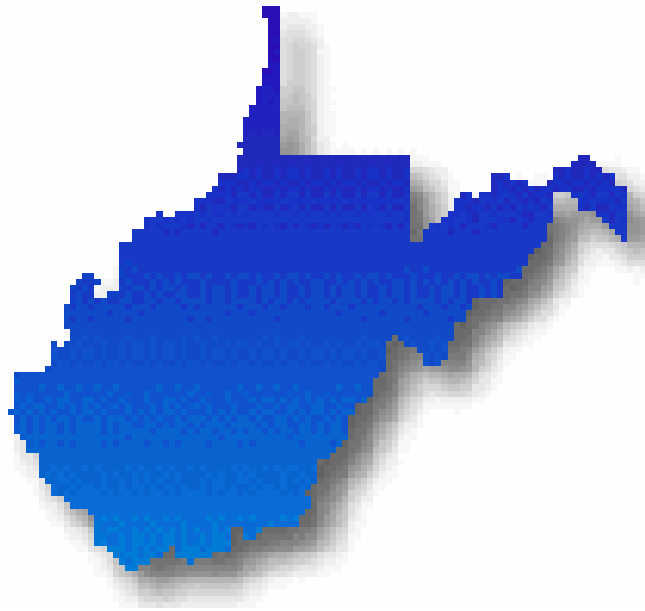


Property Tax Increment Financing in West Virginia

A Guide for Counties and Class I and II Municipalities



West Virginia
USA

West Virginia Development Office
West Virginia Department of Tax and Revenue

April, 2003



STATE OF WEST VIRGINIA
OFFICE OF THE GOVERNOR
CHARLESTON 25305

BOB WISE
GOVERNOR

April 21, 2003

Dear Fellow West Virginian:

During the 2002 Legislative session, an exciting new economic development tool was created to assist new businesses and expand existing businesses.

Last November, the citizens of West Virginia ratified Amendment One to the Constitution, allowing the use of tax increment financing secured by property taxes. This amendment empowers local leaders promoting the future growth of every county and city in West Virginia.

Property tax increment financing can be a complex process. To guide you through the process, I asked officials from the West Virginia Development Office and the Department of Tax and Revenue to develop a step-by-step manual. This guidebook will be a living document, evolving as we learn from each project and gain experience from the use of this funding.

I want to take this opportunity to thank the business community, local governments and labor for working together to make TIF a reality.

I hope this guide will be helpful and wish you much success in your new business endeavor.

Very truly yours,

A handwritten signature in black ink that reads "Bob Wise".

Bob Wise

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I. Introduction

Forward

On November 5, 2002, the people of West Virginia ratified Amendment One to the West Virginia Constitution allowing the use of tax increment financing (TIF) secured by property taxes to fund economic development and job creation in the state. This amendment is implemented by the West Virginia Tax Increment Financing Act (W. Va. Code § 7-11B-1 *et seq.*), which was passed by the West Virginia State Legislature during the 2002 legislative session. *See*, Appendix A for a copy of the law.

Tax increment financing captures the projected increase in property tax revenue gained by developing a discrete geographic area and uses that increase to assist in paying for the project. This funding makes it possible to go forward with projects that otherwise would not be built.

Tax increment financing can be used by West Virginia counties and class I and II municipalities to help fund their own development projects or projects brought to them by private developers or other private or government entities. Class III and IV municipalities must work with their local county commissions in order to utilize tax increment financing. (Class I municipalities have more than 50,000 people. Class II municipalities have more than 10,000 and up to 50,000 people. Class III municipalities have more than 2,000 and up to 10,000 people. Class IV municipalities have less than 2,000 people.)

Throughout this guide, the phrases “development or redevelopment project area or district” or “project area or district” are used interchangeably. The first phase simply indicates that counties and municipalities may create (1) a development project area; (2) a development project district; (3) a redevelopment project area; or (4) a redevelopment project district.

An economic development project area or district is a discrete geographic area that has not previously been developed or is underdeveloped and for which the county commission or municipality finds that development will not solely be used for the development of commercial businesses that will unfairly compete in the local economy and that development is in the public interest because it will:

1. Discourage commerce, industry or manufacturing from moving their operations to another state;
2. Result in increased employment in the municipality or county, whichever is applicable; or
3. Result in preservation or enhancement of the tax base of the county or municipality.

A redevelopment project area or district is a discrete geographic area that needs upgrading and can be classified by the county commission, or the governing body of a class I or II municipality, as either (1) a blighted area or (2) a conservation area.

(1) A blighted area is one with conditions that prevent or significantly hinder the sound growth of the community. These conditions include, but are not limited to: dilapidated and deteriorated structures, unsafe or unsanitary conditions, overcrowding, poor street layout, faulty lot layout, and the existence of conditions which endanger life or property or are a menace to the public health, safety, and welfare.

(2) A conservation area is one in which fifty (50) percent or more of the structures are thirty-five (35) years or older and which is at risk of becoming a blighted area because of the presence of at least three (3) of the following factors:

- Dilapidation;
- Obsolescence;
- Deterioration;
- Illegal use of individual structures;
- Structures below minimum code standards;
- Abandonment;
- Excessive vacancies;
- Overcrowding of structures and community facilities;
- Lack of ventilation, light, or sanitary facilities;
- Inadequate utilities;
- Excessive land coverage;
- Harmful land use or land layout;
- Deterioration of physical maintenance; and/or
- Lack of community planning.

A development or redevelopment project area or district is a discrete geographic area of a county or municipality (or both) for which the county commission, or the governing body of a class I or II municipality, finds that economic development would result in an increase in jobs, enhancement of the tax base, and further encourage commerce, industry, or manufacturing or tourism development to locate their operations in West Virginia. The actual development or redevelopment of such an area or district will take place through approved tax increment financing projects, through other private or public development, or through a combination of these activities.

A development or redevelopment project area or district may contain more than one tax increment financing project. However, after the entire tax increment of the project area or district has been committed to one or more tax increment financing projects, no additional projects may be financed with TIF funds in that project area or district. [Note: In some cases, the tax increment may grow faster than originally anticipated and may allow TIF obligations to be retired early or open up an opportunity to finance additional projects using TIF funds in the particular project area or district.]

The designation, by a county commission or the governing body of a class I or II municipality, of a discrete geographic area as a development or redevelopment project area or district is a prerequisite to the approval of individual development or redevelopment projects. A development or redevelopment project area or district may already be in existence or may be established at the same time the development or redevelopment project is approved by the county commission or governing body of the municipality in which it will be located. The area or district in which a project is located must directly and substantially benefit from the proposed project.

A development or redevelopment project area or district must contain contiguous land, but may include land situated in multiple counties or municipalities, or any combination of counties and municipalities. A development or redevelopment project area or district may not exist for more than thirty (30) years and may be abolished at any time as long as there are no outstanding tax increment financing obligations.

