

Senate Bill No. 272

(By Senators Kessler (Acting President) and Hall,

By Request of the Executive)

[Introduced January 25, 2011; referred to the Committee on
Energy, Industry and Mining; and then to the Committee on
Finance.]

A BILL to amend and reenact §7-11B-3, §7-11B-4, §7-11B-7, §7-11B-8,
§7-11B-9, §7-11B-10, §7-11B-17 and §7-11B-22 of the Code of
West Virginia, 1931, as amended, all relating to the West
Virginia Tax Increment Financing Act; revising definitions
relating to governing bodies of counties and municipalities;
adding definition for "municipality"; adding remediation of
property to definition of "development or redevelopment
project"; redefining "project costs" to include remediation
costs for landfills, former coal mining sites, solid waste
facilities or hazardous waste sites; defining "remediation";
requiring the Director of the Development Office to provide
the Legislature with an itemized list of applications seeking
approval of development and redevelopment districts along with
a status explanation of applications on dates certain;

1 clarifying municipalities' power to utilize tax increment
 2 financing and to finance project costs by other means;
 3 clarifying that municipalities are not required to seek
 4 approval when amending project plans if the project is not
 5 enlarged or the total amount of indebtedness increased;
 6 providing that development or redevelopment districts shall
 7 not be terminated so long as tax increment financing
 8 obligations remain outstanding; clarifying the time when bonds
 9 may be refunded or refinanced and when refunding bonds may be
 10 issued in principal amounts; and providing technical
 11 corrections.

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

13 That §7-11B-3, §7-11B-4, §7-11B-7, §7-11B-8, §7-11B-9, §7-11B-
 14 10, §7-11B-17 and §7-11B-22 of the Code of West Virginia, 1931, as
 15 amended, be amended and reenacted, all to read as follows:

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

17 **§7-11B-3. Definitions.**

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

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

1 (1) "Agency" includes a municipality, a county or municipal
2 development agency established pursuant to authority granted in
3 section one, article twelve of this chapter, a port authority, an
4 airport authority or ~~any~~ other entity created by this state or an
5 agency or instrumentality of this state that engages in economic
6 development activity.

7 (2) "Base assessed value" means the taxable assessed value of
8 all real and tangible personal property, excluding personal motor
9 vehicles, having a tax situs within a development or redevelopment
10 district as shown upon the landbooks and personal property books of
11 the assessor on July 1 of the calendar year preceding the
12 effective date of the order or ordinance creating and establishing
13 the development or redevelopment district.

14 (3) "Blighted area" means an area within the boundaries of a
15 redevelopment district located within the territorial limits of a
16 municipality or county in which the structures, buildings or
17 improvements, by reason of dilapidation, deterioration, age or
18 obsolescence, inadequate provision for access, ventilation, light,
19 air, sanitation, open spaces, high density of population and
20 overcrowding or the existence of conditions which endanger life or
21 property, are detrimental to the public health, safety, morals or
22 welfare. "Blighted area" includes any area which, by reason of the
23 presence of a substantial number of substandard, slum, deteriorated
24 or deteriorating structures, predominance of defective or

1 inadequate street layout, faulty lot layout in relation to size,
2 adequacy, accessibility or usefulness, unsanitary or unsafe
3 conditions, deterioration of site or other improvements, diversity
4 of ownership, defective or unusual conditions of title or the
5 existence of conditions which endanger life or property by fire and
6 other causes, or any combination of such factors, substantially
7 impairs or arrests the sound growth of a municipality, retards the
8 provision of housing accommodations or constitutes an economic or
9 social liability and is a menace to the public health, safety,
10 morals or welfare in its present condition and use, or any area
11 which is predominantly open and which because of lack of
12 accessibility, obsolete platting, diversity of ownership,
13 deterioration of structures or of site improvements, or otherwise,
14 substantially impairs or arrests the sound growth of the community.

15 (4) "Conservation area" means any improved area within the
16 boundaries of a development or redevelopment district located
17 within the territorial limits of a municipality or county in which
18 fifty percent or more of the structures in the area have an age of
19 thirty-five years or more. A conservation area is not yet a
20 blighted area but is detrimental to the public health, safety,
21 morals or welfare and may become a blighted area because of any one
22 or more of the following factors: Dilapidation, obsolescence,
23 deterioration, illegal use of individual structures, presence of
24 structures below minimum code standards, abandonment, excessive

1 vacancies, overcrowding of structures and community facilities,
2 lack of ventilation, light or sanitary facilities, inadequate
3 utilities, excessive land coverage, deleterious land use or layout,
4 depreciation of physical maintenance and lack of community
5 planning. A conservation area shall meet at least three of the
6 factors provided in this subdivision.

