

1 COMMITTEE SUBSTITUTE

2 FOR

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4 FOR

5 **Senate Bill No. 272**

6 (By Senators Kessler (Acting President) and Hall,

7 By Request of the Executive)

8 _____
9 [Originating in the Committee on Finance;

10 reported February 22, 2011.]

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14 A BILL to amend and reenact §7-11B-3, §7-11B-4, §7-11B-7, §7-11B-8,
15 §7-11B-9, §7-11B-10, §7-11B-17 and §7-11B-22 of the Code of
16 West Virginia, 1931, as amended, all relating to the West
17 Virginia Tax Increment Financing Act; clarifying exclusions to
18 the definition of "base-assessed value"; revising definitions
19 relating to governing bodies of counties and municipalities;
20 adding definition for "municipality"; adding provisions which
21 allow the funding of improvements to terrain, capital
22 improvements and the acquisition and installation of equipment
23 for ski resorts as an authorized project and project cost;
24 adding remediation of property to definition of "development
25 or redevelopment project"; redefining "project costs" to
26 include remediation costs for landfills, former coal or other

1 mining sites, solid waste facilities or hazardous waste sites;
2 defining "remediation"; requiring the Director of the
3 Development Office to provide the Legislature with an itemized
4 list of applications seeking approval of development and
5 redevelopment districts along with a status explanation of
6 applications on dates certain; clarifying municipalities'
7 power to utilize tax increment financing and to finance
8 project costs by other means; requiring county commissions and
9 municipalities to send descriptions of development districts
10 and project plans to local levying bodies prior to issuing a
11 notice; clarifying that municipalities are not required to
12 seek approval when amending project plans if the project is
13 not enlarged or the total amount of indebtedness increased;
14 providing that development or redevelopment districts shall
15 not be terminated so long as tax increment financing
16 obligations remain outstanding; clarifying the time when bonds
17 may be refunded or refinanced and when refunding bonds may be
18 issued in principal amounts; and providing technical
19 corrections.

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

21 That §7-11B-3, §7-11B-4, §7-11B-7, §7-11B-8, §7-11B-9, §7-11B-
22 10, §7-11B-17 and §7-11B-22 of the Code of West Virginia, 1931, as
23 amended, be amended and reenacted, all to read as follows:

24 **ARTICLE 11B. WEST VIRGINIA TAX INCREMENT FINANCING ACT.**

25 **§7-11B-3. Definitions.**

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

6 (b) *Words and phrases defined.* --

7 (1) "Agency" includes a municipality, a county or municipal
8 development agency established pursuant to authority granted in
9 section one, article twelve of this chapter, a port authority, an
10 airport authority or ~~any~~ other entity created by this state or an
11 agency or instrumentality of this state that engages in economic
12 development activity.

13 (2) "Base assessed value" means the taxable assessed value of
14 all real and tangible personal property, excluding personal motor
15 vehicles, personal trailers, personal boats, personal campers,
16 personal motor homes and personal motorcycles, having a tax situs
17 within a development or redevelopment district as shown upon the
18 landbooks and personal property books of the assessor on July 1 of
19 the calendar year preceding the effective date of the order or
20 ordinance creating and establishing the development or
21 redevelopment district.

22 (3) "Blighted area" means an area within the boundaries of a
23 redevelopment district located within the territorial limits of a
24 municipality or county in which the structures, buildings or
25 improvements, by reason of dilapidation, deterioration, age or
26 obsolescence, inadequate provision for access, ventilation, light,

1 air, sanitation, open spaces, high density of population and
2 overcrowding or the existence of conditions which endanger life or
3 property, are detrimental to the public health, safety, morals or
4 welfare. "Blighted area" includes any area which, by reason of the
5 presence of a substantial number of substandard, slum, deteriorated
6 or deteriorating structures, predominance of defective or
7 inadequate street layout, faulty lot layout in relation to size,
8 adequacy, accessibility or usefulness, unsanitary or unsafe
9 conditions, deterioration of site or other improvements, diversity
10 of ownership, defective or unusual conditions of title or the
11 existence of conditions which endanger life or property by fire and
12 other causes, or any combination of such factors, substantially
13 impairs or arrests the sound growth of a municipality, retards the
14 provision of housing accommodations or constitutes an economic or
15 social liability and is a menace to the public health, safety,
16 morals or welfare in its present condition and use, or any area
17 which is predominantly open and which because of lack of
18 accessibility, obsolete platting, diversity of ownership,
19 deterioration of structures or of site improvements, or otherwise,
20 substantially impairs or arrests the sound growth of the community.

