

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 234**

5 (BY SENATORS KESSLER (ACTING PRESIDENT) AND HALL,

6 BY REQUEST OF THE EXECUTIVE)

7 _____
8 [Passed March 9, 2011; in effect ninety days from passage.]
9 _____

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11
12 AN ACT to amend and reenact §8-38-3, §8-38-4, §8-38-5, §8-38-7,
13 §8-38-10, §8-38-12, §8-38-15, §8-38-16, §8-38-17 and §8-38-20
14 of the Code of West Virginia, 1931, as amended, all relating
15 to revising the Municipal Economic Opportunity Development
16 District Act generally; enlarging the types of municipal
17 corporations that may use sales tax increment financing to
18 finance certain economic development projects to any Class I,
19 Class II and Class III city and any Class IV town or village;
20 including "mining operations" in the definition of
21 "remediation"; including remediation of former coal or other
22 mining sites as a permissible development expenditure for a
23 project; changing the standard by which the maximum amounts of
24 reserves that may be established in the financing of a project
25 are measured; recommending that the Development Office

1 consider whether the economic development that a project
2 enables is large enough to require that it contain mixed-use
3 development consisting of a housing component with at least
4 ten percent of housing units in the district allocated for
5 affordable housing when determining whether there is a
6 pressing need for the project; defining "affordable housing";
7 reducing the amount of capital investment required for project
8 approval; allowing the Development Office to reduce the
9 minimum amount of local sales tax revenues that would be
10 deposited into the state's General Revenue Fund in certain
11 circumstances; providing that the maximum repayment schedule
12 of all notes, bonds or other instruments issued to fund
13 projects is thirty years; and providing technical and clerical
14 cleanup.

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

16 That §8-38-3, §8-38-4, §8-38-5, §8-38-7, §8-38-10, §8-38-12,
17 §8-38-15, §8-38-16, §8-38-17 and §8-38-20 of the Code of West
18 Virginia, 1931, as amended, be amended and reenacted, all to read
19 as follows:

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

21 **§8-38-3. Definitions.**

22 For purposes of this article, the term:

23 (1) "Affordable housing" means housing that could be purchased
24 with a cash down payment of at least ten percent and the proceeds
25 of a mortgage loan, the monthly principal and interest payments on

1 which do not exceed thirty percent of the gross monthly income of
2 a household earning one hundred percent of the current median
3 family income, as computed by the United States Department of
4 Housing and Urban Development, for the county in which the district
5 is located. For the purposes of this definition, the monthly
6 principal and interest payments referred to in the preceding
7 sentence are computed using a standard amortization calculation
8 incorporating the prevailing annual rate of interest on mortgage
9 loans offered by financial institutions in the vicinity of the
10 district, as determined by the Development Office at the time of
11 its review of a municipality's application in accordance with
12 section seven of this article, and a thirty year amortization
13 period.

14 (2) "Development expenditures" means payments for governmental
15 functions, programs, activities, facility construction,
16 improvements and other goods and services which a district board is
17 authorized to perform or provide under section five of this
18 article;

19 (3) "District" means an economic opportunity development
20 district created pursuant to this article;

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

23 (5) "Eligible property" means any taxable or exempt real
24 property located in a district established pursuant to this
25 article;

1 (6) "Municipality" is a word of art and means any Class I,
2 Class II and Class III city or any Class IV town or village as
3 classified in section three, article one of this chapter;

4 (7) "Remediation" means measures undertaken to bring about the
5 reconditioning or restoration of property located within the
6 boundaries of an economic opportunity development district that has
7 been affected by exploration, mining, industrial operations or
8 solid waste disposal and which measures, when undertaken, will
9 eliminate or ameliorate the existing state of the property and
10 enable the property to be commercially developed.

11 **§8-38-4. Authorization to create economic opportunity development**
12 **districts.**

13 A municipality may, in accordance with the procedures and
14 subject to the limitations set forth in this article:

15 (1) Create one or more economic opportunity development
16 districts within its limits;

17 (2) Provide for the administration and financing of
18 development expenditures within the districts; and

19 (3) Provide for the administration and financing of a
20 continuing program of development expenditures within the
21 districts.