While TIF can be an extremely useful tool for local officials in helping to facilitate economic development and growth, tax increment financing will not work for every project. This handbook contains guidance for counties and class I or II municipalities to help determine if use of tax increment financing makes sense for economic development projects in their local areas. It also explains the process a county or municipality will follow in order to utilize tax increment financing secured by property taxes.

How Does Tax Increment Financing Work?

Tax increment financing captures the projected increase in property tax revenue created by developing an area and uses that increase to assist in paying for development and redevelopment projects. This funding makes it possible to go forward with projects that otherwise would not be built.

Upon creation of a development or redevelopment project area or district, the local county assessor will establish the base-assessed value of that area or district. The base-assessed value is the taxable assessed value of all real and tangible property having a tax situs in the development or redevelopment project area or district on July 1st of the calendar year preceding adoption of a county order or passage of a municipal ordinance establishing such area or district.

Each subsequent year, the county assessor will certify the current assessed value of the property in the development or redevelopment project area or district. The difference between the amount of regular levy property taxes on the current assessed value and the amount of regular levy property taxes on the base-assessed value is the tax increment.

Regular levy property taxes on the base-assessed value of the property will continue to be allocated to the appropriate local taxing bodies. The tax increment will be deposited in a tax increment financing fund for use on projects approved for the project area or district.

Excess levies and levies for general obligation bond debt service are not part of the regular levies and will not be affected by the use of tax increment financing. In addition to the incremental increase portion of regular levies collected on property within the project area or district, payments in lieu of property taxes made on tax-exempt property located within a project area or district will be deposited in the tax increment financing fund.

Tax increment financing is possible because the development or redevelopment project is expected to increase the aggregate assessed value of property in the development or redevelopment project area or district. The regular levy taxes collected on this increase are used to fund a portion or all of the costs of the development or redevelopment project. There are two ways to fund projects using tax increment financing: (1) Pay-as-you-go method; and (2) Issuing tax increment financing bonds or notes.

(1) **Pay-as-you-go.** In some cases, the county or municipality may be able to use the tax increment to pay for projects as they are constructed. Possible projects that might use the pay-as-you-go method are the installation of streetscapes or other small improvements. In all cases, the county or municipality (in conjunction with any outside developer) will need to submit a project proposal to the State Development Office; however, no tax increment financing obligations will be issued (see below) to finance the construction.

(2) **Issuing Tax Increment Financing Bonds or Notes.** In other cases, there may be substantial up-front development costs and the county or municipality will need to issue tax increment financing bonds or notes in order to use the increment to help finance the project. These obligations will provide money up front to pay for a portion or all of the project's costs. The obligations will then be paid back by the tax increment over a period of up to thirty (30) years.

Tax increment financing bonds and notes are considered tax-exempt by the State of West Virginia, but are not automatically exempt from federal income taxes. The Internal Revenue Service (IRS) has a set of specific guidelines that must be met in order for interest paid on the bonds and notes to be exempt from federal taxes. A county or municipal official will need to seek the advice of a bond counsel or an investment banker on how to structure the project and to determine the federal tax status of proposed bonds or notes.

Tax increment financing bonds and notes – unlike county and municipal general obligations bonds - will not be secured by the full faith and credit of the county or municipality and will be payable solely from the tax increment or other revenues pledged for their repayment.

EXAMPLE: To help illustrate tax increment financing, we take the case of a hypothetical project in which TIF bonds will be issued in Kanawha County, West Virginia. In this case, the property in the development project area or district has a base-

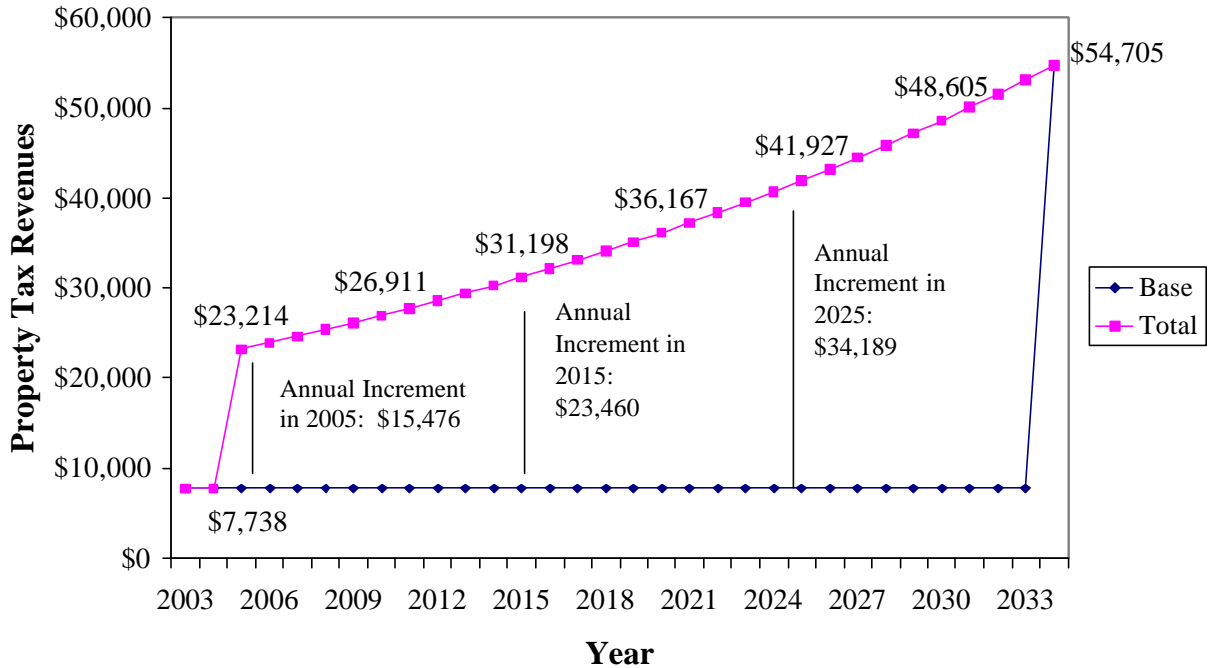
assessed value of \$500,000. The rate of regular levies on this property is \$1.5476 per each \$100 in assessed value. As a result, local levying bodies are currently collecting \$7,738 in regular levies on this property. Kanawha County property is also assessed an additional \$1.4189 for bonds and other special assessments that are not affected by tax increment financing.

If TIF bonds are issued to help fund the project, construction is expected to be completed so that the property value will increase to \$1.5 million in 2005 and then by an additional three (3) percent per year after that. The following schedule shows the increase in property values in the hypothetical development project area or district.

Year	2003 (District is created)	2005 (Construction completed – reassessment of property)	2010	2015	2020	2025	2030	2033 (District is terminated)
Property Value	\$500,000	\$1,500,000	\$1,738,911	\$2,015,875	\$2,336,951	\$2,709,167	\$3,140,667	\$3,341,892

As the property taxes rise, the amount of regular levy property taxes on the property in this area will increase, thus generating the increment used to help finance the project. The local levying bodies will continue to receive \$7,738 in regular levies from this property throughout the financing period. The increment will be used to make payments to holders of the TIF bonds issued for this project. Any excess increment may be used to pay off the bonds early or – according to an annual review process set up by the county or municipality at the time the development or redevelopment project area or district was established – may be returned to the local levying bodies after the close of the fiscal year in which the excess funds were received. At the end of the financing period, all tax revenues will revert back to the local levying bodies. The following graph illustrates how the tax revenues on this property will change over the financing period.

