own any  
89 real property situate in the district, to contribute capital  
90 to any entity or entities and to exercise the rights of an  
91 owner with respect thereto; and

92 (L) To expend its funds in the execution of the powers  
93 and authority given in this section, which expenditures, by  
94 the means authorized in this section, are hereby deter-  
95 mined and declared as a matter of legislative finding to be  
96 for a public purpose and use, in the public interest and for  
97 the general welfare of the people of West Virginia, to  
98 alleviate and prevent economic deterioration and to relieve  
99 the existing critical condition of unemployment existing  
100 within the state.

101 (b) *Additional contents of order.* — The county commis-  
102 sion's order shall also state the general intention of the  
103 county commission to develop and increase services and to  
104 make capital improvements within the district.

105 (c) *Mailing of certified copies of order.* — Upon entry of  
106 an order establishing an economic opportunity develop-

107 ment district excise tax, a certified copy of the order shall  
108 be mailed to the state auditor, as ex officio the chief  
109 inspector and supervisor of public offices, the state  
110 treasurer and the tax commissioner.

**§7-22-12. Special district excise tax authorized.**

1 (a) *General.* — The county commission of a county,  
2 authorized by the Legislature to levy a special district  
3 excise tax for the benefit of an economic opportunity  
4 development district, may, by order entered of record,  
5 impose that tax on the privilege of selling tangible per-  
6 sonal property and rendering select services in the district  
7 in accordance with this section.

8 (b) *Tax base.* — The base of a special district excise tax  
9 imposed pursuant to this section shall be identical to the  
10 base of the consumers sales and service tax imposed  
11 pursuant to article fifteen, chapter eleven of this code on  
12 sales made and services rendered within the boundaries of  
13 the district: *Provided*, That except for the exemption  
14 provided in section nine-f of said article, all exemptions  
15 and exceptions from the consumers sales and service tax  
16 shall also apply to the special district excise tax and sales  
17 of gasoline and special fuel shall not be subject to special  
18 district excise tax but shall remain subject to the tax  
19 levied by said article.

20 (c) *Tax rate.* — The rate of a special district excise tax  
21 levied pursuant to this section shall be stated in an order  
22 entered of record by the county commission and equal to  
23 the general rate of tax on each dollar of gross proceeds  
24 from sales of tangible personal property and services  
25 subject to the tax levied by section three, article fifteen,  
26 chapter eleven of this code. The tax on fractional parts of  
27 a dollar shall be levied and collected in conformity with  
28 the provision of said section.

29 (d) *Collection by tax commissioner.* — The order of the  
30 county commission imposing a special district excise tax

31 shall provide for the tax to be collected by the tax commis-  
32 sioner in the same manner as the tax levied by section  
33 three, article fifteen, chapter eleven of this code is admin-  
34 istered, assessed, collected and enforced.

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

36 (1) The order of the county commission imposing a  
37 special district excise tax shall provide that the tax  
38 commissioner deposit the net amount of tax collected in  
39 the special economic opportunity development district  
40 fund to the credit of the county commission's subaccount  
41 therein for the economic opportunity development district  
42 and that the money in the subaccount may only be used to  
43 pay for development expenditures as provided in this  
44 article except as provided in subsection (f) of this section.

45 (2) The state treasurer shall withhold from the county  
46 commission's subaccount in the economic opportunity  
47 development district fund and shall deposit in the general  
48 revenue fund of this state, on or before the twentieth day  
49 of each calendar month next following the effective date  
50 of a special district excise tax, a sum equal to one twelfth  
51 of the base tax revenue amount last certified by the  
52 council pursuant to section seven of this article.

53 (f) *Effective date of special district excise tax.* – Any  
54 taxes imposed pursuant to the authority of this section  
55 shall be effective on the first day of the calendar month  
56 that begins sixty days after the date of adoption of an  
57 order entered of record imposing the tax or the first day of  
58 any later calendar month expressly designated in the  
59 order.

60 (g) *Copies of order.* – Upon entry of an order levying a  
61 special district excise tax, a certified copy of the order  
62 shall be mailed to the state auditor, as ex officio the chief  
63 inspector and supervisor of public offices, the state  
64 treasurer and the tax commissioner.

**§7-22-14. Modification of included area; notice; hearing.**

1 (a) *General.* — The order creating an economic opportu-  
2 nity development district may not be amended to include  
3 additional contiguous property until after the amendment  
4 is approved by the council in the same manner as an  
5 application to approve the establishment of the district is  
6 acted upon under section seven of this article and the  
7 amendment is authorized by the Legislature.

8 (b) *Limitations.* — Additional property may not be  
9 included in the district unless it is situated within the  
10 boundaries of the county and is contiguous to the then  
11 current boundaries of the district.

12 (c) *Public hearing required.* —

13 (1) The county commission of any county desiring to  
14 amend its order shall designate a time and place for a  
15 public hearing upon the proposal to include additional  
16 property. The notice shall meet the requirements set forth  
17 in section six of this article.

18 (2) At the time and place set forth in the notice, the  
19 county commission shall afford the opportunity to be  
20 heard to any owners of real property either currently  
21 included in or proposed to be added to the existing district  
22 and to any other residents of the county.

23 (d) *Application to council.* — Following the hearing, the  
24 county commission may, by resolution, apply to the  
25 council for community and economic development to  
26 approve inclusion of the additional property in the district.

27 (e) *Consideration by council.* — Before the council for  
28 community and economic development approves inclusion  
29 of the additional property in the district, the council shall  
30 determine the amount of taxes levied by article fifteen,  
31 chapter eleven of this code that were collected by busi-  
32 nesses located in the area the county commission proposes  
33 to add to the district in the same manner as the base  
34 amount of tax was determined when the district was first  
35 created. The state treasurer shall also deposit one twelfth

36 of this additional tax base amount into the general revenue  
37 fund each month, as provided in section twelve of this  
38 article.

39 (f) *Legislative action required.* — After the council  
40 approves amending the boundaries of the district, the  
41 Legislature must amend section nine of this article to  
42 allow levy of the special district excise tax on business  
43 located in geographic area to be included in the district.  
44 After the Legislature amends said section, the county  
45 commission may then amend its order: *Provided*, That the  
46 order may not be effective any earlier than the first day of  
47 the calendar month that begins sixty days after the  
48 effective date of the act of the Legislature authorizing the  
49 levy on the special district excise tax on businesses located  
50 in the geographic area to be added to the boundaries of the  
51 district for which the tax is levied or a later date as set  
52 forth in the order of the county commission.

53 (g) *Collection of special district excise tax.* — All busi-  
54 nesses included in a district because of the boundary  
55 amendment shall on the effective date of the order,  
56 determined as provided in subsection (f) of this section,  
57 collect the special district excise tax on all sales on  
58 tangible property or services made from locations in the  
59 district on or after the effective date of the county commis-  
60 sion's order or a later date as set forth in the order.

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

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

10 outstanding indebtedness, the proceeds of which were  
11 applied to any development or redevelopment expendi-  
12 tures or the payment of which is secured by revenues  
13 payable into the fund provided under section eight of this  
14 article, or by any public property, and following a public  
15 hearing upon the proposed abolishment.

16 (b) *Notice of public hearing.* — Notice of the public  
17 hearing required by subsection (a) of this section shall be  
18 provided by first-class mail to all owners of real property  
19 within the district and shall be published as a Class I-0  
20 legal advertisement in compliance with article three,  
21 chapter fifty-nine of this code at least twenty days prior to  
22 the public hearing.

23 (c) *Transfer of district assets and funds.* — Upon the  
24 abolishment of any economic opportunity development  
25 district, any funds or other assets, contractual rights or  
26 obligations, claims against holders of indebtedness or  
27 other financial benefits, liabilities or obligations existing  
28 after full payment has been made on all existing contracts,  
29 bonds, notes or other obligations of the district are trans-  
30 ferred to and assumed by the county commission. Any  
31 funds or other assets transferred shall be used for the  
32 benefit of the area included in the district being abolished.

33 (d) *Reinstatement of district.* — Following abolishment  
34 of a district pursuant to this section, its reinstatement  
35 requires compliance with all requirements and procedures  
36 set forth in this article for the initial development, ap-  
37 proval, establishment and creation of an economic oppor-  
38 tunity development district.

#### **§7-22-17. Security for bonds.**

1 (a) *General.* — Unless the county commission shall  
2 otherwise determine in the resolution authorizing the  
3 issuance of the bonds or notes under the authority of this  
4 article, there is hereby created a statutory lien upon the  
5 subaccount created pursuant to section eight of this article



6 and all special district excise tax revenues collected for the  
7 benefit of the district pursuant to section eleven-a, article  
8 ten, chapter eleven of this code for the purpose of securing  
9 the principal of the bonds or notes and the interest  
10 thereon.

