

1 **Senate Bill No. 375**

2 (By Senators Cann and Snyder)

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4 [Introduced January 17, 2014; referred to the Committee on  
5 Economic Development; and then to the Committee on Finance.]  
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10 A BILL 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 shall have the meanings ascribed to them in  
22 this section unless a different meaning is clearly required either  
23 by the context in which the word or phrase is used or by specific

1 definition in this article.

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

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

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

18 (3) "Blighted area" means an area within the boundaries of a  
19 development or redevelopment district located within the  
20 territorial limits of a municipality or county in which the  
21 structures, buildings or improvements, by reason of dilapidation,  
22 deterioration, age or obsolescence, inadequate provision for  
23 access, ventilation, light, air, sanitation, open spaces, high

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

21 (4) "Conservation area" means any improved area within the  
22 boundaries of a development or redevelopment district located  
23 within the territorial limits of a municipality or county in which

1 fifty percent or more of the structures in the area have an age of  
2 thirty-five years or more. A conservation area is not yet a  
3 blighted area but is detrimental to the public health, safety,  
4 morals or welfare and may become a blighted area because of any one  
5 or more of the following factors: Dilapidation; obsolescence;  
6 deterioration; illegal use of individual structures; presence of  
7 structures below minimum code standards; abandonment; excessive  
8 vacancies; overcrowding of structures and community facilities;  
9 lack of ventilation, light or sanitary facilities; inadequate  
10 utilities; excessive land coverage; deleterious land use or layout;  
11 depreciation of physical maintenance; and lack of community  
12 planning. A conservation area shall meet at least three of the  
13 factors provided in this subdivision.

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

17 (6) "Current assessed value" means the annual taxable assessed  
18 value of all real and tangible personal property, excluding  
19 personal motor vehicles, personal trailers, personal boats,  
20 personal campers, personal motor homes, personal ATVs and personal  
21 motorcycles having a tax situs within a development or  
22 redevelopment district as shown upon the landbook and personal  
23 property records of the assessor.

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

4           (8) "Development project" or "redevelopment project" means a  
5 project undertaken in a development or redevelopment district for  
6 eliminating or preventing the development or spread of slums or  
7 deteriorated, deteriorating or blighted areas, for discouraging the  
8 loss of commerce, industry or employment, for increasing employment  
9 or for any combination thereof in accordance with a tax increment  
10 financing plan. A development or redevelopment project may include  
11 one or more of the following:

12           (A) The acquisition of land and improvements, if any, within  
13 the development or redevelopment district and clearance of the land  
14 so acquired; or

15           (B) The development, redevelopment, revitalization or  
16 conservation of the project area whenever necessary to provide land  
17 for needed public facilities, public housing or industrial or  
18 commercial development or revitalization, to eliminate unhealthful,  
19 unsanitary or unsafe conditions, to lessen density, mitigate or  
20 eliminate traffic congestion, reduce traffic hazards, eliminate  
21 obsolete or other uses detrimental to public welfare or otherwise  
22 remove or prevent the spread of blight or deterioration;

23           (C) The financial or other assistance in the relocation of

1 persons and organizations displaced as a result of carrying out the  
2 development or redevelopment project and other improvements  
3 necessary for carrying out the project plan, together with those  
4 site improvements that are necessary for the preparation of any  
5 sites and making any land or improvements acquired in the project  
6 area available, by sale or lease, for public housing or for  
7 development, redevelopment or rehabilitation by private enterprise  
8 for commercial or industrial uses in accordance with the plan;

9 (D) The construction of capital improvements within a  
10 development or redevelopment district designed to increase or  
11 enhance the development of commerce, industry or housing within the  
12 development project area; or

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

15 (9) "Development or redevelopment district" means an area  
16 proposed by one or more agencies as a development or redevelopment  
17 district which may include one or more counties, one or more  
18 municipalities or any combination thereof, that has been approved  
19 by the county commission of each county in which the project area  
20 is located if the project is located outside the corporate limits  
21 of a municipality, or by the governing body of a municipality if  
22 the project area is located within a municipality, or by both the  
23 county commission and the governing body of the municipality when

1 the development or redevelopment district is located both within  
2 and without a municipality.

3 (10) "Economic development area" means any area or portion of  
4 an area within the boundaries of a development or redevelopment  
5 district located within the territorial limits of a municipality or  
6 county that does not meet the requirements of subdivisions (3) and  
7 (4) of this subsection and for which the county commission finds  
8 that development or redevelopment will not be solely used for  
9 development of commercial businesses that will unfairly compete in  
10 the local economy and that development or redevelopment is in the  
11 public interest because it will:

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

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

16 (C) Result in preservation or enhancement of the tax base of  
17 the county or municipality.

