

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 439**

5 (SENATORS FITZSIMMONS, KESSLER (MR. PRESIDENT), BEACH, EDGELL AND YOST,

6 *original sponsors*)

7 _____
8 [Passed March 8, 2014; in effect from passage.]
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11
12 AN ACT to amend and reenact §7-22-9 and §7-22-15 of the Code of
13 West Virginia, 1931, as amended, all relating to county
14 economic opportunity development district; increasing the
15 Fort Henry economic opportunity development project district
16 from three hundred to five hundred contiguous acres of land;
17 providing when the Fort Henry Economic Opportunity
18 Development District may be abolished or terminated;
19 providing time period during which certain economic
20 opportunity development districts may exist and when
21 abolished by operation of law; providing definitions;
22 providing for the authority of the Tax Commissioner; and

1 providing effect of cessation and abolishment of a county
2 economic opportunity development district.

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

4 That §7-22-9 and §7-22-15 of the Code of West Virginia,
5 1931, as amended, be amended and reenacted, all to read as
6 follows:

7 **ARTICLE 22. COUNTY ECONOMIC OPPORTUNITY DEVELOPMENT DISTRICTS.**

8 **§7-22-9. Authorization to levy special district excise tax.**

9 (a) *General.* -- County commissions have no inherent
10 authority to levy taxes and have only that authority expressly
11 granted to them by the Legislature. The Legislature is
12 specifically extended, and intends by this article, to exercise
13 certain relevant powers expressed in section six-a, article X of
14 the Constitution of this state as follows: (1) The Legislature
15 may appropriate state funds for use in matching or maximizing
16 grants-in-aid for public purposes from the United States or any
17 department, bureau, commission or agency thereof, or any other
18 source, to any county, municipality or other political
19 subdivision of the state, under such circumstances and subject to
20 such terms, conditions and restrictions as the Legislature may
21 prescribe by law; and (2) the Legislature may impose a state tax
22 or taxes or dedicate a state tax or taxes or any portion thereof

1 for the benefit of and use by counties, municipalities or other
2 political subdivisions of the state for public purposes, the
3 proceeds of any such imposed or dedicated tax or taxes or portion
4 thereof to be distributed to such counties, municipalities or
5 other political subdivisions of the state under such
6 circumstances and subject to such terms, conditions and
7 restrictions as the Legislature may prescribe.

8 Because a special district excise tax would have the effect
9 of diverting, for a specified period of years, tax dollars which
10 to the extent, if any, are not essentially incremental to tax
11 dollars currently paid into the General Revenue Fund of the
12 state, the Legislature finds that in order to substantially
13 ensure that such special district excise taxes will not adversely
14 impact the current level of the General Revenue Fund of the
15 state, it is necessary for the Legislature to separately consider
16 and act upon each and every economic development district which
17 is proposed, including the unique characteristics of location,
18 current condition and activity of and within the area included in
19 such proposed economic opportunity development district and that
20 for such reasons a statute more general in ultimate application
21 is not feasible for accomplishment of the intention and purpose
22 of the Legislature in enacting this article. Therefore, no

1 economic opportunity development district excise tax may be
2 levied by a county commission until after the Legislature
3 expressly authorizes the county commission to levy a special
4 district excise tax on sales of tangible personal property and
5 services made within district boundaries approved by the
6 Legislature.

7 (b) *Authorizations.* -- The Legislature authorizes the
8 following county commissions to levy special district excise
9 taxes on sales of tangible personal property and services made
10 from business locations in the following economic opportunity
11 development districts:

12 (1) The Ohio County Commission may levy a special district
13 excise tax for the benefit of the Fort Henry Economic Opportunity
14 Development District which comprises five hundred contiguous
15 acres of land. Notwithstanding the time limitations provisions
16 of subdivision (2), subsection (a), section fifteen of this
17 article, the Fort Henry Economic Opportunity Development District
18 shall not be abolished under subdivision (2), subsection (a),
19 section fifteen of this article until the year 2044, unless
20 sooner abolished and terminated in accordance with the provisions
21 of subdivision (1), subsection (a), section fifteen of this
22 article or any other provision of this code, or sooner abolished

1 for any other reason: *Provided*, That on December 31, 2044, the
2 provisions of subdivision (2), subsection (a), section fifteen of
3 this article shall apply to abolish the Fort Henry Economic
4 Opportunity Development District, if the district has not been
5 abolished prior to that date.

