

# WEST VIRGINIA LEGISLATURE

## 2021 REGULAR SESSION

Introduced

### Senate Bill 448

FISCAL  
NOTE

BY SENATORS MARTIN AND JEFFRIES

[Introduced February 25, 2021; referred  
to the Committee on Government Organization; and  
then to the Committee on Finance]

1 A BILL to amend and reenact §7-11B-7, §7-11B-9, §7-11B-10, and §7-11B-22 of the Code of  
 2 West Virginia, 1931, as amended, all relating generally to property tax increment financing  
 3 districts; authorizing a county commission or municipality to modify the termination time of  
 4 certain districts; extending length of certain districts; providing clarification as to the  
 5 discharge of any tax increment financing obligations outstanding on the termination date  
 6 of a district; eliminating certain existing limitations on the terms of tax increment financing  
 7 obligations issued to refund existing obligations; providing clarifications with respect to the  
 8 base assessed value and termination date when two or more tax increment financing  
 9 districts have been combined; and establishing effect date.

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

## **CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.**

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

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

1 (a) County commissions and the governing bodies of Class I, Class II or Class III  
 2 municipalities, upon their own initiative or upon application of an agency or a developer, may  
 3 propose creation of a development or redevelopment district and designate the boundaries of the  
 4 district: *Provided*, That a district may not include noncontiguous land.

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

9 (1) Notice of the hearing shall be published as a Class II legal advertisement in accordance  
 10 with § 59-3-2 of this code.

11 (2) The notice shall include the time, place and purpose of the public hearing, describe in  
 12 sufficient detail the tax increment financing plan, the proposed boundaries of the development or

13 redevelopment district and, when a development or redevelopment project plan is being  
14 proposed, the proposed tax increment financing obligations to be issued to finance the  
15 development or redevelopment project costs.

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

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

23 (c) After the public hearing, the county commission, or the governing body of the  
24 municipality, shall finalize the boundaries of the development or redevelopment district, the  
25 development or redevelopment project plan, or both, and submit the same to the director of the  
26 Development Office for his or her review and approval. The director, within sixty days after receipt  
27 of the application, shall approve the application as submitted, reject the application or return the  
28 application to the county commission or governing body of the municipality for further  
29 development or review in accordance with instructions of the director of the Development Office.  
30 A development or redevelopment district or development or redevelopment project plan may not  
31 be adopted by the county commission or the governing body of a municipality until after it has  
32 been approved by the executive director of the Development Office.

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

36 (1) Describes the boundaries of a development or redevelopment district sufficiently to  
37 identify with ordinary and reasonable certainty the territory included in the district, which  
38 boundaries shall create a contiguous district;

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

41           (3) Assigns a name to the development or redevelopment district for identification  
42 purposes.

43           (A) The name may include a geographic or other designation, shall identify the county or  
44 municipality authorizing the district and shall be assigned a number, beginning with the number  
45 one.

46           (B) Each subsequently created district in the county or municipality shall be assigned the  
47 next consecutive number;

48           (4) Contains findings that the real property within the development or redevelopment  
49 district will be benefitted by eliminating or preventing the development or spread of slums or  
50 blighted, deteriorated or deteriorating areas, discouraging the loss of commerce, industry or  
51 employment, increasing employment or any combination thereof;

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

53           (6) Establishes a tax increment financing fund as a separate fund into which all tax  
54 increment revenues and other revenues designated by the county commission, or governing body  
55 of the municipality, for the benefit of the development or redevelopment district shall be deposited,  
56 and from which all project costs shall be paid, which may be assigned to and held by a trustee for  
57 the benefit of bondholders if tax increment financing obligations are issued by the county  
58 commission or the governing body of the municipality; and

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

64           (A) For each tax year, the county assessor shall record in the land and personal property

65 books both the base assessed value and the current assessed value of the real and tangible  
66 personal property having a tax situs in the development or redevelopment district;

67 (B) Ad valorem taxes collected from regular levies upon real and tangible personal  
68 property having a tax situs in the district that are attributable to the lower of the base assessed  
69 value or the current assessed value of real and tangible personal property located in the  
70 development project area shall be allocated to the levying bodies in the same manner as  
71 applicable to the tax year in which the development or redevelopment project plan is adopted by  
72 order of the county commission or by ordinance adopted by the governing body of the  
73 municipality;

74 (C) The tax increment with respect to real and tangible personal property in the  
75 development or redevelopment district shall be allocated and paid into the tax increment financing  
76 fund and shall be used to pay the principal of and interest on tax increment financing obligations  
77 issued to finance the costs of the development or redevelopment projects in the development or  
78 redevelopment district. Any levying body having a development or redevelopment district within  
79 its taxing jurisdiction shall not receive any portion of the annual tax increment except as otherwise  
80 provided in this article; and

81 (D) In no event shall the tax increment include any taxes collected from excess levies,  
82 levies for general obligation bonded indebtedness or any levies other than the regular levies  
83 provided for in § 11-8-1 *et seq.* of this code.

84 (e) Proceeds from tax increment financing obligations issued under this article may only  
85 be used to pay for costs of development and redevelopment projects to foster economic  
86 development in the development or redevelopment district or land contiguous thereto.

87 (f) Notwithstanding subsection (d) of this section, a county commission may not enter an  
88 order approving a development or redevelopment project plan unless the county commission  
89 expressly finds and states in the order that the development or redevelopment project is not  
90 reasonably expected to occur without the use of tax increment financing.

91 (g) Notwithstanding subsection (d) of this section, the governing body of a municipality  
92 may not adopt an ordinance approving a development or redevelopment project plan unless the  
93 governing body expressly finds and states in the ordinance that the development or  
94 redevelopment project is not reasonably expected to occur without the use of tax increment  
95 financing.