11 (b) *Security for debt service.* — The principal of and  
12 interest on any bonds or notes issued under the authority  
13 of this article shall be secured by a pledge of the special  
14 district excise tax revenues derived from the economic  
15 opportunity development district project by the county  
16 commission issuing the bonds or notes to the extent  
17 provided in the resolution adopted by the county commis-  
18 sion authorizing the issuance of the bonds or notes.

19 (c) *Trust indenture.* —

20 (1) In the discretion and at the option of the county  
21 commission, the bonds and notes may also be secured by  
22 a trust indenture by and between the county commission  
23 and a corporate trustee, which may be a trust company or  
24 bank having trust powers, within or without the state of  
25 West Virginia.

26 (2) The resolution authorizing the bonds or notes and  
27 fixing the details thereof may provide that the trust  
28 indenture may contain provisions for the protection and  
29 enforcing the rights and remedies of the bondholders as  
30 are reasonable and proper, not in violation of law, includ-  
31 ing covenants setting forth the duties of the county  
32 commission in relation to the construction, acquisition or  
33 financing of an economic opportunity development district  
34 project, or part thereof or an addition thereto, and the  
35 improvement, repair, maintenance and insurance thereof  
36 and for the custody, safeguarding and application of all  
37 moneys and may provide that the economic opportunity  
38 development district project shall be constructed and paid  
39 for under the supervision and approval of the consulting  
40 engineers or architects employed and designated by the  
41 county commission or, if directed by the county commis-

42 sion in the resolution, by the district board, and satisfac-  
43 tory to the purchasers of the bonds or notes, their succes-  
44 sors, assigns or nominees who may require the security  
45 given by any contractor or any depository of the proceeds  
46 of the bonds or notes or the revenues received from the  
47 district project be satisfactory to the purchasers, their  
48 successors, assigns or nominees.

49 (3) The indenture may set forth the rights and remedies  
50 of the bondholders, the county commission or trustee and  
51 the indenture may provide for accelerating the maturity of  
52 the revenue bonds, at the option of the bondholders or the  
53 county commission issuing the bonds, upon default in the  
54 payment of the amounts due under the bonds.

55 (4) The county commission may also provide by resolu-  
56 tion and in the trust indenture for the payment of the  
57 proceeds of the sale of the bonds or notes and the revenues  
58 from the economic opportunity development district  
59 project to any depository it determines, for the custody  
60 and investment thereof and for the method of distribution  
61 thereof, with safeguards and restrictions it determines to  
62 be necessary or advisable for the protection thereof and  
63 upon the filing of a certified copy of the resolution or of  
64 the indenture for record in the office of the clerk of the  
65 county commission of the county in which the economic  
66 opportunity development project is located, the resolution  
67 has the same effect, as to notice, as the recordation of a  
68 deed of trust or other recordable instrument.

69 (5) In the event that more than one certified resolution or  
70 indenture is recorded, the security interest granted by the  
71 first recorded resolution or indenture has priority in the  
72 same manner as an earlier filed deed of trust except to the  
73 extent the earlier recorded resolution or indenture pro-  
74 vides otherwise.

75 (d) *Mortgage or deed of trust.* –

76 (1) In addition to or in lieu of the indenture provided in  
77 subsection (c) of this section, the principal of and interest

78 on the bonds or notes may, but need not, be secured by a  
79 mortgage or deed of trust covering all or any part of the  
80 economic opportunity development district project from  
81 which the revenues pledged are derived and the same may  
82 be secured by an assignment or pledge of the income  
83 received from the economic opportunity development  
84 district project.

85 (2) The proceedings under which bonds or notes are  
86 authorized to be issued, when secured by a mortgage or  
87 deed of trust, may contain the same terms, conditions and  
88 provisions provided for herein when an indenture is  
89 entered into between the county commission and a trustee  
90 and any mortgage or deed of trust may contain any  
91 agreements and provisions customarily contained in  
92 instruments securing bonds or notes, including, without  
93 limiting the generality of the foregoing, provisions respect-  
94 ing the fixing and collection of revenues from the eco-  
95 nomic opportunity development district project covered by  
96 the proceedings or mortgage, the terms to be incorporated  
97 in any lease, sale or financing agreement with respect to  
98 the economic opportunity development district project, the  
99 improvement, repair, maintenance and insurance of the  
100 economic opportunity district project, the creation and  
101 maintenance of special funds from the revenues received  
102 from the economic opportunity development district  
103 project and the rights and remedies available in event of  
104 default to the bondholders or note holders, the county  
105 commission, or to the trustee under an agreement, inden-  
106 ture, mortgage or deed of trust, all as the county commis-  
107 sion body considers advisable and shall not be in conflict  
108 with the provisions of this article or any existing law:  
109 *Provided*, That in making any agreements or provisions, a  
110 county commission shall not have the power to incur  
111 original indebtedness by indenture, order, resolution,  
112 mortgage or deed of trust except with respect to the  
113 economic opportunity development district project and the  
114 application of the revenues therefrom and shall not have  
115 the power to incur a pecuniary liability or a charge upon

116 its general credit or against its taxing powers unless  
117 approved by the voters in accordance with article one,  
118 chapter thirteen of this code or as otherwise permitted by  
119 the constitution of this state.

120 (e) *Enforcement of obligations.* –

121 (1) The proceedings authorizing any bonds and any  
122 indenture, mortgage or deed of trust securing the bonds  
123 may provide that, in the event of default in payment of the  
124 principal of or the interest on the bonds, or notes, or in the  
125 performance of any agreement contained in the proceed-  
126 ings, indenture, mortgage or deed of trust, payment and  
127 performance may be enforced by the appointment of a  
128 receiver in equity with power to charge and collect rents  
129 or other amounts and to apply the revenues from the  
130 economic opportunity development district project in  
131 accordance with the proceedings or the provisions of the  
132 agreement, indenture, mortgage or deed of trust.

133 (2) Any agreement, indenture, mortgage or deed of trust  
134 may provide also that, in the event of default in payment  
135 or the violation of any agreement contained in the mort-  
136 gage or deed of trust, the agreement, indenture, mortgage  
137 or deed of trust may be foreclosed either by sale at public  
138 outcry or by proceedings in equity and may provide that  
139 the holder or holders of any of the bonds secured thereby  
140 may become the purchaser at any foreclosure sale, if the  
141 highest bidder therefor.

142 (f) *No pecuniary liability.* – No breach of any agreement,  
143 indenture, mortgage or deed of trust shall impose any  
144 pecuniary liability upon a county or any charge upon its  
145 general credit or against its taxing powers.

#### **§7-22-19. Refunding bonds.**

1 (a) Any bonds issued under this article and at any time  
2 outstanding may at any time, and from time to time, be  
3 refunded by a county commission by the issuance of its  
4 refunding bonds in amount as the county commission

5 considers necessary to refund the principal of the bonds to  
6 be refunded, together with any unpaid interest thereon; to  
7 make any improvements or alterations in the economic  
8 opportunity development district project; and any premi-  
9 ums and commissions necessary to be paid in connection  
10 therewith.

11 (b) Any refunding may be effected whether the bonds to  
12 be refunded shall have then matured or shall thereafter  
13 mature, either by sale of the refunding bonds and the  
14 application of the proceeds thereof for the redemption of  
15 the bonds to be refunded thereby, or by exchange of the  
16 refunding bonds for the bonds to be refunded thereby:  
17 *Provided*, That the holders of any bonds to be refunded  
18 shall not be compelled without their consent to surrender  
19 their bonds for payment or exchange prior to the date on  
20 which they are payable or, if they are called for redemp-  
21 tion, prior to the date on which they are by their terms  
22 subject to redemption.

23 (c) Any refunding bonds issued under the authority of  
24 this article is subject to the provisions contained in section  
25 sixteen of this article and shall be secured in accordance  
26 with the provisions of section seventeen of this article.

## **CHAPTER 8. MUNICIPAL CORPORATIONS.**

### **ARTICLE 38. MUNICIPAL ECONOMIC OPPORTUNITY DEVELOPMENT DISTRICTS.**

#### **§8-38-2. Legislative findings and declaration of purpose.**

1 The Legislature finds that many significant business  
2 opportunities initiated within municipalities of this state  
3 face financial and other economic obstacles.