22 **§8-38-5. Development expenditures.**

23 Any municipality that has established an economic opportunity
24 development district under this article may make, or authorize to
25 be made by a district board and other public or private parties,

1 development expenditures as will promote the economic vitality of
2 the district and the general welfare of the municipality,
3 including, but not limited to, expenditures for the following
4 purposes:

5 (1) Beautification of the district by means
6 including landscaping and construction and erection of fountains,
7 shelters, benches, sculptures, signs, lighting, decorations and
8 similar amenities;

9 (2) Provision of special or additional public services such as
10 sanitation, security for persons and property and the construction
11 and maintenance of public facilities, including, but not limited
12 to, sidewalks, parking lots, parking garages and other public
13 areas;

14 (3) Making payments for principal, interest, issuance costs,
15 any of the costs described in section twenty of this article and
16 appropriate reserves for bonds and other instruments and
17 arrangements issued or entered into by the municipality for
18 financing the expenditures of the district described in this
19 section and to otherwise implement the purposes of this article;

20 (4) Providing financial support for public transportation and
21 vehicle parking facilities open to the general public, whether
22 physically situate within the district's boundaries or on adjacent
23 land;

24 (5) Acquiring, building, demolishing, razing, constructing,
25 repairing, reconstructing, refurbishing, renovating,

1 rehabilitating, expanding, altering, otherwise developing,
2 operating and maintaining real property generally, parking
3 facilities, commercial structures and other capital improvements to
4 real property, fixtures and tangible personal property, whether or
5 not physically situate within the district's boundaries: *Provided,*
6 That the expenditure directly benefits the district;

7 (6) Developing plans for the architectural design of the
8 district and portions thereof and developing plans and programs for
9 the future development of the district;

10 (7) Developing, promoting and supporting community events and
11 activities open to the general public that benefit the district;

12 (8) Providing the administrative costs for a district
13 management program;

14 (9) Providing for the usual and customary maintenance and
15 upkeep of all improvements and amenities in the district as are
16 commercially reasonable and necessary to sustain its economic
17 viability on a permanent basis;

18 (10) Providing any other services that the municipality or
19 district board is authorized to perform and which the municipality
20 does not also perform to the same extent on a countywide basis;

21 (11) Making grants to the owners or tenants of economic
22 opportunity development district for the purposes described in this
23 section;

24 (12) Acquiring an interest in any entity or entities that own
25 any portion of the real property situate in the district and

1 contributing capital to any entity or entities;

2 (13) Remediation of publicly or privately owned landfills,
3 former coal or other mining sites, solid waste facilities or
4 hazardous waste sites to facilitate commercial development which
5 would not otherwise be economically feasible; and

6 (14) To do any and all things necessary, desirable or
7 appropriate to carry out and accomplish the purposes of this
8 article notwithstanding any provision of this code to the contrary.

9 **§8-38-7. Application to Development Office for approval of an**
10 **economic opportunity development district project.**

11 (a) *General.* -- The Development Office shall receive and act
12 on applications filed with it by municipalities pursuant to section
13 six of this article. Each application must include:

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

16 (2) The total cost of the project;

17 (3) A reasonable estimate of the number of months needed to
18 complete the project;

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

22 (5) A description of the proposed method of financing the
23 development expenditures, together with a description of the
24 reserves to be established for financing ongoing development
25 expenditures necessary to permanently maintain the optimum economic

1 viability of the district following its inception: *Provided*, That
2 the amounts of the reserves may not exceed the amounts that would
3 be required by prevailing commercial capital market considerations;

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

9 (7) A description of the financial contribution of the
10 municipality to the funding of development expenditures;

11 (8) Identification of any businesses that the municipality
12 expects to relocate their business locations from the district to
13 another place in the state in connection with the establishment of
14 the district or from another place in this state to the district:
15 *Provided*, That for purposes of this article, any entities shall be
16 designated "relocated entities";

17 (9) Identification of any businesses currently conducting
18 business in the proposed economic opportunity development district
19 that the municipality expects to continue doing business there
20 after the district is created;

21 (10) A good faith estimate of the aggregate amount of
22 consumers sales and service tax that was actually remitted to the
23 Tax Commissioner by all business locations identified as provided
24 in subdivisions (8) and (9) of this subsection with respect to
25 their sales made and services rendered from their then current

1 business locations that will be relocated from, or to, or remain in
2 the district for the twelve full calendar months next preceding the
3 date of the application: *Provided*, That for purposes of this
4 article, the aggregate amount is designated as "the base tax
5 revenue amount";

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

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

10 (13) The Tax Commissioner's certification of: (i) The amount
11 of consumers sales and service taxes collected from businesses
12 located in the economic opportunity district during the twelve
13 calendar months preceding the calendar quarter during which the
14 application will be submitted to the Development Office; (ii) the
15 estimated amount of economic opportunity district excise tax that
16 will be collected during the first twelve months after the month in
17 which the Tax Commissioner would first begin to collect that tax;
18 and (iii) the estimated amount of economic opportunity district
19 excise tax that will be collected during the first thirty-six
20 months after the month in which the Tax Commissioner would first
21 begin to collect that tax; and

22 (14) Any additional information the Development Office may
23 require.