Example of Tax Increment Financing



NOTE: In general, the market will only support the issuance of TIF bonds for projects that generate a large enough increment to support a bond offering. It will be important for county and municipality officials to consult with their bond counsel and an investment banker or commercial banker early in the process to assess whether or not a project is sufficiently large to support the offering of TIF bonds.

II. Development District

Establishing a Development or Redevelopment Project Area or District

A county or class I or II municipality must establish a development or redevelopment project area or district in order to get approval for a development or redevelopment project. In most cases, a proposed project idea will cause a county or municipality to designate a project area or district and the county or municipality will follow the process for establishing a development or redevelopment project area or district at the same time that a project proposal is being considered.

A county or municipality may also choose to designate a development or redevelopment project area or district even if there are no current project proposals for that area. This may allow projects in this area to take advantage of a lower base-assessed value – especially if property values rise before a project is approved – and thus provide an

assured increment for financing a project. However, this may not outweigh the preference by developers to finance projects over the full thirty-year period. Remember, the life of any TIF obligations may not exceed the life of the development or redevelopment project area or district, which may not exceed thirty (30) years. If TIF obligations are issued several years after the development or redevelopment project area or district is established, their maturity date must still be no later than the expiration date of the development or redevelopment project area or district. Another potential issue with establishing a project area or district without a project plan in mind is that it may result in the accrual of excess funds in the tax increment financing fund. In this event, the county or municipality will need to decide annually whether to redistribute those funds back to the levying bodies or to let them accrue to be used for a future project.

In order to designate a geographic area as a development or redevelopment project area or district, a county commission or the governing body of a municipality must follow these steps:

1. Hold a public hearing;
2. Obtain from the county assessor the base-assessed value of all taxable property with a tax situs in the proposed project area or district;
3. Submit an application to the West Virginia Development Office;
4. Adopt a county order or enact a municipal ordinance approving the development or redevelopment project area or district; and
5. Establish the tax increment financing fund.

Public Hearings

The law requires that the public and other levying bodies in an area be given the opportunity for comment through a public hearing process. When the development or redevelopment project area or district is being proposed at the same time as a development or redevelopment project, the public hearing on the proposed project area or district and the public hearing on the proposed project may be conducted either separately or together as long as they meet the following guidelines:

Hearing on the Establishment of a Development or Redevelopment Project Area or District

The Tax Increment Financing Act requires that, prior to establishing a development or redevelopment project area or district, a public hearing must be held at which interested persons who appear are afforded an opportunity to express their views on the project area or district.

The notice of the hearing must be published once each week for the three (3) consecutive weeks immediately preceding the public hearing as a class III legal advertisement. The notice must at a minimum include:

1. The date, time, place, and purpose of the hearing; and
2. A description in sufficient detail of the proposed boundaries of the development or redevelopment project area or district.

In addition, prior to the first publication of this notice, a copy must be sent by first-class mail to the chief executive officer of all other local governing bodies with the power to levy taxes on property located within the proposed development or redevelopment project area or district.

NOTE: The thirty (30) days that counties, municipalities and county boards of education have to review proposals is not a separate thirty (30) days. Rather, it begins when the thirty-day notice of the public hearing is sent to the chief executive officers of the levying bodies having jurisdiction to levy property taxes on property within the proposed project area or district.

Approval by State of West Virginia Development Office

A county or municipality must apply to the West Virginia Development Office to obtain approval of the proposed area as a development or redevelopment project area or district before it can be established as a development or redevelopment project area or district by the county commission or governing body of the municipality. The county or municipality must also apply to the West Virginia Development Office for approval of a project to be financed, in whole or part, by TIF financing.

The Development Office has sixty (60) days after the application is received to approve the application, reject the application, or return the application to the county or municipality with instructions. It is assumed, however, that if a county or municipality meets the requirements of this handbook and has done a thorough analysis of the proposed project, including its economic feasibility and its effect on jobs and the local economy, in both the short- and long-term, and has done a thorough analysis of the need for TIF financing, the terms of the financing, and the effect of TIF financing on local levying bodies, the state will defer to the local entity.

When the proposals to establish a development or redevelopment project area or district and to fund a project, either in whole or part, with TIF financing are part of a single proposal for which a single public hearing was held by the county commission or governing body of the municipality, the proposals may be submitted together to the Development Office. If they are submitted together, the Development Office will consider them as one application and will have only sixty (60) days to consider both proposals. If they are not submitted together, then each application will be subject to its own sixty- (60) day time period for review.

Approval of the Designation of a Development or Redevelopment Project Area or District

In order to gain approval for the designation of a development or redevelopment project area or district, a county or municipality must submit the following to the State Development Office:

- A completed “Cover Sheet for State Approval of a Development or Redevelopment Project Area or district” (*see* Appendix D);
- Findings that the real property within the development or redevelopment project area or district will be benefited by the elimination or prevention of the spread of slums, blighted, deteriorated, or deteriorating areas; by increasing employment; and/or by encouraging commerce and industry to stay in this area;
- Verification and results of the public hearing;
- The county assessor’s certification of the base-assessed value of the property in the development or redevelopment project area or district. This is defined as the annual taxable-assessed value of all real and tangible personal property within the designated area as shown on the records of the assessor on the first of July preceding the formation of the development or redevelopment project area or district;
- A description of the process to be used to allocate any excess increment that accrues in the tax increment financing fund for the project area or district and that is not tied to a specific project proposal;
- If the application is being submitted by a county commission, the county must provide all municipalities included in the boundaries of the development or redevelopment project area or district thirty (30) days to review the proposed area and must obtain their approval in the form of a resolution. The county must include a copy of the resolution(s) with its application; and
- If the application is being submitted by a class I or II municipality, the governing body of the municipality must allow the county or counties included in the boundaries of the development or redevelopment project area or district thirty (30) days to review the proposed project area or district. The county or counties may request further information, provide guidance, or make other formal requests. The class I or II municipality must include any such communications from the county or counties in its application to the Development Office.

Order or Ordinance Establishing a Development or Redevelopment Project Area

(Samples can be found in Appendix F)

Once the State Development Office has approved the applications, the next step is for the county commission to adopt an order, or the governing body of the municipality to pass an ordinance, establishing the new development or redevelopment project area or district and a second order, or ordinance, approving the project plan.