4 The Legislature further finds that there are undeveloped,  
5 underdeveloped or seriously deteriorated development  
6 areas within certain municipalities of this state which are  
7 uniquely situated relative to large populations in other  
8 states or to other specific economic recreational or cultural  
9 activities or facilities which will attract large populations

10 from this state and other states who would be likely to  
11 make substantial retail purchases of tangible personal  
12 property and services offered in modern and modernized  
13 structures and facilities constructed, supplemented,  
14 reconstructed or repaired in such undeveloped, underde-  
15 veloped or seriously deteriorated areas within certain  
16 municipalities of this state. The Legislature further finds  
17 that economic inducements provided by the state are  
18 necessary and appropriate to enable the construction,  
19 supplementation, reconstruction and repair of such  
20 modern and modernized structures and facilities in such  
21 undeveloped, underdeveloped or seriously deteriorated  
22 areas within certain municipalities of this state. This  
23 adversely affects the economic and general well-being of  
24 the citizens of those municipalities. Establishment of  
25 economic opportunity development districts within  
26 municipalities of the state, in accordance with the purpose  
27 and powers set forth in this article, will serve a public  
28 purpose and promote the health, safety, prosperity,  
29 security and general welfare of all citizens in the state. It  
30 will also promote the establishment and vitality of signifi-  
31 cant business opportunities within those municipalities  
32 while serving as an effective means for developing or  
33 restoring and promoting retail and other business activity  
34 within the economic opportunity development districts  
35 created herein. This will be of special benefit to the tax  
36 base of the municipalities within which any economic  
37 development district is created pursuant to this article and  
38 will specifically generate substantial incremental increases  
39 in excise taxes on sales within such economic opportunity  
40 development districts of tangible personal property and  
41 services and thereby and otherwise will stimulate eco-  
42 nomic growth and job creation.

### §8-38-3. Definitions.

1 For purposes of this article, the term:

- 2 (1) "Council" means the council for community and  
3 economic development established in section two, article  
4 two, chapter five-b of this code;

5 (2) "Development expenditures" means payments for  
6 governmental functions, programs, activities, facility  
7 construction, improvements and other goods and services  
8 which a district board is authorized to perform or provide  
9 under section five of this article;

10 (3) "District" means an economic opportunity develop-  
11 ment district created pursuant to this article;

12 (4) "District board" means a district board created  
13 pursuant to section ten of this article;

14 (5) "Eligible property" means any taxable or exempt real  
15 property located in a district established pursuant to this  
16 article; and

17 (6) "Municipality" is a word of art and shall mean, for  
18 the purposes of this article, only Class I and Class II cities  
19 as classified in section three, article one of this chapter.

**§8-38-6. Notice; hearing.**

1 (a) *General.* — A municipality desiring to create an  
2 economic opportunity development district shall conduct  
3 a public hearing.

4 (b) *Notice of hearing.* — Notice of the public hearing  
5 shall be published as a Class I-0 legal advertisement in  
6 compliance with article three, chapter fifty-nine of this  
7 code at least twenty days prior to the scheduled hearing.  
8 In addition to the time and place of the hearing, the notice  
9 must also state:

10 (1) The purpose of the hearing;

11 (2) The name of the proposed district;

12 (3) The general purpose of the proposed district;

13 (4) The geographic boundaries of the property proposed  
14 to be included in the district; and

15 (5) The proposed method of financing any costs involved,  
16 including the base and rate of special district excise tax

17 that may be imposed upon sales of tangible personal  
18 property and taxable services from business locations  
19 situated within the proposed district.

20 (c) *Opportunity to be heard.* — At the time and place set  
21 forth in the notice, the municipality shall afford the  
22 opportunity to be heard to any owner of real property  
23 situated in the proposed district and any residents of the  
24 municipality.

25 (d) *Application to council.* — If the municipality, follow-  
26 ing the public hearing, determines it advisable and in the  
27 public interest to establish an economic opportunity  
28 development district, it shall apply to the council for  
29 community and economic development for approval of the  
30 economic opportunity development district project  
31 pursuant to the procedures provided in section seven of  
32 this article.

**§8-38-7. Application to council for community and economic  
development for approval of an economic opportu-  
nity development district project.**

1 (a) *General.* — The council for community and economic  
2 development shall receive and act on applications filed  
3 with it by municipalities pursuant to section six of this  
4 article. Each application must include:

5 (1) A true copy of the notice described in section six of  
6 this article;

7 (2) The total cost of the project;

8 (3) A reasonable estimate of the number of months  
9 needed to complete the project;

10 (4) A general description of the capital improvements,  
11 additional or extended services and other proposed  
12 development expenditures to be made in the district as  
13 part of the project;

14 (5) A description of the proposed method of financing the  
15 development expenditures, together with a description of



16 the reserves to be established for financing ongoing  
17 development or redevelopment expenditures necessary to  
18 permanently maintain the optimum economic viability of  
19 the district following its inception: *Provided*, That the  
20 amounts of the reserves shall not exceed the amounts that  
21 would be required by ordinary commercial capital market  
22 considerations;

23 (6) A description of the sources and anticipated amounts  
24 of all financing, including, but not limited to, proceeds  
25 from the issuance of any bonds or other instruments,  
26 revenues from the special district excise tax and enhanced  
27 revenues from property taxes and fees;

28 (7) A description of the financial contribution of the  
29 municipality to the funding of development expenditures;

30 (8) Identification of any businesses that the municipality  
31 expects to relocate their business locations from the  
32 district to another place in the state in connection with the  
33 establishment of the district or from another place in this  
34 state to the district: *Provided*, That for purposes of this  
35 article, any entities shall be designated "relocated enti-  
36 ties";

37 (9) Identification of any businesses currently conducting  
38 business in the proposed economic opportunity develop-  
39 ment district that the municipality expects to continue  
40 doing business there after the district is created;

41 (10) A good faith estimate of the aggregate amount of  
42 consumers sales and service tax that was actually remitted  
43 to the tax commissioner by all business locations identified  
44 as provided in subdivisions (8) and (9) of this subsection  
45 with respect to their sales made and services rendered  
46 from their then current business locations that will be  
47 relocated from, or to, or remain in the district, for the  
48 twelve full calendar months next preceding the date of the  
49 application: *Provided*, That for purposes of this article,  
50 the aggregate amount is designated as "the base tax  
51 revenue amount";

52 (11) A good faith estimate of the gross annual district tax  
53 revenue amount;

54 (12) The proposed application of any surplus from all  
55 funding sources to further the objectives of this article;

56 (13) The tax commissioner's certification of: (i) The  
57 amount of consumers sales and service taxes collected  
58 from businesses located in the economic opportunity  
59 district during the twelve calendar months preceding the  
60 calendar quarter during which the application will be  
61 submitted to the council; (ii) the estimated amount of  
62 economic opportunity district excise tax that will be  
63 collected during the first twelve months after the month in  
64 which the tax commissioner would first begin to collect  
65 that tax; and (iii) the estimated amount of economic  
66 opportunity district excise tax that will be collected  
67 during the first thirty-six months after the month in which  
68 the tax commissioner would first begin to collect that tax;  
69 and

70 (14) Any additional information the council may require.

71 (b) *Review of applications.* — The council shall review all  
72 project proposals for conformance to statutory and  
73 regulatory requirements, the reasonableness of the pro-  
74 ject's budget and timetable for completion, and the  
75 following criteria:

76 (1) The quality of the proposed project and how it  
77 addresses economic problems in the area in which the  
78 project will be located;

79 (2) The merits of the project determined by a cost-benefit  
80 analysis that incorporates all costs and benefits, both  
81 public and private;

82 (3) Whether the project is supported by significant  
83 private sector investment and substantial credible evi-  
84 dence that but for the existence of sales tax increment  
85 financing the project would not be feasible;

86 (4) Whether the economic opportunity development  
87 district excise tax dollars will leverage or be the catalyst  
88 for the effective use of private, other local government,  
89 state or federal funding that is available;

90 (5) Whether there is substantial and credible evidence  
91 that the project is likely to be started and completed in a  
92 timely fashion;

93 (6) Whether the project will, directly or indirectly,  
94 improve the opportunities, in the area where the project  
95 will be located, for the successful establishment or expan-  
96 sion of other industrial or commercial businesses;

97 (7) Whether the project will, directly or indirectly, assist  
98 in the creation of additional long-term employment  
99 opportunities in the area and the quality of jobs created in  
100 all phases of the project, to include, but not be limited to,  
101 wages and benefits;

102 (8) Whether the project will fulfill a pressing need for the  
103 area, or part of the area, in which the economic opportu-  
104 nity district is located;

105 (9) Whether the municipality has a strategy for economic  
106 development in the municipality and whether the project  
107 is consistent with that strategy;

108 (10) Whether the project helps to diversify the local  
109 economy;

110 (11) Whether the project is consistent with the goals of  
111 this article;

112 (12) Whether the project is economically and fiscally  
113 sound using recognized business standards of finance and  
114 accounting; and

115 (13) The ability of the municipality and the project  
116 developer or project team to carry out the project: *Pro-*  
117 *vided*, That no project may be approved by the council  
118 unless the amount of all development expenditures

119 proposed to be made in the first twenty-four months  
120 following the creation of the district results in capital  
121 investment of more than fifty million dollars in the district  
122 and the municipality submits clear and convincing infor-  
123 mation, to the satisfaction of the council, that such  
124 investment will be made if the council approves the project  
125 and the Legislature authorizes the municipality to levy an  
126 excise tax on sales of goods and services made within the  
127 economic opportunity development district as provided in  
128 this article.