24 (b) *Review of applications.* -- The Development Office shall
25 review all project proposals for conformance to statutory and

1 regulatory requirements, the reasonableness of the project's budget
2 and timetable for completion and the following criteria:

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

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

8 (3) Whether the project is supported by significant private
9 sector investment and substantial credible evidence that, but for
10 the existence of sales tax increment financing, the project would
11 not be feasible;

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

16 (5) Whether there is substantial and credible evidence that
17 the project is likely to be started and completed in a timely
18 fashion;

19 (6) Whether the project will, directly or indirectly, improve
20 the opportunities in the area where the project will be located for
21 the successful establishment or expansion of other industrial or
22 commercial businesses;

23 (7) Whether the project will, directly or indirectly, assist
24 in the creation of additional long-term employment opportunities in
25 the area and the quality of jobs created in all phases of the

1 project, to include, but not be limited to, wages and benefits;

2 (8) Whether the project will fulfill a pressing need for the
3 area, or part of the area, in which the economic opportunity
4 district is located: *Provided*, That the Development Office should
5 consider whether the economic development project is large enough
6 to require that it contain a mixed use development provision
7 consisting of a housing component with at least ten percent of
8 housing units in the district allocated for affordable housing;

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

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

13 (11) Whether the project is consistent with the goals of this
14 article;

15 (12) Whether the project is economically and fiscally sound
16 using recognized business standards of finance and accounting; and

17 (13) (A) The ability of the municipality and the project
18 developer or project team to carry out the project: *Provided*, That
19 no project may be approved by the Development Office unless the
20 amount of all development expenditures proposed to be made in the
21 first twenty-four months following the creation of the district
22 results in capital investment of more than \$25 million in the
23 district and the municipality submits clear and convincing
24 information, to the satisfaction of the Development Office, that
25 the investment will be made if the Development Office approves the

1 project and the Legislature authorizes the municipality to levy an
2 excise tax on sales of goods and services made within the economic
3 opportunity development district as provided in this article.

4 (B) Notwithstanding any provision of paragraph (A) of this
5 subdivision to the contrary, no project involving remediation may
6 be approved by the Development Office unless the amount of all
7 development expenditures proposed to be made in the first
8 forty-eight months following the creation of the district results
9 in capital investment of more than \$25 million in the district. In
10 addition to the remaining provisions of paragraph (A) of this
11 subdivision the Development Office may not approve a project
12 involving remediation authorized under section five of this article
13 unless the municipality submits clear and convincing information,
14 to the satisfaction of the Development Office, that the proposed
15 remediation expenditures to be financed by the issuance of bonds or
16 notes pursuant to section sixteen of this article do not constitute
17 more than twenty-five percent of the total development expenditures
18 associated with the project.

19 (c) *Additional criteria.* -- The Development Office may
20 establish other criteria for consideration when approving the
21 applications.

22 (d) *Action on the application.* -- The Executive Director of
23 the Development Office shall act to approve or not approve any
24 application within thirty days following the receipt of the
25 application or the receipt of any additional information requested

1 by the Development Office, whichever is the later.

2 (e) *Certification of project.* -- If the Executive Director of
3 the Development Office approves a municipality's economic
4 opportunity district project application, he or she shall issue to
5 the municipality a written certificate evidencing the approval.

6 The certificate shall expressly state a base tax revenue
7 amount, the gross annual district tax revenue amount and the
8 estimated net annual district tax revenue amount which, for
9 purposes of this article, is the difference between the gross
10 annual district tax revenue amount and the base tax revenue amount,
11 all of which the Development Office has determined with respect to
12 the district's application based on any investigation it considers
13 reasonable and necessary, including, but not limited to, any
14 relevant information the Development Office requests from the Tax
15 Commissioner and the Tax Commissioner provides to the Development
16 Office: *Provided*, That in determining the net annual district tax
17 revenue amount, the Development Office may not use a base tax
18 revenue amount less than that amount certified by the Tax
19 Commissioner but, in lieu of confirmation from the Tax Commissioner
20 of the gross annual district tax revenue amount, the Development
21 Office may use the estimate of the gross annual district tax
22 revenue amount provided by the municipality pursuant to subsection
23 (a) of this section.

24 (f) *Certification of enlargement of geographic boundaries of*
25 *previously certified district.* -- If the Executive Director of the

1 Development Office approves a municipality's economic opportunity
2 district project application to expand the geographic boundaries of
3 a previously certified district, he or she shall issue to the
4 municipality a written certificate evidencing the approval.

5 The certificate shall expressly state a base tax revenue
6 amount, the gross annual district tax revenue amount and the
7 estimated net annual district tax revenue amount which, for
8 purposes of this article, is the difference between the gross
9 annual district tax revenue amount and the base tax revenue amount,
10 all of which the Development Office has determined with respect to
11 the district's application based on any investigation it considers
12 reasonable and necessary, including, but not limited to, any
13 relevant information the Development Office requests from the Tax
14 Commissioner and the Tax Commissioner provides to the Development
15 Office: *Provided*, That in determining the net annual district tax
16 revenue amount, the Development Office may not use a base tax
17 revenue amount less than that amount certified by the Tax
18 Commissioner, but, in lieu of confirmation from the Tax
19 Commissioner of the gross annual district tax revenue amount, the
20 Development Office may use the estimate of the gross annual
21 district tax revenue amount provided by the municipality pursuant
22 to subsection (a) of this section.