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

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

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

18 (8) "Development project" or "redevelopment project" means a
19 project undertaken in a development or redevelopment district for
20 eliminating or preventing the development or spread of slums or
21 deteriorated, deteriorating or blighted areas, for discouraging the
22 loss of commerce, industry or employment, for increasing
23 employment, for remediation of property or for any combination
24 thereof in accordance with a tax increment financing plan. A

1 development or redevelopment project may include one or more of the
2 following:

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

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

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

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

1 enhance the development of commerce, industry or housing within the
2 development project area; or

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

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

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

1 city and any Class IV town or village heretofore or hereafter
2 incorporated as a municipal corporation under the laws of this
3 state.

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

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

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

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

1 assessed value of all taxable real and tangible personal property
2 in the area selected for the development or redevelopment project
3 exceeds the total base assessed value of all taxable real and
4 tangible personal property in the development or redevelopment
5 district until the designation is terminated as provided in this
6 article.

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

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

17 ~~(21)~~ (22) "Project" means any capital improvement, facility
18 or both, as specifically set forth and defined in the project plan,
19 requiring an investment of capital, including, but not limited to,
20 extensions, additions or improvements to existing facilities,
21 including water or wastewater facilities, and the remediation of
22 ~~contaminated property as provided for in article twenty-two,~~
23 ~~chapter twenty-two of this code~~ property located within the
24 development or redevelopment district as provided herein but does

1 not include performance of any governmental service by a county or
2 municipal government.

3 ~~(22)~~ (23) "Project area" means an area within the boundaries
4 of a development or redevelopment district in which a development
5 or redevelopment project is undertaken as specifically set forth
6 and defined in the project plan.

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

14 (A) Capital costs, including, but not limited to, the actual
15 costs of the construction of public works or improvements, capital
16 improvements and facilities, new buildings, structures and
17 fixtures, the demolition, alteration, remodeling, repair or
18 reconstruction of existing buildings, structures and fixtures,
19 ~~environmental remediation,~~ parking and landscaping, the acquisition
20 of equipment and site clearing, grading and preparation;

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

1 ~~(B)~~ (C) Financing costs, including, but not limited to, an
2 interest paid to holders of evidences of indebtedness issued to pay
3 for project costs, all costs of issuance and any redemption
4 premiums, credit enhancement or other related costs;

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

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

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

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

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

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

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

13 ~~(24)~~ (25) "Project developer" means any person who engages in
14 the development of projects in the state.

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

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

1 and indebtedness secured by the liens.

2 ~~(27)~~ (28) "Redevelopment area" means an area designated by a
3 county commission or the governing body of a municipality in
4 respect to which the commission or governing body has made a
5 finding that there exist conditions which cause the area to be
6 classified as a blighted area, a conservation area, an economic
7 development area or a combination thereof, which area includes only
8 those parcels of real property directly and substantially
9 benefitted by the proposed redevelopment project located within the
10 development or redevelopment district or ~~land contiguous thereto.~~
11 contiguous land.

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

19 ~~(28)~~ (30) "Redevelopment plan" means the comprehensive program
20 under this article of a county or municipality for redevelopment
21 intended by the payment of redevelopment costs to reduce or
22 eliminate those conditions, the existence of which qualified the
23 redevelopment area as a blighted area, conservation area, economic
24 development area or combination thereof and to thereby enhance the

1 tax bases of the levying bodies which extend into the redevelopment
2 area. Each redevelopment plan shall conform to the requirements of
3 this article.

4 ~~(29)~~ (31) "Tax increment" means the amount of regular levy
5 property taxes attributable to the amount by which the current
6 assessed value of real and tangible personal property having a tax
7 situs in a development or redevelopment district exceeds the base
8 assessed value of the property.

9 ~~(30)~~ (32) "Tax increment financing fund" means a separate fund
10 for a development or redevelopment district established by the
11 county commission or governing body of the municipality into which
12 all tax increment revenues and other pledged revenues are deposited
13 and from which projected project costs, debt service and other
14 expenditures authorized by this article are paid.

