

Senate Bill No. 234

(By Senators Kessler (Acting President) and Hall,

By Request of the Executive)

[Introduced January 21, 2011; referred to the Committee on
Energy, Industry and Mining; and then to the Committee on
Finance.]

**FISCAL
NOTE**

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

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

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

13 That §8-38-3, §8-38-4, §8-38-5, §8-38-7, §8-38-10, §8-38-12,
14 §8-38-15, §8-38-16, §8-38-17 and §8-38-20 of the Code of West
15 Virginia, 1931, as amended, be amended and reenacted, all to read
16 as follows:

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

18 **§8-38-3. Definitions.**

19 For purposes of this article, the term:

20 (1) "Affordable housing" means housing that could be purchased
21 with a cash down payment of at least ten percent and the proceeds
22 of a mortgage loan, the monthly principal and interest payments on
23 which do not exceed thirty percent of the gross monthly income of
24 a household earning one hundred percent of the current median
25 family income, as computed by the United States Department of

1 Housing and Urban Development, for the county in which the district
2 is located. For the purposes of this definition, the monthly
3 principal and interest payments referred to in the preceding
4 sentence are computed using a standard amortization calculation
5 incorporating the prevailing annual rate of interest on mortgage
6 loans offered by financial institutions in the vicinity of the
7 district, as determined by the Development Office at the time of
8 its review of a municipality's application in accordance with
9 section seven of this article, and a thirty year amortization
10 period.

11 ~~(1)~~ (2) "Development expenditures" means payments for
12 governmental functions, programs, activities, facility
13 construction, improvements and other goods and services which a
14 district board is authorized to perform or provide under section
15 five of this article;

16 ~~(2)~~ (3) "District" means an economic opportunity development
17 district created pursuant to this article;

18 ~~(3)~~ (4) "District board" means a district board created
19 pursuant to section ten of this article;

20 ~~(4)~~ (5) "Eligible property" means any taxable or exempt real
21 property located in a district established pursuant to this
22 article;

23 ~~(5)~~ (6) "Municipality" is a word of art and ~~shall mean, for~~
24 ~~the purposes of this article, only~~ means any Class I, and Class II
25 and Class III city or any Class IV town or village as classified in

1 including, but not limited to, expenditures for the following
2 purposes:

3 (1) Beautification of the district by means ~~such as~~ including
4 landscaping and construction and erection of fountains, shelters,
5 benches, sculptures, signs, lighting, decorations and similar
6 amenities;

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

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

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

22 (5) Acquiring, building, demolishing, razing, constructing,
23 repairing, reconstructing, refurbishing, renovating,
24 rehabilitating, expanding, altering, otherwise developing,
25 operating and maintaining real property generally, parking

1 facilities, commercial structures and other capital improvements to
2 real property, fixtures and tangible personal property, whether or
3 not physically situate within the district's boundaries: *Provided,*
4 That the expenditure directly benefits the district;

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

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

10 (8) Providing the administrative costs for a district
11 management program;

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

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

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

22 (12) Acquiring an interest in any entity or entities that own
23 any portion of the real property situate in the district and
24 contributing capital to any entity or entities;

25 (13) Remediation of publicly or privately owned landfills,

1 former coal mining sites, solid waste facilities or hazardous waste
2 sites to facilitate commercial development which would not
3 otherwise be economically feasible; and

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

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

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

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

14 (2) The total cost of the project;

15 (3) A reasonable estimate of the number of months needed to
16 complete the project;

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

20 (5) A description of the proposed method of financing the
21 development expenditures, together with a description of the
22 reserves to be established for financing ongoing development ~~or~~
23 ~~redevelopment~~ expenditures necessary to permanently maintain the
24 optimum economic viability of the district following its inception:

25 *Provided,* That the amounts of the reserves ~~shall~~ may not exceed the

1 amounts that would be required by ~~ordinary~~ prevailing commercial
2 capital market considerations;

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

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

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

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

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

1 the district for the twelve full calendar months next preceding the
2 date of the application: *Provided*, That for purposes of this
3 article, the aggregate amount is designated as "the base tax
4 revenue amount";

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

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

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

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

23 (b) *Review of applications.* -- The Development Office shall
24 review all project proposals for conformance to statutory and
25 regulatory requirements, the reasonableness of the project's budget

1 and timetable for completion and the following criteria:

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

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

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

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

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

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

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

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

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

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

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

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

16 (13) (A) The ability of the municipality and the project
17 developer or project team to carry out the project: *Provided, That*
18 no project may be approved by the Development Office unless the
19 amount of all development expenditures proposed to be made in the
20 first twenty-four months following the creation of the district
21 results in capital investment of more than \$50 million in the
22 district and the municipality submits clear and convincing
23 information, to the satisfaction of the Development Office, that
24 ~~such~~ the investment will be made if the Development Office approves
25 the project and the Legislature authorizes the municipality to levy