23 (g) *Promulgation of rules.* -- The Executive Director of the
24 Development Office may promulgate rules to implement the economic
25 opportunity development district project application approval

1 process and to describe the criteria and procedures it has
2 established in connection therewith. These rules are not subject
3 to the provisions of chapter twenty-nine-a of this code but shall
4 be filed with the Secretary of State.

5 **§8-38-10. Ordinance to create district as approved by Development**
6 **Office and authorized by the Legislature.**

7 (a) *General.* -- If an economic opportunity development
8 district project has been approved by the Executive Director of the
9 Development Office and the levying of a special district excise tax
10 for the district has been authorized by the Legislature, all in
11 accordance with this article, the municipality may create the
12 district by ordinance entered of record as provided in article one
13 of this chapter: *Provided,* That the municipality may not amend,
14 alter or change in any manner the boundaries of the economic
15 opportunity development district authorized by the Legislature. In
16 addition to all other requirements, the ordinance shall contain the
17 following:

18 (1) The name of the district and a description of its
19 boundaries;

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

23 (3) The base and rate of any special district excise tax that
24 may be imposed upon sales by businesses for the privilege of
25 operating within the district, which tax shall be passed on to and

1 paid by the consumer, and the manner in which the taxes will be
2 imposed, administered and collected, all of which shall be in
3 conformity with the requirements of this article; and

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

7 (A) To make and adopt all necessary bylaws and rules for its
8 organization and operations not inconsistent with any applicable
9 laws;

10 (B) To elect its own officers, to appoint committees and to
11 employ and fix compensation for personnel necessary for its
12 operations;

13 (C) To enter into contracts with any person, agency,
14 government entity, agency or instrumentality, firm, partnership,
15 limited partnership, limited liability company or corporation,
16 including both public and private corporations, and for-profit and
17 not-for-profit organizations and generally to do any and all things
18 necessary or convenient for the purpose of promoting, developing
19 and advancing the purposes described in section two of this
20 article;

21 (D) To amend or supplement any contracts or leases or to enter
22 into new, additional or further contracts or leases upon the terms
23 and conditions for consideration and for any term of duration, with
24 or without option of renewal, as agreed upon by the district board
25 and any person, agency, government entity, agency or

1 instrumentality, firm, partnership, limited partnership, limited
2 liability company or corporation;

3 (E) To, unless otherwise provided in, and subject to the
4 provisions of any contracts or leases to operate, repair, manage,
5 and maintain buildings and structures and provide adequate
6 insurance of all types and in connection with the primary use
7 thereof and incidental thereto to provide services, such as retail
8 stores and restaurants, and to effectuate incidental purposes,
9 grant leases, permits, concessions or other authorizations to any
10 person or persons upon the terms and conditions for consideration
11 and for the term of duration as agreed upon by the district board
12 and any person, agency, governmental department, firm or
13 corporation;

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

16 (G) To apply for, receive and use grants-in-aid, donations and
17 contributions from any source or sources and to accept and use
18 bequests, devises, gifts and donations from any person, firm or
19 corporation;

20 (H) To acquire real property by gift, purchase or construction
21 or in any other lawful manner and hold title thereto in its own
22 name and to sell, lease or otherwise dispose of all or part of any
23 real property which it may own, either by contract or at public
24 auction, upon the approval by the district board;

25 (I) To purchase or otherwise acquire, own, hold, sell, lease

1 and dispose of all or part of any personal property which it may
2 own, either by contract or at public auction;

3 (J) Pursuant to a determination by the district board that
4 there exists a continuing need for development expenditures and
5 that moneys or funds of the district are necessary therefor, to
6 borrow money and execute and deliver the district's negotiable
7 notes and other evidences of indebtedness therefor, on the terms as
8 the district shall determine, and give security therefor as is
9 requisite, including, without limitation, a pledge of the
10 district's rights in its subaccount of the Economic Opportunity
11 Development District Fund;

12 (K) To acquire (either directly or on behalf of the
13 municipality) an interest in any entity or entities that own any
14 real property situate in the district, to contribute capital to any
15 entity or entities and to exercise the rights of an owner with
16 respect thereto; and

17 (L) To expend its funds in the execution of the powers and
18 authority given in this section, which expenditures, by the means
19 authorized in this section, are hereby determined and declared as
20 a matter of legislative finding to be for a public purpose and use,
21 in the public interest and for the general welfare of the people of
22 West Virginia, to alleviate and prevent economic deterioration and
23 to relieve the existing critical condition of unemployment existing
24 within the state.

25 (b) *Additional contents of ordinance.* -- The municipality's

1 ordinance shall also state the general intention of the
2 municipality to develop and increase services and to make capital
3 improvements within the district.