21 (4) "Conservation area" means any improved area within the
22 boundaries of a development or redevelopment district located
23 within the territorial limits of a municipality or county in which
24 fifty percent or more of the structures in the area have an age of
25 thirty-five years or more. A conservation area is not yet a
26 blighted area but is detrimental to the public health, safety,

1 morals or welfare and may become a blighted area because of any one
2 or more of the following factors: Dilapidation, obsolescence,
3 deterioration, illegal use of individual structures, presence of
4 structures below minimum code standards, abandonment, excessive
5 vacancies, overcrowding of structures and community facilities,
6 lack of ventilation, light or sanitary facilities, inadequate
7 utilities, excessive land coverage, deleterious land use or layout,
8 depreciation of physical maintenance and lack of community
9 planning. A conservation area shall meet at least three of the
10 factors provided in this subdivision.

11 (5) "County commission" means the governing body of a county
12 of this state and, for purposes of this article only, includes the
13 governing body of a ~~Class I or Class II~~ municipality in this state.

14 (6) "Current assessed value" means the annual taxable assessed
15 value of all real and tangible personal property, excluding
16 personal motor vehicles, having a tax situs within a development or
17 redevelopment district as shown upon the landbook and personal
18 property records of the assessor.

19 (7) "Development office" means the West Virginia Development
20 Office created in section one, article two, chapter five-b of this
21 code.

22 (8) "Development project" or "redevelopment project" means a
23 project undertaken in a development or redevelopment district for
24 eliminating or preventing the development or spread of slums or
25 deteriorated, deteriorating or blighted areas, for discouraging the
26 loss of commerce, industry or employment, for increasing

1 employment, for remediation of property or for any combination
2 ~~thereof~~ in accordance with a tax increment financing plan. A
3 development or redevelopment project may include one or more of the
4 following:

5 (A) The acquisition of land and improvements, if any, within
6 the development or redevelopment district and clearance or
7 remediation, or both, of the land so acquired; or

8 (B) The development, redevelopment, revitalization or
9 conservation of the project area whenever necessary to provide land
10 for needed public facilities, public housing, or industrial or
11 commercial development or revitalization, to eliminate unhealthful,
12 unsanitary or unsafe conditions, to lessen density, mitigate or
13 eliminate traffic congestion, reduce traffic hazards, eliminate
14 obsolete or other uses detrimental to public welfare or otherwise
15 remove or prevent the spread of blight or deterioration;

16 (C) The financial or other assistance in the relocation of
17 persons and organizations displaced as a result of carrying out the
18 development or redevelopment project and other improvements
19 necessary for carrying out the project plan, together with those
20 site improvements that are necessary for the preparation of any
21 sites and making any land or improvements acquired in the project
22 area available, by sale or lease, for public housing or for
23 development, redevelopment or rehabilitation by private enterprise
24 for commercial or industrial uses in accordance with the plan;

25 (D) The construction of capital improvements within a
26 development or redevelopment district designed to increase or

1 enhance the development of commerce, industry or housing within the
2 development project area, including any improvements to mountain
3 terrain or the construction of amenities for an existing or new ski
4 resort; or

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

7 (9) "Development or redevelopment district" means an area
8 proposed by one or more agencies as a development or redevelopment
9 district, which may include one or more counties, one or more
10 municipalities or any combination, ~~thereof~~, that has been approved
11 by the county commission of each county in which the project area
12 is located if the project is located outside the corporate limits
13 of a municipality, or by the governing body of a municipality if
14 the project area is located within a municipality, or by both the
15 county commission and the governing body of the municipality when
16 the development or redevelopment district is located both within
17 and without a municipality.

18 (10) "Economic development area" means any area or portion of
19 an area within the boundaries of a development or redevelopment
20 district located within the territorial limits of a municipality or
21 county that does not meet the requirements of subdivisions (3) and
22 (4) of this subsection and for which the county commission finds
23 that development or redevelopment will not be solely used for
24 development of commercial businesses that will unfairly compete in
25 the local economy and that development or redevelopment is in the
26 public interest because it will:

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

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

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

7 (11) "Governing body of a municipality" means the city council
8 of a ~~Class I or Class II~~ municipality in this state.

9 (12) "Incremental value" for ~~any~~ a development or
10 redevelopment district means the difference between the base
11 assessed value and the current assessed value. The incremental
12 value will be positive if the current value exceeds the base value
13 and the incremental value will be negative if the current value is
14 less than the base assessed value.

15 (13) "Includes" and "including" when used in a definition
16 contained in this article ~~shall not be deemed to~~ does not exclude
17 other things otherwise within the meaning of the term being
18 defined.

19 (14) "Local levying body" means the county board of education
20 and the county commission and includes the governing body of a
21 municipality when the development or redevelopment district is
22 located, in whole or in part, within the boundaries of the
23 municipality.

24 (15) "Municipality" means any Class I, Class II and Class III
25 city and any Class IV town or village heretofore or hereafter
26 incorporated as a municipal corporation under the laws of this

1 state.

2 ~~(15)~~ (16) "Obligations" or "tax increment financing
3 obligations" means bonds, loans, debentures, notes, special
4 certificates or other evidences of indebtedness issued by a county
5 commission or municipality pursuant to this article to carry out a
6 development or redevelopment project or to refund outstanding
7 obligations under this article.