At a minimum, the order, or ordinance, establishing a development or redevelopment project area or district must do the following:

- Describe the boundaries of the development or redevelopment project area or district in sufficient detail to ensure there is no ambiguity about the proposed area;
- Approve the creation of the development or redevelopment project area or district as of a date certain;
- Name the proposed area – both a descriptive name and a number (beginning with one) – each subsequent development or redevelopment project area or district within the county or municipality will be assigned the next consecutive number;
- Contain findings that the real property within the development or redevelopment project area or district will be benefited by the elimination or prevention of the spread of slums, blighted, deteriorated, or deteriorating areas; by increasing employment; and/or by encouraging commerce and industry to stay in this area;
- Establish the tax increment financing fund as a separate fund into which all tax increment revenues and other revenues, as designated by the county or municipality, shall be deposited and reiterate that the tax increment shall only be used for approved projects in the development or redevelopment project area or district to which the fund relates and that at no time can it be used for other purposes;
- Establish the process to be used to allocate any increment that accrues in the TIF fund that is not tied to a specific project proposal in the development or redevelopment project area or district; and
- Certifies that ad valorem taxes on real and tangible personal property having a tax situs in the development or redevelopment project area or district shall be assessed collected, and distributed as provided in W. Va. Code § 7-11B-17 until the project area or district terminates.

Responsibilities of a County or Municipality after the Development or Redevelopment Project Area or District has been established

Once a development or redevelopment project area or district has been established, the county or municipality must ensure that the tax increment is collected and properly allocated.

Each year, the county assessor will provide to each levying body with the power to levy taxes on property within the development or redevelopment project area or district notice of the base-assessed value of the taxable property, the then current assessed value of that property, the incremental increase in assessed value of that property, and the tax increment associated with that property. The notice will also explain that the tax increment amount, determined by multiplying the incremental increase in assessed value of that property by the regular levy rates on property in the project area or district, will be paid into the tax increment financing fund for that project area or district.

Using the calculations by the county assessor, the county sheriff will allocate the taxes on the taxable property included in the development or redevelopment project area or district. The regular levy taxes on the base-assessed value of the taxable property will be distributed to the appropriate levying bodies. In each year in which there is a positive tax increment, the tax increment will be deposited in the TIF fund for that project area or district.

The county sheriff will also allocate payments in lieu of property taxes in the same manner.

Additionally, the county sheriff will deposit in the TIF fund any additional moneys that have been appropriated for the development or redevelopment project area or district by the county commission and the municipal treasurer will deposit in the TIF fund any additional moneys appropriated by the governing body of the municipality.

Funds in the TIF fund may be temporarily invested in the same manner as other funds of the county commission or the municipality that established the fund.

In any year in which there are excess funds in the TIF fund that are not associated with a development or redevelopment project, the county or municipality will, according to the procedures set out in its application for the development or redevelopment project area or district, decide whether to leave the money in the TIF fund or to redistribute the excess monies to the levying bodies based on their proportionate share of the regular levy taxes collected on the base-assessed value of property in the project area or district.

Amending an Existing Development or Redevelopment Project Area or District

The county or municipality may modify the boundaries of the development or redevelopment project area or district. This includes combining two project areas or districts. However, if there are any TIF obligations outstanding, the change may not reduce the amount of tax increment available for these obligations or impair the security of outstanding bonds or other TIF obligations.

To amend a development or redevelopment project area or district, the county or municipality must follow the procedures for establishing a new development or redevelopment project area or district, including holding public hearings, submitting an application to the West Virginia Development Office, and passing an order, or ordinance amending the boundaries.

Terminating a Development or Redevelopment Project Area or District

A development or redevelopment project area or district may not be in existence for more than thirty (30) years. A county or municipality may elect to set a shorter period for the existence of any project area or district. For many projects, a shorter period will be appropriate. The two competing considerations are (1) the period of time reasonably

necessary to pay off the TIF obligations; and (2) the need to make the tax increment revenue available to the local levying as early as reasonably possible. Under no circumstances may TIF obligations have a final maturity later than the termination date of the project area or district.

If there are no outstanding TIF obligations, a county or municipality may repeal the order or ordinance that established the development or redevelopment project area or district at any time.

Upon expiration of the time period set forth in the original order or ordinance, a county or municipality must repeal the order or ordinance that established the development or redevelopment project area or district.

III. Development Projects

Development or Redevelopment Projects – What Projects Qualify for Tax Increment Financing?

Projects must be located within a development or redevelopment project area or district. That area may already be in existence or may be established in conjunction with the approval of the development or redevelopment project that is funded in whole or part with tax increment financing. The project area or district in which the project is located must be directly and substantively benefited by the proposed project plan.

Examples of projects that might use Tax Increment Financing:

- Creating an industrial site – including installing sewer, water, and electric lines to the site;
- Cleaning up an environmentally blighted area and preparing the land for future development; or
- Building a road that improves access to an area.

Tax increment financing is reserved for use with projects that, “but for” the existence of tax increment financing, would otherwise not be built.

Eligible projects may be proposed by a county or municipality, by a private developer, or by another government or private entity (including local economic development authorities). However, each project must be approved by a county commission or the governing body of a class I or II municipality in order to be eligible for tax increment financing.

In order to be eligible for tax increment financing, a project must also promote the economic development of the project area or district by eliminating a blighted area, preventing the deterioration of an area into a blighted area, increasing employment, and/or encouraging the location of commercial or industrial activity and jobs in West Virginia.

Examples of projects include:

- Infrastructure construction or repair – such as sewer expansion/repair, storm drainage, street construction/expansion, expanding access to the water supply, park improvements, bridge construction/repair, curb and sidewalk improvements, devices for traffic control, street lighting, etc.;
- Land acquisition;
- Land improvements – such as building demolition, brownfield remediation, or other site improvements;
- Community revitalization construction – such as landscaping or street lighting;
- The development or redevelopment of the project area for housing, housing developments (including residential, vacation, and retirement communities), public facilities, or industrial or commercial development;
- New infrastructure for housing developments (including residential, vacation, and retirement communities), housing, or industrial or commercial development;
- Other development that eliminates unsanitary or unsafe conditions; reduces overcrowding in the area, reduces traffic congestion, eliminates traffic hazards, or eliminates obsolete or detrimental uses to the area;
- Other capital improvements to the area; and
- Any other projects deemed appropriate by the county or municipality with authority over the development or redevelopment project area or district as meeting the purposes of the West Virginia Tax Increment Financing Act.

The West Virginia Tax Increment Financing Act does not restrict the use of tax increment financing to new project ideas. A project proposal may have been on the drawing board prior to the ratification of Amendment One and passage of the West Virginia Tax Increment Financing Act as long as without the use of tax increment financing the project would not be built in the foreseeable future.

Getting Approval for a Development or Redevelopment Project

A proposed project must be located in either an existing development or redevelopment project area or district or in one that is established concurrently with approval of the project plan. An existing development or redevelopment project area or district may already have one or more approved projects but may still have excess increment that may be used for another development or redevelopment project.

Eligible projects may be proposed by a county or municipality, by a private developer, or by another government or private entity (including local economic development authorities). However, each project needs the support of a county commission or the governing body of a class I or II municipality in order to be eligible for tax increment financing.

