

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

Senate Bill 607

By Senators Oliverio, Clements, Caputo, Jeffries, and
Maroney

[Introduced February 13, 2023; referred
to the Committee on Economic Development; and
then to the Committee on Finance]

1 A BILL to amend and reenact §7-22-12 of the Code of West Virginia, 1931, as amended, relating to
2 the rate or rates of a special district excise tax levied by county commissions; and providing
3 for increases on the rate or rates after July 1, 2023.

Be it enacted by the Legislature of West Virginia:

ARTICLE 22. COUNTY ECONOMIC OPPORTUNITY DEVELOPMENT DISTRICTS.

§7-22-12. Special district excise tax authorized.

1 (a) *General.* -- The county commission of a county, authorized by the Legislature to levy a
2 special district excise tax for the benefit of an economic opportunity development district, may, by
3 order entered of record, impose that tax on the privilege of selling tangible personal property and
4 rendering select services in the district in accordance with this section.

5 (b) *Tax base.* -- The base of a special district excise tax imposed pursuant to this section
6 shall be identical to the base of the consumers sales and service tax imposed pursuant to article
7 fifteen, chapter eleven of this code on sales made and services rendered within the boundaries of
8 the district. Sales of gasoline and special fuel are not subject to special district excise tax but
9 remain subject to the tax levied by §11-15-1 *et seq.* of this code. Except for the exemption provided
10 in §11-15-9f of this code, all exemptions and exceptions from the consumers sales and service tax
11 also apply to the special district excise tax.

12 (c) *Tax rate.* -- The rate or rates of a special district excise tax levied pursuant to this
13 section shall be identical to the rate or rates of the consumer sales and service tax imposed
14 pursuant to §11-15-1 *et seq.* of this code on sales made and services rendered within the
15 boundaries of the district authorized by this section. For fiscal years beginning on or after July 1,
16 2023, the rate or rates of a special district excise tax levied pursuant to this section may be
17 increased by an order adopted by the county commission to a rate or rates that exceed the rate
18 or rates of the consumer sales and services tax imposed pursuant to §11-15-1 *et seq.* of this
19 code on sales made and services rendered within the boundaries of the district authorized by

20 this section by a maximum of one cent on the dollar on sales made and services rendered.

21 (d) *Collection by Tax Commissioner.* -- The order of the county commission imposing a
22 special district excise tax shall provide for the tax to be collected by the Tax Commissioner in the
23 same manner as the tax levied by §11-15-3 of this code is administered, assessed, collected and
24 enforced.

25 (1) The Tax Commissioner may require the electronic filing of returns related to the special
26 district excise tax imposed pursuant to this section, and also may require the electronic payment of
27 the special district excise tax imposed pursuant to this section. The Tax Commissioner may
28 prescribe by rules adopted or proposed pursuant to §29A-3-1 *et seq.* of this code, administrative
29 notices, and forms and instructions, the procedures and criteria to be followed to electronically file
30 those returns and to electronically pay the special district excise tax imposed pursuant to this
31 section.

32 (2) Any rules filed by the State Tax Commissioner relating to the special district excise tax
33 imposed pursuant to this section shall set forth the following:

34 (A) Acceptable indicia of timely payment;

35 (B) Which type of electronic filing method or methods a particular type of taxpayer may or
36 may not use;

37 (C) What type of electronic payment method or methods a particular type of taxpayer may
38 or may not use;

39 (D) What, if any, exceptions are allowable, and alternative methods of payment that may
40 be used for any exceptions;

41 (E) Procedures for making voluntary or mandatory electronic payments or both;

42 (F) Procedures for ensuring that taxpayers new to an economic opportunity development
43 district are included within the Tax Commissioner's database;

44 (G) Procedures for ensuring that taxpayers with multiple locations properly allocate their
45 special district excise taxes to the appropriate economic opportunity development district and

46 reflect the allocation of their returns; and

47 (H) Any other provisions necessary to ensure the timely electronic filing of returns related
48 to the special district excise tax and the making of payments electronically of the special district
49 excise tax imposed pursuant to this section.

50 (3)(A) Notwithstanding the provisions of §11-10-5d of this code: (i) So long as bonds are
51 outstanding pursuant to this article, the Tax Commissioner shall provide on a monthly basis to the
52 trustee for bonds issued pursuant to this article information on returns submitted pursuant to this
53 article; and (ii) the trustee may share the information so obtained with the county commission that
54 established the economic opportunity development district that issued the bonds pursuant to this
55 article and with the bondholders and with bond counsel for bonds issued pursuant to this article.
56 The Tax Commissioner and the trustee may enter into a written agreement in order to accomplish
57 exchange of the information.

58 (B) Any confidential information provided pursuant to this subdivision shall be used solely
59 for the protection and enforcement of the rights and remedies of the bondholders of bonds issued
60 pursuant to this article. Any person or entity that is in possession of information disclosed by the
61 Tax Commissioner or shared by the trustee pursuant to subdivision (a) of this subsection is subject
62 to the provisions of §11-10-5d of this code as if the person or entity that is in possession of the tax
63 information is an officer, employee, agent or representative of this state or of a local or municipal
64 governmental entity or other governmental subdivision.

65 (C) Notwithstanding any provision of this code to the contrary, so long as bonds are
66 outstanding pursuant to this article, the Tax Commissioner shall allow a designated representative
67 of the county commission that established the economic opportunity development district for
68 which the bonds were issued to audit the returns filed by the taxpayers in the economic opportunity
69 development district no less often than once each quarter of the fiscal year. The Tax
70 Commissioner may require the audit to be conducted at the Tax Commissioner's office, may
71 prohibit copying of any returns, and may require the representatives to enter into a written

72 confidentiality agreement. The Tax Commissioner shall promptly investigate any questions raised
73 by an audit, shall promptly take all actions required to correct any errors, and shall report to the
74 applicable county commission the results of its investigation and actions.

75 (e) *Deposit of net tax collected.* --

76 (1) The order of the county commission imposing a special district excise tax shall provide
77 that the Tax Commissioner deposit the net amount of tax collected in the Special Economic
78 Opportunity Development District Fund to the credit of the county commission's subaccount
79 therein for the economic opportunity development district and that the money in the subaccount
80 may only be used to pay for development expenditures as provided in this article except as
81 provided in subsection (f) of this section.

82 (2) The State Treasurer shall withhold from the county commission's subaccount in the
83 Economic Opportunity Development District Fund and shall deposit in the General Revenue Fund
84 of this state, on or before the 20th day of each calendar month next following the effective date of a
85 special district excise tax, a sum equal to one twelfth of the base tax revenue amount last certified
86 by the Development Office pursuant to section seven of this article.

87 (f) *Effective date of special district excise tax.* -- Any taxes imposed pursuant to the
88 authority of this section are effective on the first day of the calendar month that begins sixty days
89 after the date of adoption of an order entered of record imposing the tax or the first day of any later
90 calendar month expressly designated in the order.

91 (g) *Copies of order.* -- Upon entry of an order levying a special district excise tax, a certified
92 copy of the order shall be mailed to the State Auditor, as ex officio the chief inspector and
93 supervisor of public offices, the State Treasurer and the Tax Commissioner.

NOTE: The purpose of this bill is to authorize counties to increase the special district excise tax to a rate or rates on sales within the boundaries of an economic opportunity development district by a maximum of one cent on the dollar of sales to provide additional collections of tax increment to aid economic development in this state.

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