8 ~~(16)~~ (17) "Order" means an order of the county commission
9 adopted in conformity with the provisions of this article and as
10 provided in this chapter.

11 ~~(17)~~ (18) "Ordinance" means a law adopted by the governing
12 body of a municipality in conformity with the provisions of this
13 article and as provided in chapter eight of this code.

14 ~~(18)~~ (19) "Payment in lieu of taxes" means those estimated
15 revenues from real property and tangible personal property having
16 a tax situs in the area selected for a development or redevelopment
17 project which revenues, according to the development or
18 redevelopment project or plan, are to be used for a private use and
19 which levying bodies would have received had a county or
20 municipality not adopted one or more tax increment financing plans
21 and which would result from levies made after the date of adoption
22 of a tax increment financing plan during the time the current
23 assessed value of all taxable real and tangible personal property
24 in the area selected for the development or redevelopment project
25 exceeds the total base assessed value of all taxable real and
26 tangible personal property in the development or redevelopment

1 district until the designation is terminated as provided in this
2 article.

3 ~~(19)~~ (20) "Person" means ~~any~~ a natural person and ~~any~~ a
4 corporation, association, partnership, limited partnership, limited
5 liability company or other entity, regardless of its form,
6 structure or nature, other than a government agency or
7 instrumentality.

8 ~~(20)~~ (21) "Private project" means any project that is subject
9 to ad valorem property taxation in this state or to a payment in
10 lieu of tax agreement that is undertaken by a project developer in
11 accordance with a tax increment financing plan in a development or
12 redevelopment district.

13 ~~(21)~~ (22) "Project" means any capital improvement, facility or
14 both, as specifically set forth and defined in the project plan,
15 requiring an investment of capital, including, but not limited to,
16 extensions, additions or improvements to existing facilities,
17 including water or wastewater facilities, ~~and~~ the remediation of
18 ~~contaminated property as provided for in article twenty-two,~~
19 ~~chapter twenty-two of this code~~ property located within the
20 development or redevelopment district as provided herein and
21 improvements to mountain terrain for the purposes of improving or
22 creating ski slopes but does not include performance of any
23 governmental service by a county or municipal government.

24 ~~(22)~~ (23) "Project area" means an area within the boundaries
25 of a development or redevelopment district in which a development
26 or redevelopment project is undertaken as specifically set forth

1 and defined in the project plan.

2 ~~(23)~~ (24) "Project costs" means expenditures made in
3 preparation of the development or redevelopment project plan and
4 made, or estimated to be made, or monetary obligations incurred, or
5 estimated to be incurred, by the county commission which are listed
6 in the project plan as capital improvements within a development or
7 redevelopment district, plus any costs incidental thereto. "Project
8 costs" include, but are not limited to:

9 (A) Capital costs, including, but not limited to, the actual
10 costs of the construction of public works or improvements, capital
11 improvements and facilities, new buildings, structures and
12 fixtures, the demolition, alteration, remodeling, repair or
13 reconstruction of existing buildings, structures and fixtures,
14 ~~environmental remediation,~~ parking and landscaping, the acquisition
15 of equipment, the acquisition and installation of equipment,
16 structures or fixtures necessary for the maintenance and operation
17 of a ski area as defined in section two, article three-a, chapter
18 twenty of this code and for the transportation of passengers for
19 such ski area, improving mountain terrain for the purposes of
20 skiing, and site clearing, grading and preparation;

21 (B) Costs of remediation of publicly or privately owned
22 landfills, former coal or other mining sites, solid waste
23 facilities or hazardous waste sites to facilitate commercial
24 development which would not otherwise be economically feasible;

25 ~~(B)~~ (C) Financing costs, including, but not limited to, an
26 interest paid to holders of evidences of indebtedness issued to pay

1 for project costs, all costs of issuance and any redemption
2 premiums, credit enhancement or other related costs;

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

8 ~~(D)~~ (E) Professional service costs, including, but not limited
9 to, ~~those~~ costs incurred for architectural planning, engineering
10 and legal advice and services;

11 ~~(E)~~ (F) Imputed administrative costs, including, but not
12 limited to, reasonable charges for time spent by county employees
13 or municipal employees in connection with the implementation of a
14 project plan;

15 ~~(F)~~ (G) Relocation costs, including, but not limited to, ~~those~~
16 relocation payments made following condemnation and job training
17 and retraining;

18 ~~(G)~~ (H) Organizational costs, including, but not limited to,
19 the costs of conducting environmental impact and other studies and
20 the costs of informing the public with respect to the creation of
21 a development or redevelopment district and the implementation of
22 project plans;

23 ~~(H)~~ (I) Payments made, in the discretion of the county
24 commission or the governing body of a municipality, which are found
25 to be necessary or convenient to creation of development or
26 redevelopment districts or the implementation of project plans; and

1 ~~(I)~~ (J) That portion of costs related to the construction of
2 environmental protection devices, storm or sanitary sewer lines,
3 water lines, amenities or streets or the rebuilding or expansion of
4 streets, or the construction, alteration, rebuilding or expansion
5 ~~of which is~~ necessitated by the project plan for a development or
6 redevelopment district whether or not the construction, alteration,
7 rebuilding or expansion is within the area or on land contiguous
8 thereto.