The law allows counties and municipalities considerable flexibility in establishing the process by which they will consider project proposals. It is strongly recommended that each county and municipality create an application form and establish application

standards that will apply to all project proposals from outside parties – including private developers and other public and private entities. A sample application form and set of standards, which have been endorsed by the West Virginia Municipal League, West Virginia Association of Counties, and the County Commissioners’ Association of West Virginia, can be found in Appendix B. This application form should include, but not be limited to:

1. Information about the project developer, including corporation, partnership, limited partnership, limited liability company, or limited liability partnership papers, if applicable;
2. Copies of audited financial statements or federal income tax returns for the developer for the most recent five years. In the event the developer is a partnership, limited liability company or other pass-through entity that does not file federal income tax returns, copies of federal forms 1065, including all schedules filed, or federal form 1120S and all schedules filed, and federal form 8825 shall be filed in lieu of audited financial statements;
3. The name and contact information for the bond counsel and investment bankers or commercial bankers with whom they have been working, if any;
4. Information on similar projects the developer has done in the past and the relevant experience of individuals who will be working on this project;
5. A detailed description of the project;
6. A list of estimated project costs and how they are expected to be financed, including findings that this project would not otherwise be fully financed without the use of TIF financing;
7. Evidence of the financial feasibility of this project;
8. A development schedule;
9. An estimate of job creation from the project – including the wages and benefits associated with those jobs;
10. A map showing the current uses and conditions of the area;
11. A map showing proposed improvements and uses of the area;
12. A list of any public improvements that will be needed in addition to the private developer’s project; and
13. An estimate of the fiscal impact on the local levying bodies that will be forgoing the tax increment during the life of the project. This includes the effect on schools, roads, public safety, county and municipal services, etc.

Copies of the application form and its attachments must be made available to the public in the county clerk’s office (if application is made to the county commission) or through the municipal recorder’s office (if application is filed with the municipality) and posted on governing entity’s website, if it has one.

If a county or municipality expends any funds while evaluating a project proposal and shepherding it through the approval process, it may later be reimbursed for these costs from funds in the TIF fund. However, the county or municipality may want to require developers to assume the responsibility for paying all these costs. In the sample

application in Appendix B, private entities are required to pay for these costs while public entities must enter an agreement with the county or municipality as to how these costs will be financed. Whenever these costs may be paid from the TIF bond proceeds, a county or municipality will need to pass an inducement resolution and/or reimbursement resolution allowing for the expenditure of public funds for the purposes of evaluating a project proposal and shepherding it through the approval process. A sample inducement resolution is included in Appendix C.

A county or municipality must require any outside party to supply all of the information in the sample application and who is unwilling to assume financial risk for the project. If a county or municipality expends any resources on such a proposal, it does so at an increased risk of not being able to recover those expenditures.

In order for this project proposal to be approved and eligible for tax increment financing, the county or municipality will need to follow these steps:

1. Meet with the applicant and have the applicant formally present the project proposal;
2. If the application assumes that TIF bonds will be issued (rather than using the pay-as-you-go method), meet with a bond counsel and an investment banker or commercial banker for feedback on the feasibility of issuing bonds for this project. Even if the applicant has already met with a bond counsel and an investment banker or commercial banker, do not hesitate to meet with others. If this project goes forward, the county commission or the governing body of the municipality will need to secure bond counsel and the services of an investment banker or commercial banker to prepare appropriate documents in order to issue TIF bonds or notes. A list of bond counsels can be found in “The Bond Buyers Municipal Marketplace” (also known as “The Red Book”). Some investment banks are also included in the Red Book, although this list is not exhaustive;
3. Conduct additional analysis on the fiscal impact of the proposed project on local levying bodies;
4. Verify all information in the project application (including conducting independent analysis on the feasibility of the project and any other needed analysis) – ask the applicant for any additional information needed to assess whether or not to move forward with this project proposal;
5. Hold public hearings;
6. Establish a memorandum of understanding (MOU) with any outside developer about how to conduct competitive bidding associated with this project and to

Tax-Exempt Bonds?

While TIF bonds are exempt from West Virginia taxes, current market conditions may make bonds that are also exempt from federal taxes more marketable. Bond counsel can provide guidance on how to comply with federal rules for tax-exempt bonds.

- acknowledge that the developer will comply with the requirements to pay prevailing wage and provide a local labor preference;
7. Submit an application for project approval to the West Virginia Development Office; and
 8. Adopt a county order or pass a municipal ordinance approving the development or redevelopment project plan.

Hearing on a Project Proposal

Prior to approving a proposed project, the county commission or the governing body of the municipality must hold a public hearing at which all interested parties are given the opportunity to express their views on the proposed project and the proposed tax increment financing obligations to be issued, if any.

The notice of the hearing must be published in a newspaper of general circulation in the county or municipality where the proposed project is located at least fifteen (15) days prior to the hearing. Additionally, prior to the publication of this notice, a copy must be sent by first-class mail to the chief executive officer of all other local governing bodies with the power to levy taxes on property within the development or redevelopment project area or district where the project will be located.

NOTE: The thirty (30) days that counties, municipalities and county boards of education have to review proposals is not a separate thirty (30) days. Rather, it begins when the thirty-day notice of the public hearing is sent to the chief executive officers of the levying bodies having jurisdiction to levy property taxes on property within the proposed project area or district.

West Virginia Development Office Approval of a Development or Redevelopment Project Proposal

In order to gain approval for a development or redevelopment project that will be funded in whole or in part through TIF funds, a county or municipality must submit the following to the West Virginia Development Office:

1. A completed “Application for West Virginia Development Office Approval of a Development or Redevelopment Project Proposal” (*see* Appendix E);
2. A detailed description of the project that will benefit from tax increment financing. Include a description of how that project fits with the overall development plans for the development or redevelopment project area or district or the overall development plans for the county, municipality, or region;
3. A map showing the existing uses and conditions of the real property in the project area or district;
4. A map showing proposed improvements and uses of the project area or district;

5. Findings that the project would not otherwise be financed without tax increment financing;
6. The boundaries of the property within the development or redevelopment project area or district whose increment will be used for this project;
7. A certification by the county assessor of the base-assessed value of taxable property located in the development or redevelopment area or district whose increment will be used for this project;
8. A certification by the county assessor of the current assessed value of taxable property located in the development or redevelopment area or district, if it differs from the base-assessed value;
9. An estimate of the projected increase in value of the property whose increment will be used for this project and the resulting tax increment after one (1) year, five (5) years, ten (10) years, fifteen (15) years, twenty (20) years, twenty-five (25) years, and thirty (30) years;
10. An estimate of the job creation from the project – including wages and benefits associated with those jobs. Include job creation both within the project area or district and outside of the project area and district if the job creation results from development of this project area or district. Estimate job creation throughout the life of the TIF obligations.
11. Verification and results of the public hearing;
12. A list of the kind, number, and location of any public improvements that will be needed as part of the project;
13. A list of estimated costs associated with the project and the proposed methods for financing these costs. Sources of funds may include private monies, the tax increment or the proceeds from the sale of TIF obligations, and other public monies. Costs include, but are not limited to, the following:
 - a. Capital costs;
 - b. Financing costs;
 - c. The costs of professional services associated with this project;
 - d. The costs associated with acquiring, preparing, and developing the project site;
 - e. The administrative costs of using county or municipal employees to prepare the application and implement the tax increment financing project plan;
 - f. Relocation costs;
 - g. Costs associated with conducting environmental impact studies or other such analyses;
 - h. Costs associated with informing the public about the proposed project plan;
 - i. Costs related to the construction of public works associated with the project plan; and
 - j. Costs associated with the sale or lease of county or municipal property that results in a loss for the county or municipality;
14. If tax increment financing obligations are expected to be issued, the following information must also be included:
The amount of indebtedness to be incurred:

- a. If other revenues are to be used to finance this debt – including payments in lieu of taxes;
 - b. The type and amount of other monies to be deposited in the TIF fund for the development or redevelopment project area or district;
 - c. If less than the full increment is to be used, how the excess will be distributed,
 - d. The terms for early repayment of the TIF obligations; and
 - e. A letter from the county or municipality’s bond counsel and/or financial underwriter stating that the proposed project could support tax increment financing bonds or other obligations and the terms and conditions of such offering;
15. An analysis showing the fiscal impact on each local levying body. This analysis should consider the costs incurred by the local levying bodies and how those costs will be offset/funded. This includes the effect on schools, public services, utilities, etc.;
 16. Any costs to other communities or areas in West Virginia as a result of this development;
 17. Any other information, including the effect on the economy, that may be necessary to determine whether the project is financially feasible;
 18. A memorandum of understanding (MOU) between the developer and the county or municipality about how the competitive bidding process will be conducted;
 19. A relocation plan for any displaced persons, businesses, or organizations;
 20. Proposed changes to zoning ordinances, if any;
 21. Appropriate cross-references to any master plan, map, building codes, and municipal ordinances or county orders affected by the project;
 22. If the application is being submitted by a county, the county must provide all municipalities that are included, in whole or in part, in the boundaries of the development or redevelopment project area or district, thirty (30) days to review the proposed project and must obtain their approval in the form of a resolution adopted by the governing body of the municipality. The county must include a copy of the resolution(s) with its application;
 23. If the application is being submitted by a class I or II municipality, the municipality must allow the county or counties included in the boundaries of the development or redevelopment project area or district thirty (30) days to review the proposed project. The county or counties may request further information, provide guidance, or make other formal requests. The class I or II municipality must include any such communications from the county or counties with its application.
 24. If the project was proposed by an entity other than the county or municipality submitting this application, the following, as applicable, must also be submitted:
 - a. Information about the project developer, including corporation, partnership, limited partnership, limited liability company or limited liability partnership papers, if applicable;
 - b. Copies of audited financial statements or federal income tax returns of the developer for the most recent five years. In the event the developer is a partnership, limited liability company or other pass-through entity that does not file federal income tax returns, copies of federal forms 1065, including all

- schedules filed, or federal form 1120S and all schedules filed, and federal form 8825 shall be filed in lieu of audited financial statements; and
- c. Information on similar projects the developer has done in the past and the relevant experience of individuals who will be working on this project.

Order or Ordinance Approving a Project Plan

The order, or ordinance, approving a development or redevelopment project must be adopted, or passed, within one (1) year after the date of the county assessor's certification of the base value for purposes of the application to the West Virginia Development Office for this project.

The order, or ordinance, must, at a minimum, contain findings that the project plan is economically feasible and codify the memorandum of understanding (MOU) between the county, or municipality, and the developer about how the competitive bidding process will be conducted. *See*, Appendix H for information on competitive bidding.

Responsibilities of a County or Municipality after the Project Plan has been Adopted

After a project plan has been approved by adoption or an order or enactment of an ordinance, the construction or other steps associated with the improvements may begin.

If the project plan calls for the issuance of TIF bonds or notes, the first step will be to work with a bond counsel and an investment banker or commercial banker, selected by the county commission or governing body of the municipality, and the developer. Market conditions fluctuate; therefore, the county or municipality must be prepared for changes to the bond offering or the overall financing of the project.

Once the TIF bonds or notes are ready for market, the county or municipality must authorize, by order or ordinance, the issuance of the bonds. The order or ordinance must state the name of the project, the dollar amount of the TIF bonds to be issued, and the interest rate to be borne by these bonds. The order or ordinance may also include additional information about the terms of the obligations, including, but not limited to, the terms of refinancing these bonds.

The county commission, or the governing body of the municipality, will also want to work with the county assessor to ensure that the property in the development or redevelopment project area or district is being reassessed in a timely manner. If the county assessor's records do not reflect the increase in value that resulted from the development or redevelopment project, there will be no tax increment to help service the TIF obligations.

Annually, the county or municipality will also need to report on the progress of the development or redevelopment project. This report will be due to the West Virginia

Development Office by October 1st of each year and cover activity during the preceding fiscal year ending June 30th. The data in this report shall be deemed a public record. The county or municipality must publish this report on its website. If the county or municipality does not have a website, the report will be published on the website of the West Virginia Development Office. This report must include the following information:

1. The aggregate amount and the amount by source in the TIF fund and the amount that is attributable to this project;
2. The amount and purpose of any expenditures made out of the TIF fund that are attributable to this project, both for that year and for the life of the project;
3. The amount of any pledged revenues in the TIF fund, for payment of principal and interest on any outstanding TIF obligations;
4. The base-assessed value of taxable property in the development or redevelopment project area or district;
5. The current assessed value of taxable property in the development or redevelopment project area or district;
6. The increase in assessed value over the base-assessed value of taxable property in the development or redevelopment project area or district;
7. The amount of payments in lieu of taxes that have been deposited in the TIF fund and expended, both for that year and for the life of the project;
8. Reports on any contracts associated with the project plan;
9. A copy of the original project plan and any amendments to the project plan;
10. A status of the overall project;
11. The cost of any property acquired, sold, rehabilitated, reconstructed, repaired, or remodeled in association with the project plan as part of the project;
12. The number of parcels acquired for the project through initiation of eminent domain proceedings;
13. The number of jobs created or projected to be created, if any, in the project area or district, and the estimated wages and benefits associated with those jobs;
14. Any other information that the county or municipality deems necessary or that may be required by the West Virginia Development Office.

In addition to the annual report, on or before October 1st of each year, the county or municipality must publish an annual statement in a newspaper of general circulation in the county or municipality. This annual statement must include a summary of receipts and disbursements by major category of moneys in the TIF fund during that fiscal year; a summary of the status of the project plan; the amount outstanding, at the close of the preceding fiscal year, of the principal on the TIF obligations (if applicable); and any other information the county or municipality deems necessary to publish.

Every five (5) years after the adoption of a Project Plan, the county or municipality must hold a public hearing to determine if the project is making satisfactory progress under the proposed time schedule in the original plan. Notice of the hearing must be given in a newspaper of general circulation in the county or municipality and must be published once each week for four (4) consecutive weeks immediately prior to the hearing.