6 (2) The Harrison County commission may levy a special
7 district excise tax for the benefit of the Charles Pointe
8 Economic Opportunity Development District which comprises four
9 hundred thirty-seven acres of land; and

10 (3) The Monongalia County Commission may levy a special
11 district excise tax for the benefit of the University Town Centre
12 Economic Opportunity District which comprises approximately one
13 thousand four hundred fifty contiguous acres of land.

14 **§7-22-15. Abolishment and dissolution of district; notice;**
15 **hearing.**

16 (a) *General.* -- (1) Except upon the express written consent
17 of the Executive Director of the Development Office and of all
18 the holders or obligees of any indebtedness or other instruments
19 the proceeds of which were applied to any development
20 expenditures or any indebtedness the payment of which is secured
21 by revenues payable into the fund provided under section eight of
22 this article or by any public property, a district may only be

1 abolished by the county commission when there is no outstanding
2 indebtedness, the proceeds of which were applied to any
3 development expenditures or the payment of which is secured by
4 revenues payable into the fund provided under section eight of
5 this article, or by any public property, and following a public
6 hearing upon the proposed abolishment.

7 (2) *Thirty-year limitations.* --

8 (A) *Thirty-year limitation on new districts.* --

9 Notwithstanding subdivision (1) of this subsection, and
10 notwithstanding any other provision of this code to the contrary,
11 any district for which the date of initial enactment was after
12 December 31, 2013, shall cease to exist and shall be abolished by
13 operation of law, at 11:59 P.M., United States eastern time zone,
14 on December 31 of the thirtieth calendar year subsequent to the
15 initial year of enactment. Special district excise tax may not
16 be levied, imposed or collected in or from the district so
17 abolished or from or on any business located therein or any
18 transaction occurring therein after the cessation and abolishment
19 of the district.

20 (B) *Thirty-year limitation on preexisting districts*
21 *receiving authorization for boundary changes or other changes*
22 *after December 31, 2013.* -- Notwithstanding subdivision (1) of

1 this subsection, notwithstanding any other provision of this Code
2 to the contrary and notwithstanding a date of initial enactment
3 for a district that is prior to December 31, 2013, if legislative
4 authorization is enacted after December 31, 2013, to expand or
5 amend the previously authorized boundary, size or acreage of the
6 district, or make any other amendment or change relating to the
7 district, such district shall cease to exist and shall be
8 abolished by operation of law, at 11:59 P.M., United States
9 eastern time zone, on December 31 of the thirtieth calendar year
10 subsequent to the initial year of enactment. Special district
11 excise tax may not be levied, imposed or collected in or from the
12 district so abolished or from or on any business located therein
13 or any transaction occurring therein after the cessation and
14 abolishment of the district.

15 (C) *Definitions.* -- For purposes of this subdivision:

16 (i) The term "date of initial enactment" means the date of
17 passage of legislation whereby legislative authorization was
18 first enacted for the county commission to levy special district
19 excise taxes for a district, and prior to enactment of any
20 legislative authorization to expand or amend the authorized
21 boundary, size or acreage of the district, or make any other

1 amendment or change relating to the district as originally
2 authorized.

3 (ii) The term "initial year of enactment" means the calendar
4 year during which the date of initial enactment occurred.

5 (D) This section shall not be interpreted to abrogate or
6 hinder the authority of the Tax Commissioner to collect, receive,
7 process or administer any special district excise tax accrued,
8 due or payable for any tax period prior to the cessation and
9 abolishment of the district, or to audit and issue assessments of
10 tax, interest, additions to tax and penalties for the collection,
11 remittance and enforcement thereof.

12 (E) Upon cessation and abolishment of a district under this
13 section or any provision of this code, or any cessation or
14 abolishment of a district for any reason, the consumers sales and
15 service tax and use tax and municipal consumers sales and service
16 tax and use tax, if applicable, shall be imposed, collected,
17 levied and remitted, as provided by law for sales and uses in the
18 previously authorized district.

19 (b) *Notice of public hearing.* -- Notice of the public
20 hearing required by subsection (a) of this section shall be
21 provided by first-class mail to all owners of real property
22 within the district and shall be published as a Class I-0 legal

1 advertisement in compliance with article three, chapter fifty-
2 nine of this code at least twenty days prior to the public
3 hearing.

4 (c) *Transfer of district assets and funds.* -- Upon the
5 abolishment of any economic opportunity development district, any
6 funds or other assets, contractual rights or obligations, claims
7 against holders of indebtedness or other financial benefits,
8 liabilities or obligations existing after full payment has been
9 made on all existing contracts, bonds, notes or other obligations
10 of the district are transferred to and assumed by the county
11 commission. Any funds or other assets transferred shall be used
12 for the benefit of the area included in the district being
13 abolished.

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