9 ~~(24)~~ (25) "Project developer" means any person who engages in
10 the development of projects in the state.

11 ~~(25)~~ (26) "Project plan" means the plan for a development or
12 redevelopment project that is adopted by a county commission or
13 governing body of a municipality in conformity with the
14 requirements of this article and this chapter or chapter eight of
15 this code.

16 ~~(26)~~ (27) "Real property" means all lands, including
17 improvements and fixtures on them and property of any nature
18 appurtenant to them or used in connection with them and every
19 estate, interest and right, legal or equitable, in them, including
20 terms of years and liens by way of judgment, mortgage or otherwise,
21 and indebtedness secured by the liens.

22 ~~(27)~~ (28) "Redevelopment area" means an area designated by a
23 county commission or the governing body of a municipality in
24 respect to which the commission or governing body has made a
25 finding that there exist conditions which cause the area to be
26 classified as a blighted area, a conservation area, an economic

1 development area or a combination thereof, which area includes only
2 those parcels of real property directly and substantially
3 benefitted by the proposed redevelopment project located within the
4 development or redevelopment district or ~~land contiguous thereto.~~
5 contiguous land.

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

13 ~~(28)~~ (30) "Redevelopment plan" means the comprehensive program
14 under this article of a county or municipality for redevelopment
15 intended by the payment of redevelopment costs to reduce or
16 eliminate those conditions, the existence of which qualified the
17 redevelopment area as a blighted area, conservation area, economic
18 development area or combination thereof and to thereby enhance the
19 tax bases of the levying bodies which extend into the redevelopment
20 area. Each redevelopment plan shall conform to the requirements of
21 this article.

22 ~~(29)~~ (31) "Tax increment" means the amount of regular levy
23 property taxes attributable to the amount by which the current
24 assessed value of real and tangible personal property having a tax
25 situs in a development or redevelopment district exceeds the base
26 assessed value of the property.

1 ~~(30)~~ (32) "Tax increment financing fund" means a separate fund
2 for a development or redevelopment district established by the
3 county commission or governing body of the municipality into which
4 all tax increment revenues and other pledged revenues are deposited
5 and from which projected project costs, debt service and other
6 expenditures authorized by this article are paid.

7 ~~(31)~~ (33) "This code" means the Code of West Virginia, 1931,
8 as amended by the Legislature.

9 ~~(32)~~ (34) "Total ad valorem property tax regular levy rate"
10 means the aggregate levy rate of all levying bodies on all taxable
11 property having a tax situs within a development or redevelopment
12 district in a tax year but does not include excess levies, levies
13 for general obligation bonded indebtedness or any other levies that
14 are not regular levies.

15 **§7-11B-4. Powers generally.**

16 In addition to any other powers conferred by law, a county
17 commission or governing body of a ~~Class I or Class II~~ municipality
18 may exercise any powers necessary and convenient to carry out the
19 purpose of this article, including the power to:

20 (1) Create development and redevelopment areas or districts
21 and to define the boundaries of those areas or districts;

22 (2) Cause project plans to be prepared, to approve the project
23 plans and to implement the provisions and effectuate the purposes
24 of the project plans;

25 (3) Establish tax increment financing funds for each
26 development or redevelopment district;

1 (4) Issue tax increment financing obligations and pledge tax
2 increments and other revenues for repayment of the obligations;

3 (5) Deposit moneys into the tax increment financing fund for
4 any development or redevelopment district;

5 (6) Enter into any contracts or agreements, including, but not
6 limited to, agreements with project developers, consultants,
7 professionals, financing institutions, trustees and bondholders
8 determined by the county commission to be necessary or convenient
9 to implement the provisions and effectuate the purposes of project
10 plans which may include provisions for reimbursement of project
11 costs expended by such entities from tax increment or the proceeds
12 of tax increment financing obligations;

13 (7) Receive from the federal government or the state loans and
14 grants for, or in aid of, a development or redevelopment project
15 and to receive contributions from any other source to defray
16 project costs;

17 (8) Exercise the right of eminent domain to condemn property
18 for the purposes of implementing the project plan with the rules
19 and procedures set forth in chapter fifty-four of this code ~~shall~~
20 ~~govern~~ governing all condemnation proceedings authorized in this
21 article;

22 (9) Make relocation payments to those persons, businesses or
23 organizations that are displaced as a result of carrying out the
24 development or redevelopment project;

25 (10) Clear and improve property acquired by the county
26 commission pursuant to the project plan and construct public