129 (c) *Additional criteria.* — The council for community and  
130 economic development may establish other criteria for  
131 consideration when approving the applications.

132 (d) *Action on the application.* — The council for commu-  
133 nity and economic development shall act to approve or not  
134 approve any application within thirty days following the  
135 receipt of the application or the receipt of any additional  
136 information requested by the council, whichever is the  
137 later.

138 (e) *Certification of project.* — If the council for commu-  
139 nity and economic development approves a municipality's  
140 economic opportunity district project application, it shall  
141 issue to the municipality a written certificate evidencing  
142 the approval.

143 The certificate shall expressly state a base tax revenue  
144 amount, the gross annual district tax revenue amount and  
145 the estimated net annual district tax revenue amount  
146 which, for purposes of this article, is the difference  
147 between the gross annual district tax revenue amount and  
148 the base tax revenue amount, all of which the council for  
149 community and economic development has determined  
150 with respect to the district's application based on any  
151 investigation it considers reasonable and necessary,  
152 including, but not limited to, any relevant information the  
153 council for community and economic development re-  
154 quests from the tax commissioner and the tax commis-

155 sioner provides to the council: *Provided*, That in determin-  
156 ing the net annual district tax revenue amount, the council  
157 may not use a base tax revenue amount less than that  
158 amount certified by the tax commissioner but, in lieu of  
159 confirmation from the tax commissioner of the gross  
160 annual district tax revenue amount, the council may use  
161 the estimate of the gross annual district tax revenue  
162 amount provided by the municipality pursuant to subsec-  
163 tion (a) of this section.

164 (f) *Certification of enlargement of geographic boundaries*  
165 *of previously certified district.* — If the council for commu-  
166 nity and economic development approves a municipality's  
167 economic opportunity district project application to  
168 expand the geographic boundaries of a previously certified  
169 district, it shall issue to the municipality a written  
170 certificate evidencing the approval.

171 The certificate shall expressly state a base tax revenue  
172 amount, the gross annual district tax revenue amount and  
173 the estimated net annual district tax revenue amount  
174 which, for purposes of this article, is the difference  
175 between the gross annual district tax revenue amount and  
176 the base tax revenue amount, all of which the council has  
177 determined with respect to the district's application based  
178 on any investigation it considers reasonable and necessary,  
179 including, but not limited to, any relevant information the  
180 council requests from the tax commissioner and the tax  
181 commissioner provides to the council: *Provided*, That in  
182 determining the net annual district tax revenue amount,  
183 the council may not use a base tax revenue amount less  
184 than that amount certified by the tax commissioner but, in  
185 lieu of confirmation from the tax commissioner of the  
186 gross annual district tax revenue amount, the council may  
187 use the estimate of the gross annual district tax revenue  
188 amount provided by the municipality pursuant to subsec-  
189 tion (a) of this section.

190 (g) *Promulgation of rules.* — The council for community  
191 and economic development may promulgate rules to

192 implement the economic opportunity development district  
 193 project application approval process and to describe the  
 194 criteria and procedures it has established in connection  
 195 therewith. These rules are not subject to the provisions of  
 196 chapter twenty-nine-a of this code but shall be filed with  
 197 the secretary of state.

**§8-38-8. Establishment of the economic opportunity development district fund.**

1 (a) *General.* — There is hereby created a special revenue  
 2 account in the state treasury designated the “economic  
 3 opportunity development district fund” which is an  
 4 interest-bearing account and shall be invested in the  
 5 manner described in section nine-c, article six, chapter  
 6 twelve of this code with the interest income a proper credit  
 7 to the fund.

8 (b) *District subaccount.* — A separate and segregated  
 9 subaccount within the account shall be established for  
 10 each economic opportunity development district that is  
 11 approved by the council. In addition to the economic  
 12 opportunity district excise tax levied and collected as  
 13 provided in this article, funds paid into the account for the  
 14 credit of any subaccount may also be derived from the  
 15 following sources:

16 (1) All interest or return on the investment accruing to  
 17 the subaccount;

18 (2) Any gifts, grants, bequests, transfers, appropriations  
 19 or donations which are received from any governmental  
 20 entity or unit or any person, firm, foundation or corpora-  
 21 tion; and

22 (3) Any appropriations by the Legislature which are  
 23 made for this purpose.

**§8-38-9. Authorization to levy special district excise tax.**

1 (a) *General.* — Municipalities have no inherent authority  
 2 to levy taxes and have only that authority expressly

3 granted to them by the Legislature. The Legislature is  
4 specifically extended, and intends by this article to  
5 exercise certain relevant powers expressed in section six-a,  
6 article X of the constitution of this state as follows: (1)  
7 The Legislature may appropriate state funds for use in  
8 matching or maximizing grants-in-aid for public purposes  
9 from the United States or any department, bureau, com-  
10 mission or agency thereof, or any other source, to any  
11 county, municipality or other political subdivision of the  
12 state, under such circumstances and subject to such terms,  
13 conditions and restrictions as the Legislature may pre-  
14 scribe by law; and (2) the Legislature may impose a state  
15 tax or taxes or dedicate a state tax or taxes or any portion  
16 thereof for the benefit of and use by counties, municipali-  
17 ties or other political subdivisions of the state for public  
18 purposes, the proceeds of any such imposed or dedicated  
19 tax or taxes or portion thereof to be distributed to such  
20 counties, municipalities or other political subdivisions of  
21 the state under such circumstances and subject to such  
22 terms, conditions and restrictions as the Legislature may  
23 prescribe.

24 Because a special district excise tax would have the  
25 effect of diverting, for a specified period of years, tax  
26 dollars which to the extent, if any, are not essentially  
27 incremental to tax dollars currently paid into the general  
28 revenue fund of the state, the Legislature finds that in  
29 order to substantially ensure that such special district  
30 excise taxes will not adversely impact the current level of  
31 the general revenue fund of the state, it is necessary for the  
32 Legislature to separately consider and act upon each and  
33 every economic development district which is proposed,  
34 including the unique characteristics of location, current  
35 condition and activity of and within the area included in  
36 such proposed economic opportunity development district  
37 and that for such reasons a statute more general in ulti-  
38 mate application is not feasible for accomplishment of the  
39 intention and purpose of the Legislature in enacting this  
40 article. Therefore, no economic opportunity development

41 district excise tax may be levied by a municipality until  
42 after the Legislature expressly authorizes the municipality  
43 to levy a special district excise tax on sales of tangible  
44 personal property and services made within district  
45 boundaries approved by the Legislature.

46 (b) *Authorizations.* — The Legislature authorizes the  
47 following municipalities to levy special district excise  
48 taxes on sales of tangible personal property and services  
49 made from business locations in the following economic  
50 opportunity development districts.

**§8-38-10. Ordinance to create district as approved by council  
and authorized by the Legislature.**

1 (a) *General.* — If an economic opportunity development  
2 district project has been approved by the council for  
3 community and economic development and the levying of  
4 a special district excise tax for the district has been  
5 authorized by the Legislature, all in accordance with this  
6 article, the municipality may create the district by ordi-  
7 nance entered of record as provided in article one of this  
8 chapter: *Provided,* That the municipality may not amend,  
9 alter or change in any manner the boundaries of the  
10 economic opportunity development district authorized by  
11 the Legislature. In addition to all other requirements, the  
12 ordinance shall contain the following:

13 (1) The name of the district and a description of its  
14 boundaries;

15 (2) A summary of any proposed services to be provided  
16 and capital improvements to be made within the district  
17 and a reasonable estimate of any attendant costs;

18 (3) The base and rate of any special district excise tax  
19 that may be imposed upon sales by businesses for the  
20 privilege of operating within the district, which tax shall  
21 be passed on to and paid by the consumer, and the manner  
22 in which the taxes will be imposed, administered and



23 collected, all of which shall be in conformity with the  
24 requirements of this article; and

25 (4) The district board members' terms, their method of  
26 appointment and a general description of the district  
27 board's powers and duties, which powers may include the  
28 authority:

29 (A) To make and adopt all necessary bylaws and rules for  
30 its organization and operations not inconsistent with any  
31 applicable laws;

32 (B) To elect its own officers, to appoint committees and  
33 to employ and fix compensation for personnel necessary  
34 for its operations;

35 (C) To enter into contracts with any person, agency,  
36 government entity, agency or instrumentality, firm,  
37 partnership, limited partnership, limited liability company  
38 or corporation, including both public and private corpora-  
39 tions, and for-profit and not-for-profit organizations and  
40 generally to do any and all things necessary or convenient  
41 for the purpose of promoting, developing and advancing  
42 the purposes described in section two of this article;