4 (c) *Mailing of certified copies of ordinance.* -- Upon
5 enactment of an ordinance establishing an economic opportunity
6 development district excise tax, a certified copy of the ordinance
7 shall be mailed to the State Auditor, as ex officio the chief
8 inspector and supervisor of public offices, the State Treasurer and
9 the Tax Commissioner.

10 **§8-38-12. Special district excise tax authorized.**

11 (a) *General.* -- The council of a municipality, authorized by
12 the Legislature to levy a special district excise tax for the
13 benefit of an economic opportunity development district, may, by
14 ordinance, impose that tax on the privilege of selling tangible
15 personal property and rendering select services in the district in
16 accordance with this section.

17 (b) *Tax base.* -- The base of a special district excise tax
18 imposed pursuant to this section shall be identical to the base of
19 the consumers sales and service tax imposed pursuant to article
20 fifteen, chapter eleven of this code on sales made and services
21 rendered within the boundaries of the district. Sales of gasoline
22 and special fuel are not subject to special district excise tax,
23 but remain subject to the tax levied by article fifteen, chapter
24 eleven of this code. Except for the exemption provided in section
25 nine-f of article fifteen, chapter eleven of this code, all

1 exemptions and exceptions from the consumers sales and service tax
2 also apply to the special district excise tax.

3 (c) *Tax rate.* -- The rate or rates of a special district
4 excise tax levied pursuant to this section shall be stated in an
5 ordinance enacted by the municipality and identical to the rate or
6 rates of the consumers sales and service tax imposed pursuant to
7 article fifteen, chapter eleven of this code on sales rendered
8 within the boundaries of the district authorized by this section.

9 (d) *Collection by Tax Commissioner.* -- The ordinance of the
10 municipality imposing a special district excise tax shall provide
11 for the tax to be collected by the Tax Commissioner in the same
12 manner as the tax levied by section three, article fifteen, chapter
13 eleven of this code is administered, assessed, collected and
14 enforced.

15 (1) The State Tax Commissioner may require the electronic
16 filing of returns related to the special district excise tax
17 imposed pursuant to this section and may require the electronic
18 payment of the special district excise tax imposed pursuant to this
19 section. The State Tax Commissioner may prescribe by rules adopted
20 or proposed pursuant to article three, chapter twenty-nine-a of
21 this code, administrative notices, and forms and instructions, the
22 procedures and criteria to be followed to electronically file those
23 returns and to electronically pay the special district excise tax
24 imposed pursuant to this section.

25 (2) Any rules filed by the State Tax Commissioner relating to

1 the special district excise tax imposed pursuant to this section
2 shall set forth the following:

3 (A) Acceptable indicia of timely payment;

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

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

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

10 (E) Procedures for making voluntary or mandatory electronic
11 payments or both; and

12 (F) Any other provisions necessary to ensure the timely
13 electronic filing of returns related to the special district excise
14 tax and the making of payments electronically of the special
15 district excise tax imposed pursuant to this section.

16 (3) (A) Notwithstanding the provisions of section five-d,
17 article ten, chapter eleven of this code: (i) So long as bonds are
18 outstanding pursuant to this article, the Tax Commissioner shall
19 provide on a monthly basis to the trustee for bonds issued pursuant
20 to this article information on returns submitted pursuant to this
21 article; and (ii) the trustee may share the information so obtained
22 with the municipality that established the economic opportunity
23 development district that issued the bonds pursuant to this article
24 and with the bondholders and with bond counsel for bonds issued
25 pursuant to this article. The Tax Commissioner and the trustee may

1 enter into a written agreement in order to accomplish exchange of
2 the information.

3 (B) Any confidential information provided pursuant to this
4 subdivision shall be used solely for the protection and enforcement
5 of the rights and remedies of the bondholders of bonds issued
6 pursuant to this article. Any person or entity that is in
7 possession of information disclosed by the Tax Commissioner or
8 shared by the trustee pursuant to subdivision (a) of this
9 subsection is subject to the provisions of section five-d, article
10 ten, chapter eleven of this code as if the person or entity that is
11 in possession of the tax information is an officer, employee, agent
12 or representative of this state or of a local or municipal
13 governmental entity or other governmental subdivision.

14 (e) *Deposit of net tax collected.* --

15 (1) The ordinance of the municipality imposing a special
16 district excise tax shall provide that the Tax Commissioner deposit
17 the net amount of tax collected in the special Economic Opportunity
18 Development District Fund to the credit of the municipality's
19 subaccount therein for the economic opportunity development
20 district and that the money in the subaccount may only be used to
21 pay for development expenditures as provided in this article except
22 as provided in subsection (f) of this section.

23 (2) (A) The State Treasurer shall withhold from the
24 municipality's subaccount in the Economic Opportunity Development
25 District Fund and shall deposit in the General Revenue Fund of this

1 state, on or before the twentieth day of each calendar month next
2 following the effective date of a special district excise tax, a
3 sum equal to one twelfth of the base tax revenue amount last
4 certified by the Development Office pursuant to section seven of
5 this article.