1 facilities on it or contract for the construction, development,
2 redevelopment, rehabilitation, remodeling, alteration or repair of
3 the property;

4 (11) Cause parks, playgrounds or water, sewer or drainage
5 facilities or any other public improvements, including, but not
6 limited to, fire stations, community centers and other public
7 buildings which the county commission is otherwise authorized to
8 undertake to be laid out, constructed or furnished in connection
9 with the development or redevelopment project. When the public
10 improvement of the county commission is to be located, in whole or
11 in part, within the corporate limits of a municipality, the county
12 commission shall consult with the mayor and the governing body of
13 the municipality regarding the public improvement and shall pay for
14 the cost of the public improvement from the tax increment financing
15 fund;

16 (12) Lay out and construct, alter, relocate, change the grade
17 of, make specific repairs upon or discontinue public ways and
18 construct sidewalks in, or adjacent to, the project area. ~~Provided,~~
19 ~~That~~ When the public way or sidewalk is located within a
20 municipality, the governing body of the municipality shall consent
21 ~~to the same~~ and if the public way is a state road, the consent of
22 the commissioner of highways ~~shall be~~ is necessary;

23 (13) Cause private ways, sidewalks, ways for vehicular travel,
24 playgrounds or water, sewer or drainage facilities and similar
25 improvements to be constructed within the project area for the
26 particular use of the development or redevelopment district or

1 those dwelling or working in it;

2 (14) Construct any capital improvements of a public nature;

3 (15) Construct capital improvements to be leased or sold to
4 private entities in connection with the goals of the development or
5 redevelopment project;

6 (16) Cause capital improvements owned by one or more private
7 entities to be constructed within the development or redevelopment
8 district, including improvements to mountain terrain for the
9 purposes of skiing;

10 (17) Designate one or more official or employee of the county
11 commission to make decisions and handle the affairs of development
12 and redevelopment project areas or ~~districts~~ district created by
13 the county commission pursuant to this article;

14 (18) Adopt orders, ordinances or bylaws or repeal or modify
15 such ordinances or bylaws or establish exceptions to existing
16 ordinances and bylaws regulating the design, construction and use
17 of buildings within the development or redevelopment district
18 created by a county commission or governing body of a municipality
19 under this article;

20 ~~(19) Enter orders, adopt bylaws or repeal or modify such~~
21 ~~orders or bylaws or establish exceptions to existing orders and~~
22 ~~bylaws regulating the design, construction and use of buildings~~
23 ~~within the development or redevelopment district created by a~~
24 ~~county commission or governing body of a municipality under this~~
25 ~~article;~~

26 ~~(20)~~ (19) Sell, mortgage, lease, transfer or dispose of any

1 property or interest therein, by contract or auction, acquired by
2 ~~it~~ the county commission or governing body of the municipality
3 pursuant to the project plan for development, redevelopment or
4 rehabilitation in accordance with the project plan;

5 ~~(21)~~ (20) Expend project revenues as provided in this article;
6 and

7 (21) Temporarily finance any project costs through the
8 issuance of bonds, loans, debentures, notes, special certificates
9 or other evidences of indebtedness or the expenditure of the
10 general funds of a county commission or municipality: Provided,
11 That any temporary financing may be paid from tax increments or the
12 proceeds of any tax increment financing obligations and any
13 expenditure of general funds for such costs may be reimbursed from
14 tax increment or the proceeds of any tax increment financing
15 obligations; and

16 (22) Do all things necessary or convenient to carry out the
17 powers granted in this article.

18 **§7-11B-7. Creation of a development or redevelopment or district.**

19 (a) County commissions and the governing bodies of ~~Class I and~~
20 ~~FF~~ municipalities, upon their own initiative or upon application of
21 an agency or a developer, may propose creation of a development or
22 redevelopment district and designate the boundaries of the district
23 ~~Provided, That a district may not include noncontiguous land. which~~
24 must be comprised of contiguous land.

25 (b) The county commission or municipality proposing creation
26 of a development or redevelopment district shall then hold a public

1 hearing at which interested parties are afforded a reasonable
2 opportunity to express their views on the proposed creation of a
3 development or redevelopment district and its proposed boundaries.

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

7 (2) The notice shall include the time, place and purpose of
8 the public hearing, describe in sufficient detail the tax increment
9 financing plan, the proposed boundaries of the development or
10 redevelopment district and, when a development or redevelopment
11 project plan is being proposed, the proposed tax increment
12 financing obligations to be issued to finance the development or
13 redevelopment project costs.

