

WEST VIRGINIA LEGISLATURE
EIGHTY-FIRST LEGISLATURE
REGULAR SESSION, 2014



ENROLLED

Senate Bill No. 375

(BY SENATORS CANN AND SNYDER)

[PASSED MARCH 8, 2014; IN EFFECT NINETY DAYS FROM PASSAGE.]

SB 375

OFFICE WEST VIRGINIA
SECRETARY OF STATE

2014 MAR 27 P 4: 21

FILED

FILED

2014 MAR 27 P 4:21

ENROLLED

OFFICE WEST VIRGINIA
SECRETARY OF STATE
Senate Bill No. 378

(BY SENATORS CANN AND SNYDER)

[Passed March 8, 2014; in effect ninety days from passage.]

AN ACT to amend and reenact §7-11B-3 of the Code of West Virginia, 1931, as amended, relating to tax increment financing; and adding items to those which are excluded from base assessed value and current assessed value of real and personal property.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11B. WEST VIRGINIA TAX INCREMENT FINANCING ACT.

§7-11B-3. Definitions.

1 (a) *General.* – When used in this article, words and
2 phrases defined in this section have the meanings ascribed to
3 them in this section unless a different meaning is clearly
4 required either by the context in which the word or phrase is
5 used or by specific definition in this article.

6 (b) *Words and phrases defined.* –

15 7 (1) "Agency" includes a municipality, a county or
16 8 municipal development agency established pursuant to
17 9 authority granted in section one, article twelve of this chapter,
18 10 a port authority, an airport authority or any other entity
19 11 created by this state or an agency or instrumentality of this
20 12 state that engages in economic development activity.

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

28 (3) "Blighted area" means an area within the boundaries
29 of a development or redevelopment district located within the
30 territorial limits of a municipality or county in which the
31 structures, buildings or improvements, by reason of
32 dilapidation, deterioration, age or obsolescence, inadequate
33 provision for access, ventilation, light, air, sanitation, open
34 spaces, high density of population and overcrowding or the
35 existence of conditions which endanger life or property, are
36 detrimental to the public health, safety, morals or welfare.
37 "Blighted area" includes any area which, by reason of the
38 presence of a substantial number of substandard, slum,
39 deteriorated or deteriorating structures, predominance of
40 defective or inadequate street layout, faulty lot layout in

41 relation to size, adequacy, accessibility or usefulness,
42 unsanitary or unsafe conditions, deterioration of site or other
43 improvements, diversity of ownership, defective or unusual
44 conditions of title or the existence of conditions which
45 endanger life or property by fire and other causes, or any
46 combination of such factors, substantially impairs or arrests
47 the sound growth of a municipality, retards the provision of
48 housing accommodations or constitutes an economic or social
49 liability and is a menace to the public health, safety, morals
50 or welfare in its present condition and use, or any area which
51 is predominantly open and which because of lack of
52 accessibility, obsolete platting, diversity of ownership,
53 deterioration of structures or of site improvements, or
54 otherwise, substantially impairs or arrests the sound growth
55 of the community.

56 (4) "Conservation area" means any improved area within
57 the boundaries of a development or redevelopment district
58 located within the territorial limits of a municipality or
59 county in which fifty percent or more of the structures in the
60 area have an age of thirty-five years or more. A conservation
61 area is not yet a blighted area but is detrimental to the public
62 health, safety, morals or welfare and may become a blighted
63 area because of any one or more of the following factors:
64 Dilapidation; obsolescence; deterioration; illegal use of
65 individual structures; presence of structures below minimum
66 code standards; abandonment; excessive vacancies;
67 overcrowding of structures and community facilities; lack of
68 ventilation, light or sanitary facilities; inadequate utilities;
69 excessive land coverage; deleterious land use or layout;
70 depreciation of physical maintenance; and lack of community
71 planning. A conservation area shall meet at least three of the
72 factors provided in this subdivision.

73 (5) "County commission" means the governing body of
74 a county of this state and, for purposes of this article only,

75 includes the governing body of a Class I or II municipality in
76 this state.

77 (6) "Current assessed value" means the annual taxable
78 assessed value of all real and tangible personal property,
79 excluding personal motor vehicles, having a tax situs within
80 a development or redevelopment district as shown upon the
81 landbook and personal property records of the assessor:
82 *Provided*, That for any development or redevelopment district
83 approved after the effective date of the amendments to this
84 section enacted during the regular session of the Legislature
85 in 2014, personal trailers, personal boats, personal campers,
86 personal motor homes, personal ATVs and personal
87 motorcycles having a tax situs within a development or
88 redevelopment district are excluded from the current assessed
89 value.