Amending an Existing Development or Redevelopment Project Plan

An approved project plan may be modified as necessary.

When modifications include a material change in scope or use, or a change in the cost or value of the project by more than fifty percent (50%), the county or municipality must conduct a public hearing on the proposed changes at which interested parties must be afforded a reasonable opportunity to express their views on the changes. Notice of the hearing must be published as a legal advertisement in a newspaper of general circulation in the county or municipality in which the project is located once a week for three (3) consecutive weeks prior to the date of the public hearing. Prior to the publication, a copy of the notice must be sent by first-class mail to the chief executive officer of all other local levying bodies having the power to levy taxes on property within the development or redevelopment project area or district in which the project is located. In addition, at least fifteen (15) days prior to any public hearing, the proposed plan amendments must be made available to the public at the county clerk's office, or municipal recorder's office, depending on whether the project area or district was established by the county commission or the governing body of the municipality.

After conducting the public hearings, the changes must be codified through the adoption of amendments to the existing county order or municipal ordinance.

IV. Assurances

Conflict of Interest Provisions

Any employee, consultant, or elected official from the county or municipality involved in the process of establishing a development or redevelopment project area or district or preparing a project plan, who owns or controls any interest in the property located in the development or redevelopment project area or district, or proposed development or redevelopment project area or district, must disclose this in writing to the clerk of the county commission or the recorder of the municipality. This disclosure must be entered into the minute books of the county commission or governing body of the municipality.

Any individual who is required to submit the disclosure about his/her ownership or controlling interest in property in a proposed development or redevelopment project area or district must refrain from any official involvement in the process by which the project area or district is approved, and in the process by which a project proposal is approved for a new or existing project area or district, as provided in the West Virginia Tax Increment Financing Act and this handbook. In addition, he/she must refrain from communicating with other officials or government employees about this matter.

After a plan is proposed (whether or not it has been approved), no elected officials or employees of the county or municipality in which the development or redevelopment

project area or district, or development or redevelopment project, would be located may acquire any interest in any property in the development or redevelopment project area or district.

Prevailing Wage, Local Labor Preferences, and Competitive Bidding Requirements

Any development or redevelopment project that has been approved by the West Virginia Development Office that exceeds \$25,000 and that receives partial or complete funding through tax increment financing money is deemed by statute to be a public improvement and is subject to the prevailing wage, local labor preferences, and competitive bidding requirements set forth in the West Virginia Code. *See*, Appendix H for additional information on these requirements.

If the project was proposed by a person other than the county or municipality, the county or municipality must establish a memorandum of understanding (MOU) with that person in which the person acknowledges his/her obligations to pay prevailing wages, use local labor and procure goods and services through the competitive bidding process for this project. The MOU may allow the person to conduct the competitive bidding process for the county commission or governing body of the municipality, but the MOU may not relieve the county commission or the governing body of the municipality from ensuring that the person complies with all applicable laws regarding the payment of prevailing wages, use of local labor and the use of competitive bidding to procure goods and services for the project. The MOU should also include (1) a definition of the lowest qualified responsible bidder; (2) an agreement on how to deal with cost overruns; and (3) a statement reaffirming that design-build bids may be submitted that conform to the requirements of the Design-Build Procurement Act, W. Va. Code § 5-22A-1 *et seq.* At any time, based on this process, the county or municipality, or the person designated in the MOU to conduct the bidding process, may reject all bids and solicit new ones.

Exceptions:

The prevailing wage and competitive bid requirements do not apply to projects under \$50,000 that are done by full-time employees of the county or municipality.

The prevailing wage and competitive bid requirements will not prevent the use of students enrolled in a vocational education program when their work is part of the students' training program.

The prevailing wage and competitive bid requirements will not apply to emergency repairs, that, if not made immediately, will seriously impair the use of the building components or systems, or may cause danger to persons using those components or systems.

The prevailing wage and competitive bid requirements will not prevent the use of volunteers where the cost of materials or other services associated with the use of volunteers does not exceed \$50,000.

Additional Information

The following agencies and organizations can provide additional information on Property Tax Increment Financing in West Virginia.

West Virginia Development Office

Capitol Complex, Building 6, Room 525, 5th Floor
Charleston, WV 25305-0311
Toll Free Phone: 1-800-WVA-DEVO (982-3386)
Phone: (304) 558-2234
Fax: (304) 558-1189
www.wvdo.org

Department of Tax and Revenue

State Capitol, Room W-300
1900 Kanawha Boulevard East
Charleston, West Virginia 25305
Phone: (304) 558-0211
Fax: (304) 558-2324
www.state.wv.us/taxrev/

West Virginia Association of Counties

2211 Washington Street, East
Charleston, WV 25311
Phone: (304) 346-0591
Fax: (304) 346-0592
Email: wvaco@wvaco.org
www.wvcounties.org

County Commissioners' Association of West Virginia

2309 Washington Street, East
Charleston, WV 25311
Phone: (304) 345-4639
Fax: (304) 346-3512
Email: ccawv@citynet.net
www.polsci.wvu.edu/ccawv

West Virginia Municipal League

2020 Kanawha Blvd., East
Charleston, WV 25311
Phone: (304) 342-5564

Toll Free Phone: (800) 344-7702

Fax: (304) 342-5586

Email: wvml@newwave.net

www.wvml.org

Additional guidance on the use of tax increment financing may also be obtained from bond counsels listed in “The Bond Buyers Municipal Marketplace” (also known as “The Red Book”) or from investment bankers or other individuals who may assist with the issuance of TIF obligations.

Appendix A: West Virginia Tax Increment Financing Law

ARTICLE 11B. WEST VIRGINIA TAX INCREMENT FINANCING ACT.

§7-11B-1. Short title.

This article may be known and cited as “The West Virginia Tax Increment Financing Act”.

§7-11B-2. Findings and legislative purpose.

(a) It is found and declared to be the policy of this state to promote and facilitate the orderly development and economic stability of its communities. County commissions need the ability to raise revenue to finance public improvements that are designed to encourage economic growth and development in geographic areas characterized by high levels of unemployment, stagnate employment, slow income growth, contaminated property or inadequate infrastructure. The construction of necessary public improvements in accordance with local economic development plans will encourage investing in job-producing private development and expand the public tax base.

(b) It is also found and declared that capital improvements or facilities in any area that result in the increase in the value of property located in the area or encourage increased employment within the area will serve a public purpose for each taxing unit possessing the authority to impose ad valorem taxes in the area.

(c) It is the purpose of this article:

(1) To encourage local levying bodies to cooperate in the allocation of future tax revenues that are used to finance public improvements designed to encourage private development in selected areas; and

(2) To assist local governments that have a competitive disadvantage in their ability to attract business, private investment or commercial development due to their location; to encourage remediation of contaminated property; to prevent or arrest the decay of selected areas due to the inability of existing financing methods to provide public improvements; and to encourage private investment designed to promote and facilitate the orderly development or redevelopment of selected areas.