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

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

25 (c) After the public hearing, the county commission or the
26 governing body of the municipality, shall finalize the boundaries

1 of the development or redevelopment district, the development or
2 redevelopment project plan, or both, and submit the same to the
3 director of the Development Office for his or her review and
4 approval. The director, within sixty days after receipt of the
5 application, shall approve the application as submitted, reject the
6 application or return the application to the county commission or
7 governing body of the municipality for further development or
8 review in accordance with instructions of the director of the
9 Development Office. A development or redevelopment district or
10 development or redevelopment project plan may not be adopted by the
11 county commission or the governing body of a municipality until
12 ~~after~~ it has been approved by the ~~executive~~ director of the
13 Development Office. On February 1 and August 1 of each year, the
14 director of the Development Office shall deliver to the Legislature
15 of this state an itemized list of all applications seeking approval
16 of: (i) the boundaries of a development or redevelopment district
17 and: (ii) a development or redevelopment project plan, or both,
18 that have not been approved, rejected or returned to the county
19 commission or governing body of the municipality as required
20 herein. Such itemized list shall include a detailed explanation of
21 the reasons why such applications, if any, have not been approved,
22 rejected or returned to the county commission or governing body of
23 the municipality within the time frame provided herein.

24 (d) Upon approval of the application by the Development
25 Office, the county commission may enter an order and the governing
26 body of the municipality proposing the district or development or

1 redevelopment project plan may adopt an ordinance that:

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

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

8 (3) Assigns a name to the development or redevelopment
9 district for identification purposes and which:

10 (A) ~~The name~~ May include a geographic or other designation;

11 (B) Shall identify the county or municipality authorizing the
12 district; and

13 (C) Shall be assigned a number, beginning with the number one
14 ~~(B) Each subsequently~~ and each subsequently created district in the
15 county or municipality shall be assigned the next consecutive
16 number;

17 (4) Contains findings that the real property within the
18 development or redevelopment district will be benefitted by
19 eliminating or preventing the development or spread of slums or
20 blighted, deteriorated or deteriorating areas, discouraging the
21 loss of commerce, industry or employment, increasing employment or
22 any combination thereof;

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

25 (6) Establishes a tax increment financing fund as a separate
26 fund into which all tax increment revenues and other revenues

1 designated by the county commission or governing body of the
2 municipality for the benefit of the development or redevelopment
3 district shall be deposited and from which all project costs shall
4 be paid, which may be assigned to and held by a trustee for the
5 benefit of bondholders if tax increment financing obligations are
6 issued by the county commission or the governing body of the
7 municipality; and

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

15 (A) For each tax year, the county assessor shall record in the
16 land and personal property books both the base assessed value and
17 the current assessed value of the real and tangible personal
18 property having a tax situs in the development or redevelopment
19 district;

20 (B) Ad valorem taxes collected from regular levies upon real
21 and tangible personal property having a tax situs in the district
22 that are attributable to the lower of the base assessed value or
23 the current assessed value of real and tangible personal property
24 located in the development project shall be allocated to the
25 levying bodies in the same manner as applicable to the tax year in
26 which the development or redevelopment project plan is adopted by

1 order of the county commission or by ordinance adopted by the
2 governing body of the municipality;

3 (C) The tax increment with respect to real and tangible
4 personal property in the development or redevelopment district
5 shall be allocated and paid into the tax increment financing fund
6 and shall be used to pay the principal of and interest on tax
7 increment financing obligations issued to finance the costs of the
8 development or redevelopment projects in the development or
9 redevelopment district. Any levying body having a development or
10 redevelopment district within its taxing jurisdiction shall not
11 receive any portion of the annual tax increment except as otherwise
12 provided in this article; and

13 (D) In no event shall the tax increment include any taxes
14 collected from excess levies, levies for general obligation bonded
15 indebtedness or any levies other than the regular levies provided
16 for in article eight, chapter eleven of this code.

17 (e) Proceeds from tax increment financing obligations issued
18 under this article may only be used to pay for costs of development
19 or redevelopment projects to foster economic development in the
20 development or redevelopment district or ~~land contiguous thereto.~~
21 contiguous land.

22 (f) Notwithstanding subsection ~~(e)~~ (d) of this section, a
23 county commission may not enter an order approving a development or
24 redevelopment project plan unless the county commission expressly
25 finds and states in the order that the development or redevelopment
26 project is not reasonably expected to occur without the use of tax

1 increment financing.

2 (g) Notwithstanding subsection ~~(e)~~ (d) of this section, the
3 governing body of a municipality may not adopt an ordinance
4 approving a development or redevelopment project plan unless the
5 governing body expressly finds and states in the ordinance that the
6 development or redevelopment project is not reasonably expected to
7 occur without the use of tax increment financing.

8 (h) No county commission shall establish a development or
9 redevelopment district any portion of which is within the boundaries
10 of a ~~Class I or Class II~~ municipality without the formal consent of
11 the governing body of such municipality.

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

16 (j) The county commission may modify the boundaries of the
17 development or redevelopment district, from time to time, by entry
18 of an order modifying the order creating the development or
19 redevelopment district.

20 (k) The governing body of a municipality may modify the
21 boundaries of the development or redevelopment district, from time
22 to time, by amending the ordinance establishing the boundaries of
23 the district.