15 ~~(31)~~ (33) "This code" means the Code of West Virginia, 1931,
16 as amended by the Legislature.

17 ~~(32)~~ (34) "Total ad valorem property tax regular levy rate"
18 means the aggregate levy rate of all levying bodies on all taxable
19 property having a tax situs within a development or redevelopment
20 district in a tax year but does not include excess levies, levies
21 for general obligation bonded indebtedness or any other levies that
22 are not regular levies.

23 **§7-11B-4. Powers generally.**

24 In addition to any other powers conferred by law, a county

1 commission or governing body of a ~~Class I or Class II~~ municipality
2 may exercise any powers necessary and convenient to carry out the
3 purpose of this article, including the power to:

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

6 (2) Cause project plans to be prepared, to approve the project
7 plans and to implement the provisions and effectuate the purposes
8 of the project plans;

9 (3) Establish tax increment financing funds for each
10 development or redevelopment district;

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

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

15 (6) Enter into any contracts or agreements, including, but not
16 limited to, agreements with project developers, consultants,
17 professionals, financing institutions, trustees and bondholders
18 determined by the county commission to be necessary or convenient
19 to implement the provisions and effectuate the purposes of project
20 plans which may include provisions for reimbursement of project
21 costs expended by such entities from tax increment or the proceeds
22 of tax increment financing obligations;

23 (7) Receive from the federal government or the state loans and
24 grants for, or in aid of, a development or redevelopment project

1 and to receive contributions from any other source to defray
2 project costs;

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

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

11 (10) Clear and improve property acquired by the county
12 commission pursuant to the project plan and construct public
13 facilities on it or contract for the construction, development,
14 redevelopment, rehabilitation, remodeling, alteration or repair of
15 the property;

16 (11) Cause parks, playgrounds or water, sewer or drainage
17 facilities or any other public improvements, including, but not
18 limited to, fire stations, community centers and other public
19 buildings which the county commission is otherwise authorized to
20 undertake to be laid out, constructed or furnished in connection
21 with the development or redevelopment project. When the public
22 improvement of the county commission is to be located, in whole or
23 in part, within the corporate limits of a municipality, the county
24 commission shall consult with the mayor and the governing body of

1 the municipality regarding the public improvement and shall pay for
2 the cost of the public improvement from the tax increment financing
3 fund;

4 (12) Lay out and construct, alter, relocate, change the grade
5 of, make specific repairs upon or discontinue public ways and
6 construct sidewalks in, or adjacent to, the project area. ~~Provided,~~
7 ~~That~~ When the public way or sidewalk is located within a
8 municipality, the governing body of the municipality shall consent
9 ~~to the same~~ and if the public way is a state road, the consent of
10 the commissioner of highways ~~shall be~~ is necessary;

11 (13) Cause private ways, sidewalks, ways for vehicular travel,
12 playgrounds or water, sewer or drainage facilities and similar
13 improvements to be constructed within the project area for the
14 particular use of the development or redevelopment district or
15 those dwelling or working in it;

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

17 (15) Construct capital improvements to be leased or sold to
18 private entities in connection with the goals of the development or
19 redevelopment project;

20 (16) Cause capital improvements owned by one or more private
21 entities to be constructed within the development or redevelopment
22 district;

23 (17) Designate one or more official or employee of the county
24 commission to make decisions and handle the affairs of development

1 and redevelopment project areas or ~~districts~~ district created by
2 the county commission pursuant to this article;

3 (18) Adopt orders, ordinances or bylaws or repeal or modify
4 such ordinances or bylaws or establish exceptions to existing
5 ordinances and bylaws regulating the design, construction and use
6 of buildings within the development or redevelopment district
7 created by a county commission or governing body of a municipality
8 under this article;

9 ~~(19) Enter orders, adopt bylaws or repeal or modify such~~
10 ~~orders or bylaws or establish exceptions to existing orders and~~
11 ~~bylaws regulating the design, construction and use of buildings~~
12 ~~within the development or redevelopment district created by a~~
13 ~~county commission or governing body of a municipality under this~~
14 ~~article;~~

15 ~~(20)~~ (19) Sell, mortgage, lease, transfer or dispose of any
16 property or interest therein, by contract or auction, acquired by
17 it the county commission or governing body of the municipality
18 pursuant to the project plan for development, redevelopment or
19 rehabilitation in accordance with the project plan;