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

93 (8) "Development project" or "redevelopment project"
94 means a project undertaken in a development or
95 redevelopment district for eliminating or preventing the
96 development or spread of slums or deteriorated, deteriorating
97 or blighted areas, for discouraging the loss of commerce,
98 industry or employment, for increasing employment or for
99 any combination thereof in accordance with a tax increment
100 financing plan. A development or redevelopment project
101 may include one or more of the following:

102 (A) The acquisition of land and improvements, if any,
103 within the development or redevelopment district and
104 clearance of the land so acquired; or

105 **(B) The development, redevelopment, revitalization or**
106 **conservation of the project area whenever necessary to**
107 **provide land for needed public facilities, public housing or**
108 **industrial or commercial development or revitalization, to**
109 **eliminate unhealthful, unsanitary or unsafe conditions, to**
110 **lessen density, mitigate or eliminate traffic congestion, reduce**
111 **traffic hazards, eliminate obsolete or other uses detrimental**
112 **to public welfare or otherwise remove or prevent the spread**
113 **of blight or deterioration;**

114 **(C) The financial or other assistance in the relocation of**
115 **persons and organizations displaced as a result of carrying**
116 **out the development or redevelopment project and other**
117 **improvements necessary for carrying out the project plan,**
118 **together with those site improvements that are necessary for**
119 **the preparation of any sites and making any land or**
120 **improvements acquired in the project area available, by sale**
121 **or lease, for public housing or for development,**
122 **redevelopment or rehabilitation by private enterprise for**
123 **commercial or industrial uses in accordance with the plan;**

124 **(D) The construction of capital improvements within a**
125 **development or redevelopment district designed to increase**
126 **or enhance the development of commerce, industry or**
127 **housing within the development project area; or**

128 **(E) Any other projects the county commission or the**
129 **agency deems appropriate to carry out the purposes of this**
130 **article.**

131 **(9) “Development or redevelopment district” means an**
132 **area proposed by one or more agencies as a development or**
133 **redevelopment district which may include one or more**
134 **counties, one or more municipalities or any combination**
135 **thereof, that has been approved by the county commission of**
136 **each county in which the project area is located if the project**

137 is located outside the corporate limits of a municipality, or by
138 the governing body of a municipality if the project area is
139 located within a municipality, or by both the county
140 commission and the governing body of the municipality when
141 the development or redevelopment district is located both
142 within and without a municipality.

143 (10) "Economic development area" means any area or
144 portion of an area within the boundaries of a development or
145 redevelopment district located within the territorial limits of
146 a municipality or county that does not meet the requirements
147 of subdivisions (3) and (4) of this subsection and for which
148 the county commission finds that development or
149 redevelopment will not be solely used for development of
150 commercial businesses that will unfairly compete in the local
151 economy and that development or redevelopment is in the
152 public interest because it will:

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

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

157 (C) Result in preservation or enhancement of the tax base
158 of the county or municipality.

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

161 (12) "Incremental value", for any development or
162 redevelopment district, means the difference between the
163 base assessed value and the current assessed value. The
164 incremental value will be positive if the current value exceeds
165 the base value and the incremental value will be negative if
166 the current value is less than the base assessed value.

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

171 (14) "Local levying body" means the county board of
172 education and the county commission and includes the
173 governing body of a municipality when the development or
174 redevelopment district is located, in whole or in part, within
175 the boundaries of the municipality.

176 (15) "Obligations" or "tax increment financing
177 obligations" means bonds, loans, debentures, notes, special
178 certificates or other evidences of indebtedness issued by a
179 county commission or municipality pursuant to this article to
180 carry out a development or redevelopment project or to
181 refund outstanding obligations under this article.

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

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

188 (18) "Payment in lieu of taxes" means those estimated
189 revenues from real property and tangible personal property
190 having a tax situs in the area selected for a development or
191 redevelopment project which revenues, according to the
192 development or redevelopment project or plan, are to be used
193 for a private use, which levying bodies would have received
194 had a county or municipality not adopted one or more tax
195 increment financing plans and which would result from levies
196 made after the date of adoption of a tax increment financing
197 plan during the time the current assessed value of all taxable

198 real and tangible personal property in the area selected for the
199 development or redevelopment project exceeds the total base
200 assessed value of all taxable real and tangible personal
201 property in the development or redevelopment district until
202 the designation is terminated as provided in this article.

203 (19) "Person" means any natural person, and any
204 corporation, association, partnership, limited partnership,
205 limited liability company or other entity, regardless of its
206 form, structure or nature, other than a government agency or
207 instrumentality.

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

213 (21) "Project" means any capital improvement, facility or
214 both, as specifically set forth and defined in the project plan,
215 requiring an investment of capital including, but not limited
216 to, extensions, additions or improvements to existing
217 facilities, including water or wastewater facilities, and the
218 remediation of contaminated property as provided for in
219 article twenty-two, chapter twenty-two of this code, but does
220 not include performance of any governmental service by a
221 county or municipal government.