24 (l) Before a county commission or the governing body of a
25 municipality may amend such an order or ordinance, the county
26 commission or municipality shall give the public notice, hold a

1 public hearing and obtain the approval of the director of the
2 Development Office, following the procedures for establishing a new
3 development or redevelopment district. In the event any tax
4 increment financing obligations are outstanding with respect to the
5 development or redevelopment district, any change in the boundaries
6 shall not reduce the amount of tax increment available to secure the
7 outstanding tax increment financing obligations.

8 **§7-11B-8. Project plan - approval.**

9 (a) The county commission or municipality creating the district
10 shall cause the preparation of a project plan for each development
11 or redevelopment district and the project plan shall be adopted by
12 order of the county commission or ordinance adopted by the governing
13 body of the municipality after it is approved by the executive
14 director of the Development Office. This process shall conform to
15 the procedures set forth in this section.

16 (b) Each project plan shall include:

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

20 (2) A cost-benefit analysis showing the economic impact of the
21 plan on each levying body that is at least partially within the
22 boundaries of the development or redevelopment district. This
23 analysis shall show the impact on the economy if the project is not
24 built and is built pursuant to the development or redevelopment plan
25 under consideration. The cost-benefit analysis shall include a
26 fiscal impact study on every affected levying body and sufficient

1 information from the developer for the agency, if any are proposing
2 the plan, to enable the county commission ~~be asked~~ to approve the
3 project and the Development Office to evaluate whether the project
4 as proposed is financially feasible;

5 (3) An economic feasibility study;

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

7 (5) A description of the methods of financing all estimated
8 project costs including the issuance of tax increment obligations
9 and the time when the costs or ~~monetary obligations related thereto~~
10 related monetary obligations are to be incurred;

11 (6) A certification by the county assessor of the base assessed
12 value of real and tangible personal property having a tax situs in
13 a development or redevelopment district. ~~Provided, That~~ If such
14 certification is made during the months of January or February of
15 each year, the county assessor may certify an estimated base
16 assessed value of real and tangible personal property having a tax
17 situs in a development or redevelopment district ~~Provided, however,~~
18 and that prior to issuance of tax increment obligations, the county
19 assessor shall certify a final base assessed value for the estimated
20 base assessed value permitted by this section;

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

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

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

- 1 (10) Proposed changes of zoning ordinances, if any;
- 2 (11) Appropriate cross-references to any master plan, map,
3 building codes and municipal ordinances or county commission orders
4 affected by the project plan;
- 5 (12) A list of estimated nonproject costs;
- 6 (13) A statement of the proposed method for the relocation of
7 any persons, businesses or organizations to be displaced;
- 8 (14) A certificate from the executive director of the Workers'
9 Compensation Commission, the Commissioner of the Bureau of
10 Employment Programs and the State Tax Commissioner that the project
11 developer, if any, is in good standing with the Workers'
12 Compensation Commission, the Bureau of Employment Programs and the
13 State Tax Division; and
- 14 (15) A certificate from the sheriff of the county or counties
15 in which the development or redevelopment district is located that
16 the project developer, if any, is not delinquent on payment of any
17 real and personal property taxes in such county.
- 18 (c) If the project plan is to include tax increment financing,
19 the tax increment financing portion of the plan shall set forth:
- 20 (1) The amount of indebtedness to be incurred pursuant to this
21 article;
- 22 (2) An estimate of the tax increment to be generated as a
23 result of the project;
- 24 (3) The method for calculating the tax increment which shall
25 be in conformance with the provisions of this article together with
26 any provision for adjustment of the method of calculation;

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

3 (5) ~~Any~~ Other provisions as may be deemed necessary in order
4 to carry out any tax increment financing to be used for the
5 development or redevelopment project.

6 (d) If less than all of the tax increment is to be used to fund
7 a development or redevelopment project or to pay project costs or
8 retire tax increment financing obligations, the project plan shall
9 set forth the portion of the tax increment to be deposited in the
10 tax increment financing fund of the development or redevelopment
11 district and provide for the distribution of the remaining portion
12 of the tax increment to the levying bodies in whose jurisdiction the
13 district lies.

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

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

23 (2) Prior to this publication, a copy of the notice shall be
24 sent by first-class mail to the chief executive officer of all other
25 levying bodies having the power to levy taxes on property located
26 within the proposed development or redevelopment district.—

1 (f) Approval by the county commission or the governing body of
2 a municipality of an initial development or redevelopment project
3 plan must be within one year after the date of the county assessor's
4 certification required by subdivision (6), subsection (b) of this
5 section. ~~Provided, That~~ Additional development or redevelopment
6 project plans may be approved by the county commission or the
7 governing body of a municipality in subsequent years so long as the
8 development or redevelopment district continues to exist. The
9 approval shall be by order of the county commission or ordinance of
10 the municipality which shall contain a finding that the plan is
11 economically feasible.