43 (D) To amend or supplement any contracts or leases or to  
44 enter into new, additional or further contracts or leases  
45 upon the terms and conditions for consideration and for  
46 any term of duration, with or without option of renewal,  
47 as agreed upon by the district board and any person,  
48 agency, government entity, agency or instrumentality,  
49 firm, partnership, limited partnership, limited liability  
50 company or corporation;

51 (E) To, unless otherwise provided in, and subject to the  
52 provisions of any contracts or leases to operate, repair,  
53 manage, and maintain buildings and structures and  
54 provide adequate insurance of all types and in connection  
55 with the primary use thereof and incidental thereto to  
56 provide services, such as retail stores and restaurants, and  
57 to effectuate incidental purposes, grant leases, permits,

58 concessions or other authorizations to any person or  
59 persons upon the terms and conditions for consideration  
60 and for the term of duration as agreed upon by the district  
61 board and any person, agency, governmental department,  
62 firm or corporation;

63 (F) To delegate any authority given to it by law to any of  
64 its officers, committees, agents or employees;

65 (G) To apply for, receive and use grants-in-aid, dona-  
66 tions and contributions from any source or sources and to  
67 accept and use bequests, devises, gifts and donations from  
68 any person, firm or corporation;

69 (H) To acquire real property by gift, purchase or con-  
70 struction or in any other lawful manner and hold title  
71 thereto in its own name and to sell, lease or otherwise  
72 dispose of all or part of any real property which it may  
73 own, either by contract or at public auction, upon the  
74 approval by the district board;

75 (I) To purchase or otherwise acquire, own, hold, sell,  
76 lease and dispose of all or part of any personal property  
77 which it may own, either by contract or at public auction;

78 (J) Pursuant to a determination by the district board that  
79 there exists a continuing need for redevelopment expendi-  
80 tures and that moneys or funds of the district are neces-  
81 sary therefor, to borrow money and execute and deliver  
82 the district's negotiable notes and other evidences of  
83 indebtedness therefor, on the terms as the district shall  
84 determine, and give security therefor as is requisite,  
85 including, without limitation, a pledge of the district's  
86 rights in its subaccount of the economic opportunity  
87 development district fund;

88 (K) To acquire (either directly or on behalf of the munic-  
89 ipality) an interest in any entity or entities that own any  
90 real property situate in the district, to contribute capital  
91 to any entity or entities and to exercise the rights of an  
92 owner with respect thereto; and

93 (L) To expend its funds in the execution of the powers  
94 and authority given in this section, which expenditures, by  
95 the means authorized in this section, are hereby deter-  
96 mined and declared as a matter of legislative finding to be  
97 for a public purpose and use, in the public interest and for  
98 the general welfare of the people of West Virginia, to  
99 alleviate and prevent economic deterioration and to relieve  
100 the existing critical condition of unemployment existing  
101 within the state.

102 (b) *Additional contents of ordinance.* — The municipal-  
103 ity's ordinance shall also state the general intention of the  
104 municipality to develop and increase services and to make  
105 capital improvements within the district.

106 (c) *Mailing of certified copies of ordinance.* — Upon  
107 enactment of an ordinance establishing an economic  
108 opportunity development district excise tax, a certified  
109 copy of the ordinance shall be mailed to the state auditor,  
110 as ex officio the chief inspector and supervisor of public  
111 offices, the state treasurer and the tax commissioner.

#### **§8-38-11. District board; duties.**

1 (a) *General.* — The council of a municipality that has  
2 been authorized by the council for community and eco-  
3 nomic development to establish an economic opportunity  
4 development district, in accordance with this article, shall  
5 provide, by ordinance, for the appointment of a district  
6 board to oversee the operations of the district: *Provided,*  
7 That the municipality may, in the ordinance, in lieu of  
8 appointing a separate district board, designate itself to act  
9 as the district board.

10 (b) *Composition of board.* — If a separate district board  
11 is to be appointed, it shall be made up of at least seven  
12 members, two of which shall be owners, or representatives  
13 of owners, of real property situated in the economic  
14 opportunity development district and the other five shall  
15 be residents of the municipality within which the district  
16 is located.

17 (c) *Annual report.* — The district board, in addition to  
18 the duties prescribed by the ordinance creating the  
19 district, shall submit an annual report to the municipality  
20 and the council containing:

21 (1) An itemized statement of its receipts and disburse-  
22 ments for the preceding fiscal year;

23 (2) A description of its activities for the preceding fiscal  
24 year;

25 (3) A recommended program of services to be performed  
26 and capital improvements to be made within the district  
27 for the coming fiscal year; and

28 (4) A proposed budget to accomplish its objectives.

29 (d) *Conflict of interest exception.* — Nothing in this  
30 article prohibits any member of the district board from  
31 also serving on the board of directors of a nonprofit  
32 corporation with which the municipality may contract to  
33 provide specified services within the district.

34 (e) *Compensation of board members.* — Each member of  
35 the district board may receive reasonable compensation  
36 for services on the board in the amount determined by the  
37 municipality: *Provided*, That when a district board is not  
38 created for the district but the work of the board is done  
39 by the municipality, the members shall receive no addi-  
40 tional compensation.

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

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

8 (b) *Tax base.* -- The base of a special district excise tax  
9 imposed pursuant to this section shall be identical to the

10 base of the consumers sales and service tax imposed  
11 pursuant to article fifteen, chapter eleven of this code on  
12 sales made and services rendered within the boundaries of  
13 the district: *Provided*, That except for the exemption  
14 provided in section nine-f of said article, all exemptions  
15 and exceptions from the consumers sales and service tax  
16 shall also apply to the special district excise tax and sales  
17 of gasoline and special fuel shall not be subject to special  
18 district excise tax but shall remain subject to the tax  
19 levied by said article.

20 (c) *Tax rate.* — The rate of a special district excise tax  
21 levied pursuant to this section shall be stated in an ordi-  
22 nance enacted by the municipality and equal to the general  
23 rate of tax on each dollar of gross proceeds from sales of  
24 tangible personal property and services subject to the tax  
25 levied by section three, article fifteen, chapter eleven of  
26 this code. The tax on fractional parts of a dollar shall be  
27 levied and collected in conformity with the provision of  
28 said section.

29 (d) *Collection by tax commissioner.* — The ordinance of  
30 the municipality imposing a special district excise tax  
31 shall provide for the tax to be collected by the tax commis-  
32 sioner in the same manner as the tax levied by section  
33 three, article fifteen, chapter eleven of this code is admin-  
34 istered, assessed, collected and enforced.

35 (e) *Deposit of net tax collected.* —

36 (1) The ordinance of the municipality imposing a special  
37 district excise tax shall provide that the tax commissioner  
38 deposit the net amount of tax collected in the special  
39 economic opportunity development district fund to the  
40 credit of the municipality's subaccount therein for the  
41 economic opportunity development district and that the  
42 money in the subaccount may only be used to pay for  
43 development expenditures as provided in this article  
44 except as provided in subsection (f) of this section.

45 (2) The state treasurer shall withhold from the municipal-  
46 ity's subaccount in the economic opportunity development  
47 district fund and shall deposit in the general revenue fund  
48 of this state, on or before the twentieth day of each  
49 calendar month next following the effective date of a  
50 special district excise tax, a sum equal to one twelfth of  
51 the base tax revenue amount last certified by the council  
52 pursuant to section seven of this article.

53 (f) *Effective date of special district excise tax.* — Any  
54 taxes imposed pursuant to the authority of this section  
55 shall be effective on the first day of the calendar month  
56 that begins at least sixty days after the date of enactment  
57 of the ordinance imposing the tax or at any later date  
58 expressly designated in the ordinance that begins on the  
59 first day of a calendar month.

60 (g) *Copies of ordinance.* — Upon enactment of an  
61 ordinance levying a special district excise tax, a certified  
62 copy of the ordinance shall be mailed to the state auditor,  
63 as ex officio the chief inspector and supervisor of public  
64 offices, the state treasurer and the tax commissioner.

**§8-38-14. Modification of included area; notice; hearing.**

1 (a) *General.* — The ordinance creating an economic  
2 opportunity development district may not be amended to  
3 include additional contiguous property until after the  
4 amendment is approved by the council for community and  
5 economic development in the same manner as an applica-  
6 tion to approve the establishment of the district is acted  
7 upon under section seven of this article.

8 (b) *Limitations.* — Additional property may not be  
9 included in the district unless it is situated within the  
10 boundaries of the municipality and is contiguous to the  
11 then current boundaries of the district.

12 (c) *Public hearing required.* —

13 (1) The council of any municipality desiring to amend its  
14 ordinance shall designate a time and place for a public

15 hearing upon the proposal to include additional property.  
16 The notice shall meet the requirements set forth in section  
17 six of this article.

18 (2) At the time and place set forth in the notice, the  
19 municipality shall afford the opportunity to be heard to  
20 any owners of real property either currently included in or  
21 proposed to be added to the existing district and to any  
22 other residents of the municipality.