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

22 (21) Temporarily finance any project costs through the
23 issuance of bonds, loans, debentures, notes, special certificates
24 or other evidences of indebtedness or the expenditure of the

1 general funds of a county commission or municipality: Provided,
2 That any temporary financing may be paid from tax increments or the
3 proceeds of any tax increment financing obligations and any
4 expenditure of general funds for such costs may be reimbursed from
5 tax increment or the proceeds of any tax increment financing
6 obligations; and

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

9 **§7-11B-7. Creation of a development or redevelopment or district.**

10 (a) County commissions and the governing bodies of ~~Class I and~~
11 ~~II~~ municipalities, upon their own initiative or upon application of
12 an agency or a developer, may propose creation of a development or
13 redevelopment district and designate the boundaries of the district
14 ~~Provided, That a district may not include noncontiguous land. which~~
15 must be comprised of contiguous land.

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

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) The notice shall include the time, place and purpose of

1 the public hearing, describe in sufficient detail the tax increment
2 financing plan, the proposed boundaries of the development or
3 redevelopment district and, when a development or redevelopment
4 project plan is being proposed, the proposed tax increment
5 financing obligations to be issued to finance the development or
6 redevelopment project costs.

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

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

18 (c) After the public hearing, the county commission or the
19 governing body of the municipality, shall finalize the boundaries
20 of the development or redevelopment district, the development or
21 redevelopment project plan, or both, and submit the same to the
22 director of the Development Office for his or her review and
23 approval. The director, within sixty days after receipt of the
24 application, shall approve the application as submitted, reject the

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

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

23 (1) Describes the boundaries of a development or redevelopment
24 district sufficiently to identify with ordinary and reasonable

1 certainty the territory included in the district, which boundaries
2 shall create a contiguous district;

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

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

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

8 (B) Shall identify the county or municipality authorizing the
9 district; and

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

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

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

22 (6) Establishes a tax increment financing fund as a separate
23 fund into which all tax increment revenues and other revenues
24 designated by the county commission or governing body of the

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

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

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

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

1 which the development or redevelopment project plan is adopted by
2 order of the county commission or by ordinance adopted by the
3 governing body of the municipality;

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

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

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

23 (f) Notwithstanding subsection ~~(e)~~ (d) of this section, a
24 county commission may not enter an order approving a development or

1 redevelopment project plan unless the county commission expressly
2 finds and states in the order that the development or redevelopment
3 project is not reasonably expected to occur without the use of tax
4 increment financing.

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

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

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

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

23 (k) The governing body of a municipality may modify the
24 boundaries of the development or redevelopment district, from time

1 to time, by amending the ordinance establishing the boundaries of
2 the district.

3 (1) Before a county commission or the governing body of a
4 municipality may amend such an order or ordinance, the county
5 commission or municipality shall give the public notice, hold a
6 public hearing and obtain the approval of the director of the
7 Development Office, following the procedures for establishing a new
8 development or redevelopment district. In the event any tax
9 increment financing obligations are outstanding with respect to the
10 development or redevelopment district, any change in the boundaries
11 shall not reduce the amount of tax increment available to secure the
12 outstanding tax increment financing obligations.

13 **§7-11B-8. Project plan - approval.**

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

21 (b) Each project plan shall include:

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

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

12 (3) An economic feasibility study;

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

14 (5) A description of the methods of financing all estimated
15 project costs including the issuance of tax increment obligations
16 and the time when the costs or ~~monetary obligations related thereto~~
17 related monetary obligations are to be incurred;

18 (6) A certification by the county assessor of the base assessed
19 value of real and tangible personal property having a tax situs in
20 a development or redevelopment district. ~~Provided, That~~ If such
21 certification is made during the months of January or February of
22 each year, the county assessor may certify an estimated base
23 assessed value of real and tangible personal property having a tax
24 situs in a development or redevelopment district ~~Provided, however,~~

1 and that prior to issuance of tax increment obligations, the county
2 assessor shall certify a final base assessed value for the estimated
3 base assessed value permitted by this section;

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

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

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

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

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

14 (12) A list of estimated nonproject costs;

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

17 (14) A certificate from the executive director of the Workers'
18 Compensation Commission, the Commissioner of the Bureau of
19 Employment Programs and the State Tax Commissioner that the project
20 developer, if any, is in good standing with the Workers'
21 Compensation Commission, the Bureau of Employment Programs and the
22 State Tax Division; and

23 (15) A certificate from the sheriff of the county or counties
24 in which the development or redevelopment district is located that

1 the project developer, if any, is not delinquent on payment of any
2 real and personal property taxes in such county.

