

1 **ENROLLED**

2 **Senate Bill No. 375**

3 (BY SENATORS CANN AND SNYDER)

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5 [Passed March 8, 2014; in effect ninety days from passage.]
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10 AN ACT to amend and reenact §7-11B-3 of the Code of West Virginia,
11 1931, as amended, relating to tax increment financing; and
12 adding items to those which are excluded from base assessed
13 value and current assessed value of real and personal
14 property.

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

16 That §7-11B-3 of the Code of West Virginia, 1931, as amended,
17 be amended and reenacted to read as follows:

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

19 **§7-11B-3. Definitions.**

20 (a) *General.* -- When used in this article, words and phrases
21 defined in this section have the meanings ascribed to them in this
22 section unless a different meaning is clearly required either by

1 the context in which the word or phrase is used or by specific
2 definition in this article.

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

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

10 (2) "Base assessed value" means the taxable assessed value of
11 all real and tangible personal property, excluding personal motor
12 vehicles, having a tax situs within a development or redevelopment
13 district as shown upon the landbooks and personal property books of
14 the assessor on July 1 of the calendar year preceding the effective
15 date of the order or ordinance creating and establishing the
16 development or redevelopment district: *Provided,* That for any
17 development or redevelopment district approved after the effective
18 date of the amendments to this section enacted during the regular
19 session of the Legislature in 2014, personal trailers, personal
20 boats, personal campers, personal motor homes, personal ATVs and
21 personal motorcycles having a tax situs within a development or
22 redevelopment district are excluded from the base assessed value.

23 (3) "Blighted area" means an area within the boundaries of a

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

1 otherwise, substantially impairs or arrests the sound growth of the
2 community.

3 (4) "Conservation area" means any improved area within the
4 boundaries of a development or redevelopment district located
5 within the territorial limits of a municipality or county in which
6 fifty percent or more of the structures in the area have an age of
7 thirty-five years or more. A conservation area is not yet a
8 blighted area but is detrimental to the public health, safety,
9 morals or welfare and may become a blighted area because of any one
10 or more of the following factors: Dilapidation; obsolescence;
11 deterioration; illegal use of individual structures; presence of
12 structures below minimum code standards; abandonment; excessive
13 vacancies; overcrowding of structures and community facilities;
14 lack of ventilation, light or sanitary facilities; inadequate
15 utilities; excessive land coverage; deleterious land use or layout;
16 depreciation of physical maintenance; and lack of community
17 planning. A conservation area shall meet at least three of the
18 factors provided in this subdivision.

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

22 (6) "Current assessed value" means the annual taxable assessed
23 value of all real and tangible personal property, excluding

1 personal motor vehicles, having a tax situs within a development or
2 redevelopment district as shown upon the landbook and personal
3 property records of the assessor: *Provided*, That for any
4 development or redevelopment district approved after the effective
5 date of the amendments to this section enacted during the regular
6 session of the Legislature in 2014, personal trailers, personal
7 boats, personal campers, personal motor homes, personal ATVs and
8 personal motorcycles having a tax situs within a development or
9 redevelopment district are excluded from the current assessed
10 value.

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

14 (8) "Development project" or "redevelopment project" means a
15 project undertaken in a development or redevelopment district for
16 eliminating or preventing the development or spread of slums or
17 deteriorated, deteriorating or blighted areas, for discouraging the
18 loss of commerce, industry or employment, for increasing employment
19 or for any combination thereof in accordance with a tax increment
20 financing plan. A development or redevelopment project may include
21 one or more of the following:

22 (A) The acquisition of land and improvements, if any, within
23 the development or redevelopment district and clearance of the land

1 so acquired; or

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

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

19 (D) The construction of capital improvements within a
20 development or redevelopment district designed to increase or
21 enhance the development of commerce, industry or housing within the
22 development project area; or

23 (E) Any other projects the county commission or the agency

1 deems appropriate to carry out the purposes of this article.

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

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

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

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

3 (C) Result in preservation or enhancement of the tax base of
4 the county or municipality.

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

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

13 (13) "Includes" and "including", when used in a definition
14 contained in this article, shall not exclude other things otherwise
15 within the meaning of the term being defined.

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

21 (15) "Obligations" or "tax increment financing obligations"
22 means bonds, loans, debentures, notes, special certificates or
23 other evidences of indebtedness issued by a county commission or

1 municipality pursuant to this article to carry out a development or
2 redevelopment project or to refund outstanding obligations under
3 this article.

4 (16) "Order" means an order of the county commission adopted
5 in conformity with the provisions of this article and as provided
6 in this chapter.

7 (17) "Ordinance" means a law adopted by the governing body of
8 a municipality in conformity with the provisions of this article
9 and as provided in chapter eight of this code.

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

1 article.

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

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

11 (21) "Project" means any capital improvement, facility or
12 both, as specifically set forth and defined in the project plan,
13 requiring an investment of capital including, but not limited to,
14 extensions, additions or improvements to existing facilities,
15 including water or wastewater facilities, and the remediation of
16 contaminated property as provided for in article twenty-two,
17 chapter twenty-two of this code, but does not include performance
18 of any governmental service by a county or municipal government.