23 (d) *Application to council.* — Following the hearing, the  
24 municipality may, by resolution, apply to the council for  
25 community and economic development to approve inclu-  
26 sion of the additional property in the district.

27 (e) *Consideration by council.* — Before the council for  
28 community and economic development approves inclusion  
29 of the additional property in the district, the council shall  
30 determine the amount of taxes levied by article fifteen,  
31 chapter eleven of this code that were collected by busi-  
32 nesses located in the area the municipality proposes to add  
33 to the district in the same manner as the base amount of  
34 tax was determined when the district was first created.  
35 The state treasurer shall also deposit one twelfth of this  
36 additional tax base amount into the general revenue fund  
37 each month, as provided in section twelve of this article.

38 (f) *Legislative action required.* — After the council for  
39 community and economic development approves amending  
40 the boundaries of the district, the Legislature must amend  
41 section nine of this article to allow levy of the special  
42 district excise tax on business located in geographic area  
43 to be included in the district. After the Legislature amends  
44 said section, the municipality may then amend its ordi-  
45 nance: *Provided*, That the ordinance may not be effective  
46 any earlier than the first day of the calendar month that  
47 begins sixty days after the effective date of the amended  
48 ordinance imposing the levy of the special district excise  
49 tax on businesses located in the geographic area to be  
50 added to the boundaries of the district for which the tax is

51 levied or the first day of a later calendar month as set forth  
52 in the ordinance of the municipality.

53 (g) *Collection of special district excise tax.* — All busi-  
54 nesses included in a district because of the boundary  
55 amendment shall on the effective date of the ordinance,  
56 determined as provided in subsection (f) of this section,  
57 collect the special district excise tax on all sales on tangi-  
58 ble property or services made from locations in the district  
59 on or after the effective date of the municipality's ordi-  
60 nance or a later date as set forth in the ordinance.

**§8-38-15. Abolishment and dissolution of district; notice;  
hearing.**

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

16 (b) *Notice of public hearing.* — Notice of the public  
17 hearing required by subsection (a) of this section shall be  
18 provided by first-class mail to all owners of real property  
19 within the district and shall be published as a Class I-0  
20 legal advertisement in compliance with article three,  
21 chapter fifty-nine of this code at least twenty days prior to  
22 the public hearing.

23 (c) *Transfer of district assets and funds.* — Upon the  
24 abolishment of any economic opportunity development



25 district, any funds or other assets, contractual rights or  
26 obligations, claims against holders of indebtedness or  
27 other financial benefits, liabilities or obligations existing  
28 after full payment has been made on all existing contracts,  
29 bonds, notes or other obligations of the district are trans-  
30 ferred to and assumed by the municipality. Any funds or  
31 other assets transferred shall be used for the benefit of the  
32 area included in the district being abolished.

33 (d) *Reinstatement of district.* — Following abolishment  
34 of a district pursuant to this section, its reinstatement  
35 requires compliance with all requirements and procedures  
36 set forth in this article for the initial development, ap-  
37 proval, establishment and creation of an economic oppor-  
38 tunity development district.

**§8-38-16. Bonds issued to finance economic opportunity develop-  
ment district projects.**

1 (a) *General.* — The municipality that established the  
2 economic opportunity development district may issue  
3 bonds or notes for the purpose of financing development  
4 expenditures, as described in section five of this article,  
5 with respect to one or more projects within the economic  
6 opportunity development district.

7 (b) *Limited obligations.* — All bonds and notes issued by  
8 a municipality under the authority of this article are  
9 limited obligations of the municipality.

10 (c) *Term of obligations.* — No municipality may issue  
11 notes, bonds or other instruments for funding district  
12 projects or improvements that exceed a repayment sched-  
13 ule of thirty years.

14 (d) *Debt service.* — The principal and interest on the  
15 bonds shall be payable out of the funds on deposit in the  
16 subaccount established for the economic opportunity  
17 development district pursuant to section eight of this  
18 article, including, without limitation, any funds derived  
19 from the special district excise tax imposed by section

20 twelve of this article or other revenues derived from the  
21 economic opportunity development district to the extent  
22 pledged for the purpose by the municipality in the resolu-  
23 tion authorizing the bonds.

24 (e) *Surplus funds.* — To the extent that the average daily  
25 amount on deposit in the subaccount established for a  
26 district pursuant to section eight of this article exceeds, for  
27 more than six consecutive calendar months, the sum of: (1)  
28 One hundred thousand dollars; plus (2) the amount  
29 required to be kept on deposit pursuant to the documents  
30 authorizing, securing or otherwise relating to the bonds or  
31 notes issued under this section, then the excess shall be  
32 used by the district either to redeem the bonds or notes  
33 previously issued or remitted to the general fund of this  
34 state.

35 (f) *Debt not general obligation of municipality.* —  
36 Neither the notes or bonds and any interest coupons issued  
37 under the authority of this article shall ever constitute an  
38 indebtedness of the municipality issuing the notes or  
39 bonds within the meaning of any constitutional provision  
40 or statutory limitation and shall never constitute or give  
41 rise to a pecuniary liability of the municipality issuing the  
42 notes or bonds.

43 (g) *Debt not a charge general credit or taxing powers of*  
44 *municipality.* — Neither the bonds or notes, nor interest  
45 thereon, is a charge against the general credit or taxing  
46 powers of the municipality and that fact shall be plainly  
47 stated on the face of each bond or note.

48 (h) *Issuance of bonds or notes.* —

49 (1) Bonds or notes allowed under this section may be  
50 executed, issued and delivered at any time, and from time  
51 to time, may be in a form and denomination, may be of a  
52 tenor, must be negotiable but may be registered as to the  
53 principal thereof or as to the principal and interest  
54 thereof, may be payable in any amounts and at any time or  
55 times, may be payable at any place or places, may bear

56 interest at any rate or rates payable at any place or places  
57 and evidenced in any manner and may contain any provi-  
58 sions therein not inconsistent herewith, all as provided in  
59 the ordinance of the municipality whereunder the bonds or  
60 notes are authorized to be issued.

61 (2) The bonds may be sold by the municipality at public  
62 or private sale at, above or below par as the municipality  
63 authorizes.

64 (3) Bonds and notes issued pursuant to this article shall  
65 be signed by the authorized representative of the munici-  
66 pality and attested by the municipal recorder and be under  
67 the seal of the municipality.

68 (4) Any coupons attached to the bonds shall bear the  
69 facsimile signature of the authorized representative of the  
70 municipality. In case any of the officials whose signatures  
71 appear on the bonds, notes or coupons cease to be officers  
72 before the delivery of the bonds or notes, their signatures  
73 shall, nevertheless, be valid and sufficient for all purposes  
74 to the same extent as if they had remained in office until  
75 the delivery.

76 (i) *Additional bonds or notes.* — If the proceeds of the  
77 bonds or notes, by error of calculation or otherwise, are  
78 less than the cost of the economic opportunity develop-  
79 ment district project, or if additional real or personal  
80 property is to be added to the district project or if it is  
81 determined that financing is needed for additional devel-  
82 opment or redevelopment expenditures, additional bonds  
83 or notes may, in like manner, be issued to provide the  
84 amount of the deficiency or to defray the cost of acquiring  
85 or financing any additional real or personal property or  
86 development or redevelopment expenditures and, unless  
87 otherwise provided in the trust agreement, mortgage or  
88 deed of trust, are considered to be of the same issue and  
89 shall be entitled to payment from the same fund, without  
90 preference or priority, and shall be of equal priority as to  
91 any security.

**§8-38-17. Security for bonds.**

1 (a) *General.* — Unless the municipality shall otherwise  
2 determine in the resolution authorizing the issuance of the  
3 bonds or notes under the authority of this article, there is  
4 hereby created a statutory lien upon the subaccount  
5 created pursuant to section eight of this article and all  
6 special district excise tax revenues collected for the benefit  
7 of the district pursuant to section eleven-a, article ten,  
8 chapter eleven of this code for the purpose of securing the  
9 principal of the bonds or notes and the interest thereon.

10 (b) *Security for debt service.* — The principal of and  
11 interest on any bonds or notes issued under the authority  
12 of this article shall be secured by a pledge of the special  
13 district excise tax revenues derived from the economic  
14 opportunity development district project by the municipal-  
15 ity issuing the bonds or notes to the extent provided in the  
16 resolution adopted by the municipality authorizing the  
17 issuance of the bonds or notes.

18 (c) *Trust indenture.* —

19 (1) In the discretion and at the option of the municipality,  
20 the bonds and notes may also be secured by a trust inden-  
21 ture by and between the municipality and a corporate  
22 trustee, which may be a trust company or bank having  
23 trust powers, within or without the state of West Virginia.