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

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

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

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

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

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

17 (d) If less than all of the tax increment is to be used to fund
18 a development or redevelopment project or to pay project costs or
19 retire tax increment financing obligations, the project plan shall
20 set forth the portion of the tax increment to be deposited in the
21 tax increment financing fund of the development or redevelopment
22 district and provide for the distribution of the remaining portion
23 of the tax increment to the levying bodies in whose jurisdiction the
24 district lies.

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

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

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

14 (f) Approval by the county commission or the governing body of
15 a municipality of an initial development or redevelopment project
16 plan must be within one year after the date of the county assessor's
17 certification required by subdivision (6), subsection (b) of this
18 section. ~~Provided, That~~ Additional development or redevelopment
19 project plans may be approved by the county commission or the
20 governing body of a municipality in subsequent years so long as the
21 development or redevelopment district continues to exist. The
22 approval shall be by order of the county commission or ordinance of
23 the municipality which shall contain a finding that the plan is
24 economically feasible.

1 **§7-11B-9. Project plan - amendment.**

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

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

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

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

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

20 (c) One or more existing development or redevelopment districts
21 may be combined pursuant to lawfully adopted amendments to the
22 original plans for each district: *Provided*, That the county
23 commission or governing body of the municipality finds that the
24 combination of the districts will not impair the security for any

1 tax increment financing obligations previously issued pursuant to
2 this article.

3 (d) A municipality or county commission is not required to
4 obtain the approval of the director of the Development Office prior
5 to amending a project plan if the amendment does not enlarge the
6 development or redevelopment district or increase the total amount
7 of indebtedness contained in the tax increment financing portion of
8 the project plan application.

9 **§7-11B-10. Termination of development or redevelopment district.**

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

14 (b) The county commission or governing body of the municipality
15 creating the development or redevelopment district may set a shorter
16 period for the existence of the district. In this event, no tax
17 increment financing obligations may have a final maturity date later
18 than the termination date of the district.

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

22 (d) The county commission shall adopt, upon the expiration of
23 the time periods set forth in this section, an order terminating the
24 development or redevelopment district created by the county

1 commission. ~~Provided, That No district shall~~ No district may be
 2 terminated so long as ~~bonds~~ tax increment financing obligations with
 3 respect to the district remain outstanding.

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

10 **§7-11B-17. Division of ad valorem real property tax revenue.**

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

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

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

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

23 (C) The amount of ad valorem tax revenue that should be
 24 generated by multiplying the assessed value of the property for the

1 current tax year by the applicable levy rates for general obligation
2 bond debt service for the tax year;

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

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

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

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

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

23 (B) Applying the percentage share determined according to
24 paragraph (C), subdivision (1) of this subsection to the revenues

1 received and distributing such share to the levying bodies entitled
2 to such distribution by reason of having general obligation bonds
3 outstanding;

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

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

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

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

23 (d) Any funds deposited into the tax increment financing fund
24 of the development or redevelopment district may be used to pay

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

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

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

15 **§7-11B-22. Tax increment financing obligations -- terms,**
16 **conditions.**

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

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

24 (c) Tax increment financing obligations shall mature over a

1 period not exceeding thirty years from the date of entry of the
2 county commission's order, or the effective date of the municipal
3 ordinance, creating the development or redevelopment district and
4 approving the development or redevelopment plan, or a period
5 terminating with the date of termination of the development or
6 redevelopment district, whichever period terminates earlier.

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

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

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

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

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

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

22 (j) Insofar as they are consistent with subsections (a), (b)
23 and (c) of this section, the procedures for issuance, form,
24 contents, execution, negotiation and registration of county and

1 municipal industrial or commercial revenue bonds set forth in
2 article two-c, chapter thirteen of this code are incorporated by
3 reference herein.

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

NOTE: The purpose of this bill is to clarify the power of municipalities to use tax increment financing for development and redevelopment projects. The bill also allows certain remediation projects to fall within the parameters of the article and provides that the Director of the Development Office must take action on applications for projects by a date certain or the projects are deemed approved by operation of law.

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