6 (B) In addition to the amounts described in paragraph (A) of
7 this subdivision, the Tax Commissioner shall deposit in the General
8 Revenue Fund of this state on the dates specified in paragraph (A)
9 not less than twenty percent nor more than fifty percent of the
10 excess of the special district excise taxes collected during the
11 preceding month above one twelfth of the base tax revenue, said
12 percentage to be fixed by the Development Office in conjunction
13 with its approval of an application in accordance with section
14 seven of this article based on the amount of state funds, if any,
15 to be expended in conjunction with the respective economic
16 opportunity development district project for items including, but
17 not limited to, the acquisition, construction, reconstruction,
18 improvement, enlargement or extension of roadways, rights-of-way,
19 sidewalks, traffic signals, water or sewer lines and other public
20 infrastructure and such other expenditures of state funds
21 identified by the Development Office: *Provided*, That the
22 Development Office has the discretion to reduce the minimum
23 percentage of the excess special district excise taxes deposited by
24 the Tax Commissioner in the General Revenue Fund as outlined above
25 from twenty percent to ten percent in conjunction with its approval

1 of an application in accordance with section seven of this article
2 based on its determination that:

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

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

11 (iii) The economic development project contains a provision
12 for a mixed use development with a housing component with at least
13 ten percent of housing units in the district allocated as
14 affordable housing.

15 (f) *Effective date of special district excise tax.* -- Any
16 taxes imposed pursuant to the authority of this section are
17 effective on the first day of the calendar month that begins at
18 least sixty days after the date of enactment of the ordinance
19 imposing the tax or at any later date expressly designated in the
20 ordinance that begins on the first day of a calendar month.

21 (g) *Copies of ordinance.* -- Upon enactment of an ordinance
22 levying a special district excise tax, a certified copy of the
23 ordinance shall be mailed to the State Auditor, as ex officio the
24 chief inspector and supervisor of public offices, the State
25 Treasurer and the Tax Commissioner.

1 **§8-38-15. Abolishment and dissolution of district; notice;**
2 **hearing.**

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

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

22 (c) *Transfer of district assets and funds.* -- Upon the
23 abolishment of any economic opportunity development district, any
24 funds or other assets, contractual rights or obligations, claims

1 against holders of indebtedness or other financial benefits,
2 liabilities or obligations existing after full payment has been
3 made on all existing contracts, bonds, notes or other obligations
4 of the district are transferred to and assumed by the municipality.
5 Any funds or other assets transferred shall be used for the benefit
6 of the area included in the district being abolished.

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

12 **§8-38-16. Bonds issued to finance economic opportunity development**
13 **district projects.**

14 (a) *General.* -- The municipality that established the
15 economic opportunity development district may issue bonds or notes
16 for the purpose of financing development expenditures, as described
17 in section five of this article, with respect to one or more
18 projects within the economic opportunity development district.

19 (b) *Limited obligations.* -- All bonds and notes issued by a
20 municipality under the authority of this article are limited
21 obligations of the municipality.

22 (c) *Term of obligations.* -- No municipality may issue notes,
23 bonds or other instruments for funding district projects or
24 improvements that exceed a repayment schedule of thirty years.

1 (d) *Debt service.* -- The principal and interest on the bonds
2 is payable out of the funds on deposit in the subaccount
3 established for the economic opportunity development district
4 pursuant to section eight of this article, including, without
5 limitation, any funds derived from the special district excise tax
6 imposed by section twelve of this article or other revenues derived
7 from the economic opportunity development district to the extent
8 pledged for the purpose by the municipality in the ordinance
9 authorizing the bonds.

10 (e) *Surplus funds.* -- To the extent that the average daily
11 amount on deposit in the subaccount established for a district
12 pursuant to section eight of this article exceeds, for more than
13 six consecutive calendar months, the sum of: (1) \$100,000; plus (2)
14 the amount required to be kept on deposit pursuant to the documents
15 authorizing, securing or otherwise relating to the bonds or notes
16 issued under this section, then the excess shall be used by the
17 district either to redeem the bonds or notes previously issued or
18 remitted to the General Fund of this state.

19 (f) *Debt not general obligation of municipality.* -- Neither
20 the notes or bonds and any interest coupons issued under the
21 authority of this article shall ever constitute an indebtedness of
22 the municipality issuing the notes or bonds within the meaning of
23 any Constitutional provision or statutory limitation and do not
24 constitute or give rise to a pecuniary liability of the
25 municipality issuing the notes or bonds.

1 (g) *Debt not a charge general credit or taxing powers of*
2 *municipality.* -- Neither the bonds or notes, nor interest thereon,
3 is a charge against the general credit or taxing powers of the
4 municipality and that fact shall be plainly stated on the face of
5 each bond or note.