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

226 (23) "Project costs" means expenditures made in
227 preparation of the development or redevelopment project plan
228 and made, or estimated to be made, or monetary obligations

229 incurred, or estimated to be incurred, by the county
230 commission which are listed in the project plan as capital
231 improvements within a development or redevelopment
232 district, plus any costs incidental thereto. "Project costs"
233 include, but are not limited to:

234 (A) Capital costs, including, but not limited to, the actual
235 costs of the construction of public works or improvements,
236 capital improvements and facilities, new buildings, structures
237 and fixtures, the demolition, alteration, remodeling, repair or
238 reconstruction of existing buildings, structures and fixtures,
239 environmental remediation, parking and landscaping, the
240 acquisition of equipment and site clearing, grading and
241 preparation;

242 (B) Financing costs, including, but not limited to, an
243 interest paid to holders of evidences of indebtedness issued
244 to pay for project costs, all costs of issuance and any
245 redemption premiums, credit enhancement or other related
246 costs;

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

253 (D) Professional service costs including, but not limited
254 to, those costs incurred for architectural planning,
255 engineering and legal advice and services;

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

260 (F) Relocation costs including, but not limited to, those
261 relocation payments made following condemnation and job
262 training and retraining;

263 (G) Organizational costs including, but not limited to, the
264 costs of conducting environmental impact and other studies
265 and the costs of informing the public with respect to the
266 creation of a development or redevelopment district and the
267 implementation of project plans;

268 (H) Payments made, in the discretion of the county
269 commission or the governing body of a municipality, which
270 are found to be necessary or convenient to creation of
271 development or redevelopment districts or the
272 implementation of project plans; and

273 (I) That portion of costs related to the construction of
274 environmental protection devices, storm or sanitary sewer
275 lines, water lines, amenities or streets or the rebuilding or
276 expansion of streets, or the construction, alteration,
277 rebuilding or expansion of which is necessitated by the
278 project plan for a development or redevelopment district,
279 whether or not the construction, alteration, rebuilding or
280 expansion is within the area or on land contiguous thereto.

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

283 (25) "Project plan" means the plan for a development or
284 redevelopment project that is adopted by a county
285 commission or governing body of a municipality in
286 conformity with the requirements of this article and this
287 chapter or chapter eight of this code.

288 (26) "Real property" means all lands, including
289 improvements and fixtures on them and property of any

290 nature appurtenant to them or used in connection with them
291 and every estate, interest and right, legal or equitable, in
292 them, including terms of years and liens by way of judgment,
293 mortgage or otherwise, and indebtedness secured by the liens.

294 (27) "Redevelopment area" means an area designated by
295 a county commission or the governing body of a municipality
296 in respect to which the commission or governing body has
297 made a finding that there exist conditions which cause the
298 area to be classified as a blighted area, a conservation area, an
299 economic development area or a combination thereof, which
300 area includes only those parcels of real property directly and
301 substantially benefitted by the proposed redevelopment
302 project located within the development or redevelopment
303 district or land contiguous thereto.

304 (28) "Redevelopment plan" means the comprehensive
305 program under this article of a county or municipality for
306 redevelopment intended by the payment of redevelopment
307 costs to reduce or eliminate those conditions, the existence of
308 which qualified the redevelopment area as a blighted area,
309 conservation area, economic development area or
310 combination thereof, and to thereby enhance the tax bases of
311 the levying bodies which extend into the redevelopment area.
312 Each redevelopment plan shall conform to the requirements
313 of this article.

314 (29) "Tax increment" means the amount of regular levy
315 property taxes attributable to the amount by which the current
316 assessed value of real and tangible personal property having
317 a tax situs in a development or redevelopment district
318 exceeds the base assessed value of the property.

319 (30) "Tax increment financing fund" means a separate
320 fund for a development or redevelopment district established
321 by the county commission or governing body of the

322 municipality into which all tax increment revenues and other
323 pledged revenues are deposited and from which projected
324 project costs, debt service and other expenditures authorized
325 by this article are paid.

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

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

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Rob. Ferguson
.....
Member - ~~Chairman~~ *Senate Committee*

Donny Wale
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Joseph M. Minard
.....
Clerk of the Senate

Bryce A. Boy
.....
Clerk of the House of Delegates

Jeffrey K.
.....
President of the Senate

Henry My
.....
Speaker of the House of Delegates

2014 MAR 27 P 4: 21
OFFICE WEST VIRGINIA
SECRETARY OF STATE

FILED

The within *is approved* this
the *27th* Day of *March*, 2014.

Earl Ray Tomblin
.....
Governor

PRESENTED TO THE GOVERNOR

MAR 21 2014

Time 2:50 pm