12 **§7-11B-9. Project plan - amendment.**

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

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

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

24 (2) Prior to publication, a copy of the notice shall be sent
25 by first-class mail to the chief executive officer of all other
26 local levying bodies having the power to levy taxes on property

1 within the development or redevelopment district.

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

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

12 (d) A municipality or county commission is not required to
13 obtain the approval of the director of the Development Office prior
14 to amending a project plan if the amendment does not enlarge the
15 development or redevelopment district or increase the total amount
16 of indebtedness contained in the tax increment financing portion of
17 the project plan application.

18 **§7-11B-10. Termination of development or redevelopment district.**

19 (a) No development or redevelopment district may be in
20 existence for a period longer than thirty years and no tax increment
21 financing obligations may have a final maturity date later than the
22 termination date of the ~~area or~~ district.

23 (b) The county commission or governing body of the municipality
24 creating the development or redevelopment district may set a shorter
25 period for the existence of the district. In this event, no tax
26 increment financing obligations may have a final maturity date later

1 than the termination date of the district.

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

5 (d) The county commission shall adopt, upon the expiration of
6 the time periods set forth in this section, an order terminating the
7 development or redevelopment district created by the county
8 commission. ~~Provided, That No district shall~~ No district may be
9 terminated so long as ~~bonds~~ tax increment financing obligations with
10 respect to the district remain outstanding.

11 (e) The governing body of the county commission shall repeal,
12 upon the expiration of the time periods set forth in this section,
13 the ordinance establishing the development or redevelopment
14 district. ~~Provided, That no district shall~~ No district may be
15 terminated so long as ~~bonds~~ tax increment financing obligations with
16 respect to the district remain outstanding.

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

18 (a) ~~For~~ So long as the development or redevelopment district
19 exists, the county sheriff shall divide the ad valorem tax revenue
20 collected, with respect to taxable property in the district, as
21 follows:

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

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

1 (B) The amount of ad valorem tax revenue that should be
2 generated by multiplying the base assessed value of the property by
3 the applicable regular ad valorem levy rates for the tax year;

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

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

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

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

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

24 (A) Applying the percentage share determined according to
25 paragraph (B), subdivision (1) of this subsection to the revenues
26 received and distributing such share to the levying bodies entitled

1 to such distribution pursuant to current law;

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

7 (C) Applying the percentage share determined according to
8 paragraph (D), subdivision (1) of this subsection to the revenues
9 received and distributing such share to the levying bodies entitled
10 to such distribution by reason of having excess levies in effect for
11 the tax year; and

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

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

20 (c) Any additional moneys appropriated to the development or
21 redevelopment district pursuant to an appropriation by the county
22 commission that created the district and any additional moneys
23 dedicated to the fund from other sources shall be deposited to the
24 tax increment financing fund for the development or redevelopment
25 district by the sheriff.

26 (d) Any funds deposited into the tax increment financing fund

1 of the development or redevelopment district may be used to pay
2 project costs, principal and interest on ~~bonds~~ tax increment
3 financing obligations and the cost of any other improvements in the
4 development or redevelopment district deemed proper by the county
5 commission.

6 (e) Unless otherwise directed pursuant to ~~any~~ an agreement with
7 the holders of tax increment financing obligations, moneys in the
8 tax increment financing fund may be temporarily invested in the same
9 manner as other funds of the county commission or the municipality
10 that established the fund.

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

16 **§7-11B-22. Tax increment financing obligations -- terms,**
17 **conditions.**

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

21 (b) Tax increment financing obligations shall not be included
22 in the computation of the Constitutional debt limitation of the
23 county commission or municipality issuing the tax increment
24 financing obligations.

25 (c) Tax increment financing obligations shall mature over a
26 period not exceeding thirty years from the date of entry of the

1 county commission's order, or the effective date of the municipal
2 ordinance, creating the development or redevelopment district and
3 approving the development or redevelopment plan, or a period
4 terminating with the date of termination of the development or
5 redevelopment district, whichever period terminates earlier.

6 (d) Tax increment financing obligations may contain a provision
7 authorizing their redemption, in whole or in part, at stipulated
8 prices, at the option of the county commission or municipality
9 issuing the obligations, and, if so, the obligations shall provide
10 the method of selecting the tax increment financing obligations to
11 be redeemed.

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

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

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

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

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

21 (j) Insofar as they are consistent with subsections (a), (b)
22 and (c) of this section, the procedures for issuance, form,
23 contents, execution, negotiation and registration of county and
24 municipal industrial or commercial revenue bonds set forth in
25 article two-c, chapter thirteen of this code are incorporated by
26 reference herein.

(k) The bonds may be refunded or refinanced and refunding bonds may be issued in any principal amount: *Provided*, That the last maturity of the refunding bonds shall not be later than the ~~last maturity of the bonds being refunded~~ maximum maturity provided in this article.

(NOTE: Strike-throughs indicate language that would be stricken from the present law and underscoring indicates new language that would be added.)