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

7 (1) Bonds or notes allowed under this section may be executed,
8 issued and delivered at any time and, from time to time, may be in
9 a form and denomination, may be of a tenor, must be negotiable but
10 may be registered as to the principal thereof or as to the
11 principal and interest thereof, may be payable in any amounts and
12 at any time or times, may be payable at any place or places, may
13 bear interest at any rate or rates payable at any place or places
14 and evidenced in any manner and may contain any provisions therein
15 not inconsistent herewith, all as provided in the ordinance of the
16 municipality whereunder the bonds or notes are authorized to be
17 issued.

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

20 (3) Bonds and notes issued pursuant to this article shall be
21 signed by the authorized representative of the municipality and
22 attested by the municipal clerk or recorder and be under the seal
23 of the municipality.

24 (4) Any coupons attached to the bonds shall bear the facsimile
25 signature of the authorized representative of the municipality. If

1 any of the officials whose signatures appear on the bonds, notes or
2 coupons cease to be officers before the delivery of the bonds or
3 notes, their signatures are valid and sufficient for all purposes
4 to the same extent as if they had remained in office until the
5 delivery.

6 (i) *Additional bonds or notes.* -- If the proceeds of the
7 bonds or notes, by error of calculation or otherwise, are less than
8 the cost of the economic opportunity development district project,
9 or if additional real or personal property is to be added to the
10 district project or if it is determined that financing is needed
11 for additional development expenditures, additional bonds or notes
12 may, in like manner, be issued to provide the amount of the
13 deficiency or to defray the cost of acquiring or financing any
14 additional real or personal property or development expenditures
15 and, unless otherwise provided in the trust agreement, mortgage or
16 deed of trust, are considered to be of the same issue and are
17 entitled to payment from the same fund, without preference or
18 priority, and are of equal priority as to any security.

19 **§8-38-17. Security for bonds.**

20 (a) *General.* -- Unless the municipality otherwise determines
21 in the ordinance authorizing the issuance of the bonds or notes
22 under the authority of this article, there is hereby created a
23 statutory lien upon the subaccount created pursuant to section
24 eight of this article and all special district excise tax revenues
25 collected for the benefit of the district pursuant to section

1 eleven-a, article ten, chapter eleven of this code for the purpose
2 of securing the principal of the bonds or notes and the interest
3 thereon.

4 (b) *Security for debt service.* -- The principal of and
5 interest on any bonds or notes issued under the authority of this
6 article shall be secured by a pledge of the special district excise
7 tax revenues derived from the economic opportunity development
8 district project by the municipality issuing the bonds or notes to
9 the extent provided in the ordinance adopted by the municipality
10 authorizing the issuance of the bonds or notes.

11 (c) *Trust indenture.* --

12 (1) In the discretion and at the option of the municipality,
13 the bonds and notes may also be secured by a trust indenture by and
14 between the municipality and a corporate trustee, which may be a
15 trust company or bank having trust powers, within or without the
16 State of West Virginia.

17 (2) The ordinance authorizing the bonds or notes and fixing
18 the details thereof may provide that the trust indenture may
19 contain provisions for the protection and enforcing the rights and
20 remedies of the bondholders as are reasonable and proper, not in
21 violation of law, including covenants setting forth the duties of
22 the municipality in relation to the construction, acquisition or
23 financing of an economic opportunity development district project,
24 or part thereof or an addition thereto, and the improvement,
25 repair, maintenance and insurance thereof and for the custody,

1 safeguarding and application of all moneys and may provide that the
2 economic opportunity development district project shall be
3 constructed and paid for under the supervision and approval of the
4 consulting engineers or architects employed and designated by the
5 municipality or, if directed by the municipality in the ordinance,
6 by the district board, and satisfactory to the purchasers of the
7 bonds or notes, their successors, assigns or nominees who may
8 require the security given by any contractor or any depository of
9 the proceeds of the bonds or notes or the revenues received from
10 the district project be satisfactory to the purchasers, their
11 successors, assigns or nominees.

12 (3) The indenture may set forth the rights and remedies of
13 the bondholders, the municipality or trustee and the indenture may
14 provide for accelerating the maturity of the revenue bonds, at the
15 option of the bondholders or the municipality issuing the bonds,
16 upon default in the payment of the amounts due under the bonds.

17 (4) The municipality may also provide by resolution and in the
18 trust indenture for the payment of the proceeds of the sale of the
19 bonds or notes and the revenues from the economic opportunity
20 development district project to any depository it determines, for
21 the custody and investment thereof and for the method of
22 distribution thereof, with safeguards and restrictions it
23 determines to be necessary or advisable for the protection thereof
24 and upon the filing of a certified copy of the resolution or of the
25 indenture for record with the clerk or recorder of the municipality

1 in which the economic opportunity development project is located,
2 the resolution has the same effect, as to notice, as the
3 recordation of a deed of trust or other recordable instrument.