24 (2) The resolution authorizing the bonds or notes and  
25 fixing the details thereof may provide that the trust  
26 indenture may contain provisions for the protection and  
27 enforcing the rights and remedies of the bondholders as are  
28 reasonable and proper, not in violation of law, including  
29 covenants setting forth the duties of the municipality in  
30 relation to the construction, acquisition or financing of an  
31 economic opportunity development district project, or part  
32 thereof or an addition thereto, and the improvement,  
33 repair, maintenance and insurance thereof and for the  
34 custody, safeguarding and application of all moneys and

35 may provide that the economic opportunity development  
36 district project shall be constructed and paid for under the  
37 supervision and approval of the consulting engineers or  
38 architects employed and designated by the municipality or,  
39 if directed by the municipality in the resolution, by the  
40 district board, and satisfactory to the purchasers of the  
41 bonds or notes, their successors, assigns or nominees who  
42 may require the security given by any contractor or any  
43 depository of the proceeds of the bonds or notes or the  
44 revenues received from the district project be satisfactory  
45 to the purchasers, their successors, assigns or nominees.

46 (3) The indenture may set forth the rights and remedies  
47 of the bondholders, the municipality or trustee and the  
48 indenture may provide for accelerating the maturity of the  
49 revenue bonds, at the option of the bondholders or the  
50 municipality issuing the bonds, upon default in the pay-  
51 ment of the amounts due under the bonds.

52 (4) The municipality may also provide by resolution and  
53 in the trust indenture for the payment of the proceeds of  
54 the sale of the bonds or notes and the revenues from the  
55 economic opportunity development district project to any  
56 depository it determines, for the custody and investment  
57 thereof and for the method of distribution thereof, with  
58 safeguards and restrictions it determines to be necessary or  
59 advisable for the protection thereof and upon the filing of  
60 a certified copy of the resolution or of the indenture for  
61 record with the clerk of the municipality in which the  
62 economic opportunity development project is located, the  
63 resolution has the same effect, as to notice, as the  
64 recordation of a deed of trust or other recordable instru-  
65 ment.

66 (5) In the event that more than one certified resolution or  
67 indenture is recorded, the security interest granted by the  
68 first recorded resolution or indenture has priority in the  
69 same manner as an earlier filed deed of trust except to the  
70 extent the earlier recorded resolution or indenture provides  
71 otherwise.

72 (d) *Mortgage or deed of trust.* –

73 (1) In addition to or in lieu of the indenture provided in  
74 subsection (c) of this section, the principal of and interest  
75 on the bonds or notes may, but need not, be secured by a  
76 mortgage or deed of trust covering all or any part of the  
77 economic opportunity development district project from  
78 which the revenues pledged are derived and the same may  
79 be secured by an assignment or pledge of the income  
80 received from the economic opportunity development  
81 district project.

82 (2) The proceedings under which bonds or notes are  
83 authorized to be issued, when secured by a mortgage or  
84 deed of trust, may contain the same terms, conditions and  
85 provisions provided for herein when an indenture is  
86 entered into between the municipality and a trustee and  
87 any mortgage or deed of trust may contain any agreements  
88 and provisions customarily contained in instruments  
89 securing bonds or notes, including, without limiting the  
90 generality of the foregoing, provisions respecting the fixing  
91 and collection of revenues from the economic opportunity  
92 development district project covered by the proceedings or  
93 mortgage, the terms to be incorporated in any lease, sale or  
94 financing agreement with respect to the economic opportu-  
95 nity development district project, the improvement, repair,  
96 maintenance and insurance of the economic opportunity  
97 development district project, the creation and maintenance  
98 of special funds from the revenues received from the  
99 economic opportunity development district project and the  
100 rights and remedies available in event of default to the  
101 bondholders or note holders, the municipality, or to the  
102 trustee under an agreement, indenture, mortgage or deed  
103 of trust, all as the municipality considers advisable and  
104 shall not be in conflict with the provisions of this article or  
105 any existing law: *Provided*, That in making any agree-  
106 ments or provisions, a municipality shall not have the  
107 power to incur original indebtedness by indenture, ordi-  
108 nance, resolution, mortgage or deed of trust except with  
109 respect to the economic opportunity development district

110 project and the application of the revenues therefrom and  
111 shall not have the power to incur a pecuniary liability or a  
112 charge upon its general credit or against its taxing powers  
113 unless approved by the voters in accordance with article  
114 one, chapter thirteen of this code or as otherwise permitted  
115 by the constitution of this state.

116 (e) *Enforcement of obligations.* –

117 (1) The proceedings authorizing any bonds and any  
118 indenture, mortgage or deed of trust securing the bonds  
119 may provide that, in the event of default in payment of the  
120 principal of or the interest on the bonds, or notes, or in the  
121 performance of any agreement contained in the proceed-  
122 ings, indenture, mortgage or deed of trust, payment and  
123 performance may be enforced by the appointment of a  
124 receiver in equity with power to charge and collect rents or  
125 other amounts and to apply the revenues from the eco-  
126 nomic opportunity development district project in accor-  
127 dance with the proceedings or the provisions of the agree-  
128 ment, indenture, mortgage or deed of trust.

129 (2) Any agreement, indenture, mortgage or deed of trust  
130 may provide also that, in the event of default in payment  
131 or the violation of any agreement contained in the mort-  
132 gage or deed of trust, the agreement, indenture, mortgage  
133 or deed of trust may be foreclosed either by sale at public  
134 outcry or by proceedings in equity and may provide that  
135 the holder or holders of any of the bonds secured thereby  
136 may become the purchaser at any foreclosure sale, if the  
137 highest bidder therefor.

138 (f) *No pecuniary liability.* – No breach of any agreement,  
139 indenture, mortgage or deed of trust shall impose any  
140 pecuniary liability upon a municipality or any charge upon  
141 its general credit or against its taxing powers.

#### §8-38-19. Refunding bonds.

1 (a) Any bonds issued under this article and at any time  
2 outstanding may at any time, and from time to time, be  
3 refunded by a municipality by the issuance of its refunding

4 bonds in amount as the municipality considers necessary  
5 to refund the principal of the bonds to be refunded,  
6 together with any unpaid interest thereon; to make any  
7 improvements or alterations in the economic opportunity  
8 development district project; and any premiums and  
9 commissions necessary to be paid in connection therewith.

10 (b) Any refunding may be effected whether the bonds to  
11 be refunded shall have then matured or shall thereafter  
12 mature, either by sale of the refunding bonds and the  
13 application of the proceeds thereof for the redemption of  
14 the bonds to be refunded thereby, or by exchange of the  
15 refunding bonds for the bonds to be refunded thereby:  
16 *Provided*, That the holders of any bonds to be refunded  
17 shall not be compelled without their consent to surrender  
18 their bonds for payment or exchange prior to the date on  
19 which they are payable or, if they are called for redemp-  
20 tion, prior to the date on which they are by their terms  
21 subject to redemption.

22 (c) Any refunding bonds issued under the authority of  
23 this article are subject to the provisions contained in  
24 section sixteen of this article and shall be secured in  
25 accordance with the provisions of section seventeen of this  
26 article.

## CHAPTER 11. TAXATION.

### ARTICLE 10. TAX PROCEDURE AND ADMINISTRATION.

#### §11-10-11a. Administration of special district excise tax; commis- sion authorized.

1 (a) Any municipality or county commission which,  
2 pursuant to section twelve, article twenty-two, chapter  
3 seven of this code, section eleven, article thirteen-b,  
4 chapter eight of this code or section twelve, article thirty-  
5 eight, chapter eight of this code imposes a special district  
6 excise tax shall, by express provision in the order or  
7 ordinance imposing that tax, authorize the state tax  
8 commissioner to administer, assess, collect and enforce  
9 that tax on behalf of and as its agent.



10 (1) The county commission or municipality shall make  
11 such authorization by the adoption of a provision in its  
12 order or ordinance levying a special district excise tax  
13 stating its purpose and referring to this section and  
14 providing that the order or ordinance shall be effective on  
15 the first day of a month at least sixty days after its adop-  
16 tion.

17 (2) A certified copy of the order or ordinance shall be  
18 forwarded to the state auditor, the state treasurer and the  
19 tax commissioner so that it will be received within five  
20 days after its adoption or enactment.

21 (b) Any special district excise tax administered under  
22 this section shall be administered and collected by the tax  
23 commissioner in the same manner and subject to the same  
24 interest, additions to tax and penalties as provided for the  
25 tax imposed in article fifteen of this chapter.