1 an excise tax on sales of goods and services made within the
2 economic opportunity development district as provided in this
3 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 \$50 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 ~~redevelopment~~
18 development expenditures 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 ~~redevelopment~~ development
5 expenditures and that moneys or funds of the district are necessary
6 therefor, to borrow money and execute and deliver the district's
7 negotiable notes and other evidences of indebtedness therefor, on
8 the terms as the district shall determine, and give security
9 therefor as is requisite, including, without limitation, a pledge
10 of the district's rights in its subaccount of the Economic
11 Opportunity 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 ~~said~~ article fifteen, chapter eleven, all exemptions and

1 exceptions from the consumers sales and service tax ~~shall~~ also
2 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
20 ~~promulgated~~ adopted or proposed pursuant to article three, chapter
21 twenty-nine-a of this code, administrative notices, and forms and
22 instructions, the procedures and criteria to be followed to
23 electronically file ~~such~~ those returns and to electronically pay
24 the special district excise tax 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 ~~county commission~~ municipality that established the
23 economic opportunity development district that issued the bonds
24 pursuant to this article and with the bondholders and with bond
25 counsel for bonds issued pursuant to this article. The Tax

1 Commissioner and the trustee may enter into a written agreement in
2 order to accomplish ~~such~~ exchange of 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 ~~such~~ the person or entity
11 that is in possession of ~~such~~ the tax information is an officer,
12 employee, agent or representative of this state or of a local or
13 municipal 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 ~~shall be~~
17 are 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 the
4 Executive Director of the Development Office and of all the holders
5 or obligees of any indebtedness or other instruments the proceeds
6 of which were applied to any development ~~or redevelopment~~
7 expenditures or any indebtedness, the payment of which is secured
8 by revenues payable into the fund provided under section eight of
9 this article or by any public property, a district may only be
10 abolished by the municipality when there is no outstanding
11 indebtedness the proceeds of which were applied to any development
12 ~~or redevelopment~~ expenditures or the payment of which is secured by
13 revenues payable into the fund provided under section eight of this
14 article, or by any public property, and following a public hearing
15 upon the proposed 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 economic
15 opportunity development district may issue bonds or notes for the
16 purpose of financing development expenditures, as described in
17 section five of this article, with respect to one or more projects
18 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 ~~Provided, That the maximum repayment schedule of bonds issued to~~
2 ~~finance remediation authorized under section five of this article~~
3 ~~may not exceed twenty years.~~

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

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

22 (f) *Debt not general obligation of municipality.* -- Neither
23 the notes or bonds and any interest coupons issued under the
24 authority of this article shall ever constitute an indebtedness of
25 the municipality issuing the notes or bonds within the meaning of

1 any Constitutional provision or statutory limitation and ~~shall~~
2 ~~never~~ do not constitute or give rise to a pecuniary liability of
3 the municipality issuing the notes or bonds.

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

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

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

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

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

1 of the municipality.

2 (4) Any coupons attached to the bonds shall bear the facsimile
3 signature of the authorized representative of the municipality. ~~In~~
4 ~~case~~ If any of the officials whose signatures appear on the bonds,
5 notes or coupons cease to be officers before the delivery of the
6 bonds or notes, their signatures ~~shall, nevertheless, be~~ are valid
7 and sufficient for all purposes to the same extent as if they had
8 remained in office until the delivery.

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

23 **§8-38-17. Security for bonds.**

24 (a) *General.* -- Unless the municipality ~~shall~~ otherwise
25 ~~determine~~ determines in the ~~resolution~~ ordinance authorizing the

1 issuance of the bonds or notes under the authority of this article,
2 there is hereby created a statutory lien upon the subaccount
3 created pursuant to section eight of this article and all special
4 district excise tax revenues collected for the benefit of the
5 district pursuant to section eleven-a, article ten, chapter eleven
6 of this code for the purpose of securing the principal of the bonds
7 or notes and the interest thereon.

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

15 (c) *Trust indenture.* --

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

21 (2) The ~~resolution~~ ordinance authorizing the bonds or notes
22 and fixing the details thereof may provide that the trust indenture
23 may contain provisions for the protection and enforcing the rights
24 and remedies of the bondholders as are reasonable and proper, not
25 in violation of law, including covenants setting forth the duties

1 of the municipality in relation to the construction, acquisition or
2 financing of an economic opportunity development district project,
3 or part thereof or an addition thereto, and the improvement,
4 repair, maintenance and insurance thereof and for the custody,
5 safeguarding and application of all moneys and may provide that the
6 economic opportunity development district project shall be
7 constructed and paid for under the supervision and approval of the
8 consulting engineers or architects employed and designated by the
9 municipality or, if directed by the municipality in the ~~resolution~~
10 ordinance, by the district board, and satisfactory to the
11 purchasers of the bonds or notes, their successors, assigns or
12 nominees who may require the security given by any contractor or
13 any depository of the proceeds of the bonds or notes or the
14 revenues received from the district project be satisfactory to the
15 purchasers, their successors, assigns or nominees.