96 (h) No county commission shall establish a development or redevelopment district any  
97 portion of which is within the boundaries of a Class I, II, III or IV municipality without the formal  
98 consent of the governing body of such municipality.

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

102 (j) The county commission may modify the boundaries of the development or  
103 redevelopment district, from time to time, or extend the length of existence of the development or  
104 redevelopment district as set forth in section 10 of this article, by entry of an order modifying the  
105 order creating the development or redevelopment district.

106 (k) The governing body of a municipality may modify the boundaries of the development  
107 or redevelopment district, from time to time, or extend the length of existence of the development  
108 or redevelopment district as set forth in section 10 of this article, by amending the ordinance  
109 ~~establishing the boundaries of the~~ creating the development or redevelopment district.

110 (l) Before a county commission or the governing body of a municipality may amend such  
111 an order or ordinance, the county commission or municipality shall give the public notice, hold a  
112 public hearing and obtain the approval of the director of the Development Office, following the  
113 procedures for establishing a new development or redevelopment district. In the event any tax  
114 increment financing obligations are outstanding with respect to the development or  
115 redevelopment district, any change in the boundaries shall not reduce the amount of tax increment  
116 available to secure the outstanding tax increment financing obligations.

**§7-11B-9. Project plan – Amendment.**

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

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

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

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

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

13 (c) One or more existing development or redevelopment districts may be combined  
14 pursuant to lawfully adopted amendments to the original plans for each district: *Provided*, That  
15 the county commission, or governing body of the municipality, finds that the combination of the  
16 districts will not impair the security for any tax increment financing obligations previously issued  
17 pursuant to this article.

18 (1) The base assessed value of the real and tangible personal property located in the  
19 combined development or redevelopment district following such combination shall be the same  
20 base assessed value as existed for such real and tangible personal property in each of the  
21 separate development or redevelopment districts prior to such combination.

22 (2) The termination date for the combined development or redevelopment district which  
23 results from the combination of two or more previously created districts shall be the termination  
24 date as provided pursuant to section 10 of this article of the development or redevelopment district  
25 which had the latest termination date prior to the combination of such districts.

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

1 (a) No development or redevelopment district may be in existence for a period longer than  
2 thirty years and no tax increment financing obligations may have a final maturity date later than  
3 the termination date of the area or district: Provided, That for any existing development or  
4 redevelopment district for which tax increment financing obligations have been issued by a county  
5 commission, or the governing body of a municipality, prior to December 31, 2020, that existing  
6 development or redevelopment district may be in existence until December 31, 2050.

7 (b) The county commission or governing body of the municipality creating the development  
8 or redevelopment district may set a shorter period for the existence of the district. In this event,  
9 no tax increment financing obligations may have a final maturity date later than the termination  
10 date of the district. The county commission or the governing body of the municipality which  
11 created the development or redevelopment district may not take action to terminate a district prior  
12 to the time otherwise provided in its official action creating the district if the county commission or  
13 the governing body of the municipality then has tax increment revenue obligations which remain  
14 outstanding and unpaid.

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

17 (d) Upon the termination of the district, other than early termination by the county  
18 commission or the governing body of the municipality creating the district prior to the date  
19 scheduled for its termination by this act or the official action taken by the county commission or  
20 the governing body of the municipality creating the district, any tax increment financing obligations  
21 which remain outstanding and unpaid following their maturity date, together with any interest,  
22 premium or other charges associated therewith shall be deemed to be discharged and satisfied,  
23 and no longer due and payable following such termination date.

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

26 the county commission. ~~Provided, That no district shall be terminated so long as bonds with~~  
 27 ~~respect to the district remain outstanding~~

28 (e) ~~(f)~~ The governing body of the ~~county commission~~ municipality shall repeal, upon the  
 29 expiration of the time periods set forth in this section, the ordinance establishing the development  
 30 or redevelopment district. ~~Provided, That no district shall be terminated so long as bonds with~~  
 31 ~~respect to the district remain outstanding~~

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

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

4 (b) Tax increment financing obligations shall not be included in the computation of the  
 5 Constitutional debt limitation of the county commission or municipality issuing the tax increment  
 6 financing obligations.

7 (c) Tax increment financing obligations shall mature over a period not exceeding 30 years  
 8 from their issue date, ~~the date of entry of the county commission's order, or the effective date of~~  
 9 ~~the municipal ordinance, creating the development or redevelopment district and approving the~~  
 10 ~~development or redevelopment plan~~ or a period terminating with the date of termination of the  
 11 development or redevelopment district, whichever period terminates earlier.

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

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

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

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

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

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

23 (j) Insofar as they are consistent with subsections (a), (b) and (c) of this section, the  
24 procedures for issuance, form, contents, execution, negotiation and registration of county and  
25 municipal industrial or commercial revenue bonds set forth in article two-c, chapter thirteen of this  
26 code are incorporated by reference herein.

27 (k) The bonds may be refunded or refinanced and refunding bonds may be issued in any  
28 principal amount: *Provided*, That the last maturity of the refunding bonds shall not be later than  
29 the termination date of the district as set forth in section 10 of this article. ~~last maturity of the bonds~~  
30 ~~being refunded~~

NOTE: The purpose of this bill is to provide an option for certain governmental entities to extend the term of a tax increment financing district to December 31, 2050 if tax increment financing obligations were issued for that district prior to or during the COVID-19 worldwide pandemic which has caused an economic recession in the United States. The bill also provides clarifications regarding treatment upon the combination of one or more previously created tax increment financing districts and the treatment of tax increment financing obligations upon the termination of a district.

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