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

20 (12) "Incremental value", for any development or redevelopment  
21 district, means the difference between the base assessed value and  
22 the current assessed value. The incremental value will be positive  
23 if the current value exceeds the base value and the incremental

1 value will be negative if the current value is less than the base  
2 assessed value.

3 (13) "Includes" and "including", when used in a definition  
4 contained in this article, shall not ~~be deemed to~~ exclude other  
5 things otherwise within the meaning of the term being defined.

6 (14) "Local levying body" means the county board of education  
7 and the county commission and includes the governing body of a  
8 municipality when the development or redevelopment district is  
9 located, in whole or in part, within the boundaries of the  
10 municipality.

11 (15) "Obligations" or "tax increment financing obligations"  
12 means bonds, loans, debentures, notes, special certificates or  
13 other evidences of indebtedness issued by a county commission or  
14 municipality pursuant to this article to carry out a development or  
15 redevelopment project or to refund outstanding obligations under  
16 this article.

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

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

23 (18) "Payment in lieu of taxes" means those estimated revenues



1 from real property and tangible personal property having a tax  
2 situs in the area selected for a development or redevelopment  
3 project which revenues, according to the development or  
4 redevelopment project or plan, are to be used for a private use,  
5 which levying bodies would have received had a county or  
6 municipality not adopted one or more tax increment financing plans  
7 and which would result from levies made after the date of adoption  
8 of a tax increment financing plan during the time the current  
9 assessed value of all taxable real and tangible personal property  
10 in the area selected for the development or redevelopment project  
11 exceeds the total base assessed value of all taxable real and  
12 tangible personal property in the development or redevelopment  
13 district until the designation is terminated as provided in this  
14 article.

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

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

1           (21) "Project" means any capital improvement, facility or  
2 both, as specifically set forth and defined in the project plan,  
3 requiring an investment of capital including, but not limited to,  
4 extensions, additions or improvements to existing facilities,  
5 including water or wastewater facilities, and the remediation of  
6 contaminated property as provided for in article twenty-two,  
7 chapter twenty-two of this code, but does not include performance  
8 of any governmental service by a county or municipal government.

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

13           (23) "Project costs" means expenditures made in preparation of  
14 the development or redevelopment project plan and made, or  
15 estimated to be made, or monetary obligations incurred, or  
16 estimated to be incurred, by the county commission which are listed  
17 in the project plan as capital improvements within a development or  
18 redevelopment district, plus any costs incidental thereto.  
19 "Project costs" include, but are not limited to:

20           (A) Capital costs, including, but not limited to, the actual  
21 costs of the construction of public works or improvements, capital  
22 improvements and facilities, new buildings, structures and  
23 fixtures, the demolition, alteration, remodeling, repair or

1 reconstruction of existing buildings, structures and fixtures,  
2 environmental remediation, parking and landscaping, the acquisition  
3 of equipment and site clearing, grading and preparation;

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

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

13 (D) Professional service costs including, but not limited to,  
14 those costs incurred for architectural planning, engineering and  
15 legal advice and services;

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

20 (F) Relocation costs including, but not limited to, those  
21 relocation payments made following condemnation and job training  
22 and retraining;

23 (G) Organizational costs including, but not limited to, the

1 costs of conducting environmental impact and other studies and the  
2 costs of informing the public with respect to the creation of a  
3 development or redevelopment district and the implementation of  
4 project plans;

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

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

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

19 (25) "Project plan" means the plan for a development or  
20 redevelopment project that is adopted by a county commission or  
21 governing body of a municipality in conformity with the  
22 requirements of this article and this chapter or chapter eight of  
23 this code.

1           (26) "Real property" means all lands, including improvements  
2 and fixtures on them and property of any nature appurtenant to them  
3 or used in connection with them and every estate, interest and  
4 right, legal or equitable, in them, including terms of years and  
5 liens by way of judgment, mortgage or otherwise, and indebtedness  
6 secured by the liens.

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

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

1 this article.

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

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

13       (31) "This code" means the Code of West Virginia, 1931, as  
14 amended by the Legislature.

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

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(NOTE: The purpose of this bill is to add items to those which are excluded from base assessed value and current assessed value of real and personal property in the tax increment financing article.

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