26 (c) All special district excise tax moneys collected by the  
27 tax commissioner under this section shall be paid into the  
28 state treasury to the credit of each county commission's  
29 subaccount in the economic opportunity development  
30 district fund created pursuant to section nine, article  
31 twenty-two, chapter seven of this code, or to the credit of  
32 each municipality's subaccount in the economic opportu-  
33 nity development district fund created pursuant to section  
34 nine, article thirty-eight, chapter eight of this code, for the  
35 particular economic opportunity development district.  
36 The special district excise tax moneys shall be credited to  
37 the subaccount of each particular county commission or  
38 municipality levying a special district excise tax being  
39 administered under this section. The credit shall be made  
40 to the subaccount of the county commission or municipal-  
41 ity for the economic opportunity development district in  
42 which the taxable sales were made and services rendered  
43 as shown by the records of the tax commissioner and  
44 certified by him or her monthly to the state treasurer,  
45 namely, the location of each place of business of every  
46 vendor collecting and paying the tax to the tax commis-

47 sioner without regard to the place of possible use by the  
48 purchaser.

49 (d) As soon as practicable after the special district excise  
50 tax moneys have been paid into the state treasury in any  
51 month for the preceding reporting period, the district  
52 board may issue a requisition to the auditor requesting  
53 issuance of a state warrant for the proper amount in favor  
54 of each county commission or municipality entitled to the  
55 monthly remittance of its special district excise tax  
56 moneys.

57 (1) Upon receipt of the requisition, the auditor shall issue  
58 his or her warrant on the state treasurer for the funds  
59 requested and the state treasurer shall pay the warrant out  
60 of the subaccount.

61 (2) If errors are made in any payment, or adjustments are  
62 otherwise necessary, whether attributable to refunds to  
63 taxpayers or to some other fact, the errors shall be cor-  
64 rected and adjustments made in the payments for the next  
65 six months as follows: One sixth of the total adjustment  
66 shall be included in the payments for the next six months.  
67 In addition, the payment shall include a refund of amounts  
68 erroneously not paid to the county commission or the  
69 municipality and not previously remitted during the three  
70 years preceding the discovery of the error.

71 (3) A correction and adjustment in payments described  
72 in this subsection due to the misallocation of funds by the  
73 vendor shall be made within three years of the date of the  
74 payment error.

75 (e) Notwithstanding any other provision of this code to  
76 the contrary, the tax commissioner shall deduct and retain  
77 for the benefit of his or her office for expenditure pursuant  
78 to appropriation of the Legislature from each payment  
79 into the state treasury, as provided in subsection (c) of this  
80 section, one percent thereof as a commission to compen-  
81 sate his or her office for the discharge of the duties de-  
82 scribed in this section.

**ARTICLE 15B. STREAMLINED SALES AND USE TAX ADMINISTRATION.****§11-15B-32. Effective date.**

1 (a) The provisions of this article, as amended or added  
2 during the regular legislative session in the year two  
3 thousand three, shall take effect the first day of January,  
4 two thousand four, and apply to all sales made on or after  
5 that date and to all returns and payments due on or after  
6 that day, except as otherwise expressly provided in section  
7 five of this article.

8 (b) The provisions of this article, as amended or added  
9 during the second extraordinary legislative session in the  
10 year two thousand three, shall take effect the first day of  
11 January, two thousand four, and apply to all sales made on  
12 or after that date.

**§11-15B-33. State administration of local sales and use taxes.**

1 The tax commissioner shall conduct, or authorize others  
2 to conduct on his or her behalf, all audits of sellers regis-  
3 tered under the streamlined sales and use tax agreement  
4 for compliance with the sales and use tax laws of this state  
5 and the sales and use tax laws of its local jurisdictions. A  
6 local jurisdiction may not conduct independent sales or  
7 use tax audits of sellers registered under the streamlined  
8 sales and use tax agreement.

**§11-15B-34. State and local sales and use tax bases.**

1 (a) *General.* — The tax base of a local jurisdiction that  
2 levies a local sales or use tax pursuant to authority granted  
3 by the Legislature shall be identical to the sales and use  
4 tax base of this state, unless otherwise prohibited by  
5 federal law, except as provided in subsection (b) of this  
6 section.

7 (b) *Exceptions.* — This section does not apply to sales or  
8 use taxes levied on: (1) The wholesale sale of gasoline or  
9 special fuel, which local jurisdictions are prohibited from  
10 taxing; or (2) the retail sale or transfer of motor vehicles,

11 aircraft, watercraft, modular homes, manufactured homes  
12 or mobile homes.

**§11-15B-35. Local rate and boundary changes.**

1 (a) *General.* -- Local tax rate changes shall be effective  
2 only on the first day of a calendar quarter after a mini-  
3 mum of sixty days' notice to seller, except as provided in  
4 subsection (b) of this section.

5 (b) *Printed catalogs.* -- Local tax rate changes shall  
6 apply to purchases from printed catalogs where the  
7 purchaser computed the tax based upon the local tax rate  
8 published in the catalog only on and after the first day of  
9 a calendar quarter after a minimum of one hundred twenty  
10 days' notice to the sellers.

11 (c) *Local boundary changes.* -- A local jurisdiction  
12 boundary change shall first apply for purposes of compu-  
13 tation of a local sales and use tax on the first day of a  
14 calendar quarter after a minimum of sixty days' notice to  
15 sellers.

16 (d) *Database of local jurisdiction boundaries.* --

17 (1) The state shall provide and maintain a database that  
18 describes boundary changes for all taxing jurisdictions.  
19 This database shall include a description of the change and  
20 the effective date of the change for sales and use tax  
21 purposes.

22 (2) The state shall provide and maintain a database of all  
23 sales and use tax rates for all of the jurisdictions levying  
24 taxes within the state. For the identification of states,  
25 counties and cities, codes corresponding to the rates must  
26 be provided according to federal information processing  
27 standards (FIPS) as developed by the national institute of  
28 standards and technology. For the identification of all  
29 other jurisdictions, codes corresponding to the rates must  
30 be in the format determined by the members of the stream-  
31 lined sales and use tax agreement.

32 (3) The state shall provide and maintain a database that  
33 assigns each five-digit and nine-digit zip code within a  
34 member state to the proper tax rates and jurisdictions.  
35 The state must apply the lowest combined tax rate im-  
36 posed in the zip code area if the area includes more than  
37 one tax rate in any level of taxing jurisdictions. If a nine-  
38 digit zip code designation is not available for a street  
39 address or if a seller is unable to determine the nine-digit  
40 zip code designation of a purchaser after exercising due  
41 diligence to determine the designation, the seller may  
42 apply the rate for the five-digit zip code area. For the  
43 purposes of this section, there is a rebuttable presumption  
44 that a seller has exercised due diligence if the seller has  
45 attempted to determine the nine-digit zip code designation  
46 by utilizing software approved by the members of the  
47 streamlined sales and use tax agreement that makes this  
48 designation from the street address and the five-digit zip  
49 code of the purchaser.

50 (4) This state shall participate with other member states  
51 in the development of an address-based system for assign-  
52 ing taxing jurisdictions. The system shall meet the re-  
53 quirements developed pursuant to the federal Mobile  
54 Telecommunications Sourcing Act (4 U. S. C. §119). The  
55 governing board of the streamlined sales and use tax  
56 agreement may allow a member state to require sellers  
57 that register under this agreement to use an address-based  
58 system provided by that member state. If any member  
59 state develops an address-based assignment system  
60 pursuant to the Mobile Telecommunications Sourcing Act,  
61 a seller may use that system in place of the system pro-  
62 vided in subdivision (3) of this subsection.

**§11-15B-36. Relief from certain liability for local taxes.**

1 (a) *General.* — Sellers and certified service providers  
2 registered under the streamlined sales and use tax agree-  
3 ment to collect sales and use taxes imposed by local  
4 jurisdiction of this state who charged and collected the  
5 incorrect amount of sales or use taxes resulting from the

6 seller or the certified service provider relying on erroneous  
7 data provided by this state on tax rates, boundaries or  
8 taxing jurisdiction assignments shall be held harmless by  
9 the tax commissioner and the local taxing jurisdiction.

10 (b) *Exception.* — A state that is a member of the stream-  
11 lined sales and use tax agreement and provides an address-  
12 based system for assigning taxing jurisdictions pursuant  
13 to subsection (G), section three hundred five of the agree-  
14 ment, or pursuant to the federal Mobile Telecommunica-  
15 tions Sourcing Act, is not required to provide liability  
16 relief for errors resulting from reliance on information  
17 provided by the member state under subsection (F) of  
18 section three hundred five.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*Larry Blue*  
.....  
Chairman Senate Committee

*Sharon Spencer*  
.....  
Chairman House Committee

Originated in the Senate.

In effect from passage.

*Russell Elphinstone*  
.....  
Clerk of the Senate

*Barry M. Burd*  
.....  
Clerk of the House of Delegates

*Carl Ray Tomblin*  
.....  
President of the Senate

*Robert Skiss*  
.....  
Speaker House of Delegates

The within *is approved* this the *5th*  
Day of *June*, 2003.  
*Bob Wise*  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

Date 6/19/03

Time 4:45pm