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

21 (4) The municipality may also provide by resolution and in the
22 trust indenture for the payment of the proceeds of the sale of the
23 bonds or notes and the revenues from the economic opportunity
24 development district project to any depository it determines, for
25 the custody and investment thereof and for the method of

1 distribution thereof, with safeguards and restrictions it
2 determines to be necessary or advisable for the protection thereof
3 and upon the filing of a certified copy of the resolution or of the
4 indenture for record with the clerk or recorder of the municipality
5 in which the economic opportunity development project is located,
6 the resolution has the same effect, as to notice, as the
7 recordation of a deed of trust or other recordable instrument.

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

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

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

22 (2) The proceedings under which bonds or notes are authorized
23 to be issued, when secured by a mortgage or deed of trust, may
24 contain the same terms, conditions and provisions provided ~~for~~
25 herein when an indenture is entered into between the municipality

1 and a trustee and any mortgage or deed of trust may contain any
2 agreements and provisions customarily contained in instruments
3 securing bonds or notes, including, without limiting the generality
4 of the foregoing, provisions respecting the fixing and collection
5 of revenues from the economic opportunity development district
6 project covered by the proceedings or mortgage, the terms to be
7 incorporated in any lease, sale or financing agreement with respect
8 to the economic opportunity development district project, the
9 improvement, repair, maintenance and insurance of the economic
10 opportunity development district project, the creation and
11 maintenance of special funds from the revenues received from the
12 economic opportunity development district project and the rights
13 and remedies available in event of default to the bondholders or
14 note holders, the municipality, or to the trustee under an
15 agreement, indenture, mortgage or deed of trust, all as the
16 municipality considers advisable and shall not be in conflict with
17 the provisions of this article or any existing law: *Provided*, That
18 in making any agreements or provisions, a municipality shall not
19 have the power to incur original indebtedness by indenture,
20 ordinance, resolution, mortgage or deed of trust except with
21 respect to the economic opportunity development district project
22 and the application of the revenues therefrom and shall not have
23 the power to incur a pecuniary liability or a charge upon its
24 general credit or against its taxing powers unless approved by the
25 voters in accordance with article one, chapter thirteen of this

1 code or as otherwise permitted by the Constitution of this state.

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

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

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

22 (f) *No pecuniary liability.* -- No breach of any agreement,
23 indenture, mortgage or deed of trust ~~shall~~ may impose any pecuniary
24 liability upon a municipality or any charge upon its general credit
25 or against its taxing powers.

1 **§8-38-20. Use of proceeds from sale of bonds.**

2 (a) *General.* -- The proceeds from the sale of any bonds issued
3 under authority of this article shall be applied only for the
4 purpose for which the bonds were issued: *Provided,* That any
5 accrued interest received in any sale shall be applied to the
6 payment of the interest on the bonds sold: *Provided, however,* That
7 if for any reason any portion of the proceeds may not be needed for
8 the purpose for which the bonds were issued, then the unneeded
9 portion of the proceeds may be applied to the purchase of bonds for
10 cancellation or payment of the principal of or the interest on the
11 bonds, or held in reserve for the payment thereof.

12 (b) *Payment of costs.* -- The costs that may be paid with the
13 proceeds of the bonds include all development ~~and redevelopment~~
14 ~~costs~~ expenditures described in section five of this article and
15 may also include, but not be limited to, the following:

16 (1) The cost of acquiring any real estate determined
17 necessary;

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

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

25 (4) All expenses incurred in connection with the

1 authorization, sale and issuance of the bonds to finance the
2 acquisition and the interest on the bonds for a reasonable time
3 prior to construction during construction and for not exceeding
4 twelve months after completion of construction; and

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

NOTE: The purpose of this bill is to revise the Municipal Economic Opportunity Development District Act generally. The bill enlarges the types of municipal corporations that may use sales tax increment financing to finance certain economic development projects to any Class I, Class II and Class III city and any Class IV town or village. The bill includes mining operations in the definition of remediation and includes remediation of former coal mining sites as a permissible development expenditure for a project. The bill changes the standard by which the maximum amounts of reserves that may be established in the financing of a project are measured. The bill recommends that the development office consider whether the economic development that a project enables is large enough to require that it contain mixed use development consisting of a housing component with at least ten percent of housing units in the district allocated for affordable housing when determining whether there is a pressing need for the project. The bill defines "affordable housing." The bill allows the development office to reduce the minimum amount of local sales tax revenues that would be deposited into the state's general revenue fund in certain circumstances. The bill provides that the maximum repayment schedule of all notes, bonds or other instruments issued to fund projects is thirty years.

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