19 (22) "Project area" means an area within the boundaries of a
20 development or redevelopment district in which a development or
21 redevelopment project is undertaken as specifically set forth and
22 defined in the project plan.

23 (23) "Project costs" means expenditures made in preparation of

1 the development or redevelopment project plan and made, or
2 estimated to be made, or monetary obligations incurred, or
3 estimated to be incurred, by the county commission which are listed
4 in the project plan as capital improvements within a development or
5 redevelopment district, plus any costs incidental thereto.
6 "Project costs" include, but are not limited to:

7 (A) Capital costs, including, but not limited to, the actual
8 costs of the construction of public works or improvements, capital
9 improvements and facilities, new buildings, structures and
10 fixtures, the demolition, alteration, remodeling, repair or
11 reconstruction of existing buildings, structures and fixtures,
12 environmental remediation, parking and landscaping, the acquisition
13 of equipment and site clearing, grading and preparation;

14 (B) Financing costs, including, but not limited to, an
15 interest paid to holders of evidences of indebtedness issued to pay
16 for project costs, all costs of issuance and any redemption
17 premiums, credit enhancement or other related costs;

18 (C) Real property assembly costs, meaning any deficit incurred
19 resulting from the sale or lease as lessor by the county commission
20 of real or personal property having a tax situs within a
21 development or redevelopment district for consideration that is
22 less than its cost to the county commission;

23 (D) Professional service costs including, but not limited to,

1 those costs incurred for architectural planning, engineering and
2 legal advice and services;

3 (E) Imputed administrative costs including, but not limited
4 to, reasonable charges for time spent by county employees or
5 municipal employees in connection with the implementation of a
6 project plan;

7 (F) Relocation costs including, but not limited to, those
8 relocation payments made following condemnation and job training
9 and retraining;

10 (G) Organizational costs including, but not limited to, the
11 costs of conducting environmental impact and other studies and the
12 costs of informing the public with respect to the creation of a
13 development or redevelopment district and the implementation of
14 project plans;

15 (H) Payments made, in the discretion of the county commission
16 or the governing body of a municipality, which are found to be
17 necessary or convenient to creation of development or redevelopment
18 districts or the implementation of project plans; and

19 (I) That portion of costs related to the construction of
20 environmental protection devices, storm or sanitary sewer lines,
21 water lines, amenities or streets or the rebuilding or expansion of
22 streets, or the construction, alteration, rebuilding or expansion
23 of which is necessitated by the project plan for a development or

1 redevelopment district, whether or not the construction,
2 alteration, rebuilding or expansion is within the area or on land
3 contiguous thereto.

4 (24) "Project developer" means any person who engages in the
5 development of projects in the state.

6 (25) "Project plan" means the plan for a development or
7 redevelopment project that is adopted by a county commission or
8 governing body of a municipality in conformity with the
9 requirements of this article and this chapter or chapter eight of
10 this code.

11 (26) "Real property" means all lands, including improvements
12 and fixtures on them and property of any nature appurtenant to them
13 or used in connection with them and every estate, interest and
14 right, legal or equitable, in them, including terms of years and
15 liens by way of judgment, mortgage or otherwise, and indebtedness
16 secured by the liens.

17 (27) "Redevelopment area" means an area designated by a county
18 commission or the governing body of a municipality in respect to
19 which the commission or governing body has made a finding that
20 there exist conditions which cause the area to be classified as a
21 blighted area, a conservation area, an economic development area or
22 a combination thereof, which area includes only those parcels of
23 real property directly and substantially benefitted by the proposed

1 redevelopment project located within the development or
2 redevelopment district or land contiguous thereto.

3 (28) "Redevelopment plan" means the comprehensive program
4 under this article of a county or municipality for redevelopment
5 intended by the payment of redevelopment costs to reduce or
6 eliminate those conditions, the existence of which qualified the
7 redevelopment area as a blighted area, conservation area, economic
8 development area or combination thereof, and to thereby enhance the
9 tax bases of the levying bodies which extend into the redevelopment
10 area. Each redevelopment plan shall conform to the requirements of
11 this article.

12 (29) "Tax increment" means the amount of regular levy property
13 taxes attributable to the amount by which the current assessed
14 value of real and tangible personal property having a tax situs in
15 a development or redevelopment district exceeds the base assessed
16 value of the property.

17 (30) "Tax increment financing fund" means a separate fund for
18 a development or redevelopment district established by the county
19 commission or governing body of the municipality into which all tax
20 increment revenues and other pledged revenues are deposited and
21 from which projected project costs, debt service and other
22 expenditures authorized by this article are paid.

23 (31) "This code" means the Code of West Virginia, 1931, as

1 amended by the Legislature.

2 (32) "Total ad valorem property tax regular levy rate" means
3 the aggregate levy rate of all levying bodies on all taxable
4 property having a tax situs within a development or redevelopment
5 district in a tax year but does not include excess levies, levies
6 for general obligation bonded indebtedness or any other levies that
7 are not regular levies.