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

9 (d) *Mortgage or deed of trust.* --

10 (1) In addition to or in lieu of the indenture provided in
11 subsection (c) of this section, the principal of and interest on
12 the bonds or notes may, but need not, be secured by a mortgage or
13 deed of trust covering all or any part of the economic opportunity
14 development district project from which the revenues pledged are
15 derived and the same may be secured by an assignment or pledge of
16 the income received from the economic opportunity development
17 district project.

18 (2) The proceedings under which bonds or notes are authorized
19 to be issued, when secured by a mortgage or deed of trust, may
20 contain the same terms, conditions and provisions provided herein
21 when an indenture is entered into between the municipality
22 and a trustee and any mortgage or deed of trust may contain any
23 agreements and provisions customarily contained in instruments
24 securing bonds or notes, including, without limiting the generality
25 of the foregoing, provisions respecting the fixing and collection

1 of revenues from the economic opportunity development district
2 project covered by the proceedings or mortgage, the terms to be
3 incorporated in any lease, sale or financing agreement with respect
4 to the economic opportunity development district project, the
5 improvement, repair, maintenance and insurance of the economic
6 opportunity development district project, the creation and
7 maintenance of special funds from the revenues received from the
8 economic opportunity development district project and the rights
9 and remedies available in event of default to the bondholders or
10 note holders, the municipality, or to the trustee under an
11 agreement, indenture, mortgage or deed of trust, all as the
12 municipality considers advisable and shall not be in conflict with
13 the provisions of this article or any existing law: *Provided*, That
14 in making any agreements or provisions, a municipality shall not
15 have the power to incur original indebtedness by indenture,
16 ordinance, resolution, mortgage or deed of trust except with
17 respect to the economic opportunity development district project
18 and the application of the revenues therefrom and shall not have
19 the power to incur a pecuniary liability or a charge upon its
20 general credit or against its taxing powers unless approved by the
21 voters in accordance with article one, chapter thirteen of this
22 code or as otherwise permitted by the Constitution of this state.

23 (e) *Enforcement of obligations.* --

24 (1) The proceedings authorizing any bonds and any indenture,
25 mortgage or deed of trust securing the bonds may provide that, in

1 the event of default in payment of the principal of or the interest
2 on the bonds, or notes, or in the performance of any agreement
3 contained in the proceedings, indenture, mortgage or deed of trust,
4 payment and performance may be enforced by the appointment of a
5 receiver in equity with power to charge and collect rents or other
6 amounts and to apply the revenues from the economic opportunity
7 development district project in accordance with the proceedings or
8 the provisions of the agreement, indenture, mortgage or deed of
9 trust.

10 (2) Any agreement, indenture, mortgage or deed of trust may
11 provide also that, in the event of default in payment or the
12 violation of any agreement contained in the mortgage or deed of
13 trust, the agreement, indenture, mortgage or deed of trust may be
14 foreclosed either by sale at public outcry or by proceedings in
15 equity and may provide that the holder or holders of any of the
16 bonds secured thereby may become the purchaser at any foreclosure
17 sale, if the highest bidder therefor.

18 (f) *No pecuniary liability.* -- No breach of any agreement,
19 indenture, mortgage or deed of trust may impose any pecuniary
20 liability upon a municipality or any charge upon its general credit
21 or against its taxing powers.

22 **§8-38-20. Use of proceeds from sale of bonds.**

23 (a) *General.* -- The proceeds from the sale of any bonds
24 issued under authority of this article shall be applied only for
25 the purpose for which the bonds were issued: *Provided,* That any

1 accrued interest received in any sale shall be applied to the
2 payment of the interest on the bonds sold: *Provided, however,* That
3 if for any reason any portion of the proceeds may not be needed for
4 the purpose for which the bonds were issued, then the unneeded
5 portion of the proceeds may be applied to the purchase of bonds for
6 cancellation or payment of the principal of or the interest on the
7 bonds, or held in reserve for the payment thereof.

8 (b) *Payment of costs.* -- The costs that may be paid with the
9 proceeds of the bonds include all development expenditures
10 described in section five of this article and may also include, but
11 not be limited to, the following:

12 (1) The cost of acquiring any real estate determined
13 necessary;

14 (2) The actual cost of the construction of any part of an
15 economic opportunity development district project which may be
16 constructed, including architects', engineers', financial or other
17 consultants' and legal fees;

18 (3) The purchase price or rental of any part of an economic
19 opportunity development district project that may be acquired by
20 purchase or lease;

21 (4) All expenses incurred in connection with the
22 authorization, sale and issuance of the bonds to finance the
23 acquisition and the interest on the bonds for a reasonable time
24 prior to construction during construction and for not exceeding
25 twelve months after completion of construction; and

1 (5) Any other costs and expenses reasonably necessary in the
2 establishment and acquisition of an economic opportunity
3 development district project and the financing thereof.