§7-11B-3. Definitions.

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

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

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

(2) “Base-assessed value” means:

(A) The taxable assessed value of real and tangible personal property of a project developer having a tax situs within a development or redevelopment project area or district as shown upon the landbook and personal property records of the assessor on the first day of July of the year preceding the effective date of the order authorizing the tax increment financing plan; or

(B) The taxable assessed value of all real and tangible personal property having a tax situs within a development or redevelopment project area or district as shown upon the landbooks and personal property books of the assessor on the first day of July preceding the formation of the development or redevelopment project area or district.

(3) “Blighted area” means an area in which the structures, buildings or improvements, by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for access, ventilation, light, air, sanitation, or open spaces, high density of population and overcrowding or the existence of conditions which endanger life or property, are detrimental to public health, safety, morals or welfare. “Blighted area” includes any area which, by reason of the presence of a substantial number of substandard, slum, deteriorated or deteriorating structures, predominance of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility, or usefulness, unsanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, defective or unusual conditions of title, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, substantially impairs or arrests the sound growth of a municipality, retards the provision of housing accommodations, or constitutes an economic or social liability and is a menace to the public health, safety, morals or welfare in its present condition and use, or any area which is predominantly open and which because of lack of accessibility, obsolete platting, diversity of ownership, deterioration of structures or of site improvements, or otherwise, substantially impairs or arrests the sound growth of the community.

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

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

(6) “Current assessed value” means:

(A) The annual taxable assessed value of all real and tangible personal property of a project developer having a tax situs within a development project area as shown upon the landbook and personal property records of the assessor; or

(B) The annual taxable assessed value of real and tangible personal property having a tax situs within a development or redevelopment project area or district, as shown upon the landbook and personal property records of the assessor.

(7) “Development office” means the West Virginia development office created in section one, article two, chapter five-b of this code.

(8) “Development project” or “redevelopment project” means a project undertaken by a county commission or the governing body of a municipality in a development or redevelopment project area or district for eliminating or preventing the development or spread of slums or deteriorated, deteriorating or blighted areas, for discouraging the loss of commerce, industry or employment, for increasing employment, or for any combination thereof in accordance with a tax increment financing plan. A development or redevelopment project may include one or more of the following:

(A) The acquisition of land and improvements, if any within the development or redevelopment project area and clearance of the land so acquired; or

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

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

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

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

(9) “Development or redevelopment project area or district” means an area proposed by one or more agencies as a development or redevelopment project area or district, which may include one or more counties, one or more municipalities or any combination thereof, that has been approved by the county commission of each county in which the project area is located if the project is located outside the corporate limits of a municipality, or by the governing body of a municipality if the project area is located within a municipality, or by both the county commission and the governing body of the municipality when the development or redevelopment project area or district is located both within and without a municipality.

(10) “Economic development area” means any area or portion of an area located within the territorial limits of a municipality or county that does not meet the requirements of subdivisions (3) and (4) of this subsection and for which the county commission finds that development or redevelopment will not be solely used for development of commercial

businesses that will unfairly compete in the local economy and that development or redevelopment is in the public interest because it will:

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

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

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

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

(12) “Incremental value,” for any development or redevelopment project area or district, means the difference between the base-assessed value and the current assessed value. The incremental value will be positive if the current value exceeds the base value, and the incremental value will be negative if the current value is less than the base-assessed value.

(13) “Includes” and “including” when used in a definition contained in this article shall not be deemed to exclude other things otherwise within the meaning of the term being defined.

(14) “Local levying body” means the county board of education, and the county commission and includes the governing bodies of a municipality when the development or redevelopment project area or district is located, in whole or in part, within the boundaries of the municipality.

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

(16) “Order” means an order of the county commission adopted in conformity with the provisions of this article and as provided in chapter seven of this code.

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

(18) “Payment in lieu of taxes” means those estimated revenues from real property and tangible personal property having a tax situs in the area selected for a development or redevelopment project, which revenues according to the development or redevelopment project or plan are to be used for a private use, which levying bodies would have received had a county or municipality not adopted one or more tax increment financing plans, and which would result from levies made after the date of adoption of a tax increment financing plan during the time the current assessed value of all taxable real and tangible personal property in the area selected for the development or redevelopment project exceeds the total base-assessed value of all taxable real and tangible personal property in the development or redevelopment project area or district until the designation is terminated as provided in this article.

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

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

(21) “Project” means any facility requiring an investment of capital, including extensions, additions or improvements to existing facilities including water or wastewater facilities, and the remediation of contaminated property as provided for in article twenty-two, chapter twenty-two of this code, but does not include performance of any governmental service by a county or municipal government.

(22) “Project costs” means expenditures made in preparation of the development or redevelopment project plan and made, or estimated to be made, or monetary obligations incurred, or estimated to be incurred, by the county commission which are listed in the project plan as costs of public works or improvements within a development or redevelopment project area or district, plus any costs incidental thereto. “Project costs” include, but are not limited to:

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

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

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

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

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

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

(G) Organizational costs, including, but not limited to, the costs of conducting environmental impact and other studies, and the costs of informing the public with respect to the creation of a project development area and the implementation of project plans;

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

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

(23) “Project developer” means any person who engages in the development of projects in the state.

(24) “Project development or redevelopment area” means a contiguous geographic area within a county, or within two contiguous counties, in which a development or redevelopment

project will be undertaken, as defined and created by order of the county commission, or county commissions in the case of an area located in two counties.

(25) “Project plan” means the plan for a development or redevelopment project that is adopted by a county commission or governing body of a municipality in conformity with the requirements of this article and chapter seven or eight of this code.

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

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

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

(29) “Tax increment” means:

(A) The amount of regular levy property taxes attributable to the amount by which the current assessed value of a private project in a development or redevelopment project area or district exceeds the base-assessed value, if any, of the private project; or

(B) The amount of regular levy property taxes attributable to the amount by which the current assessed value of real and tangible personal property having a tax situs in a development or redevelopment project area or district exceeds the base-assessed value of the property.

(30) “Tax increment financing fund” means a separate fund for a development or redevelopment project or for a development or redevelopment project area or district established by the county commission, or governing body of the municipality, that issues tax increment financing obligations into which all tax increment revenues and other pledged revenues are deposited and from which projected project costs, debt service and other expenditures authorized by this article are paid.

(31) “This code” means the code of West Virginia, one thousand nine hundred thirty-one, as amended by the Legislature.

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

§7-11B-4. Powers generally.

In addition to any other powers conferred by law, a county commission or governing body of a Class I or II municipality may exercise any powers necessary and convenient to carry out the purpose of this article, including the power to:

(1) Create development and redevelopment areas or districts and to define the boundaries of those areas or districts;

(2) Cause project plans to be prepared, to approve the project plans, and to implement the provisions and effectuate the purposes of the project plans;

(3) Issue tax increment financing obligations and pledge tax increments and other revenues for repayment of the obligations;

(4) Deposit moneys into the tax increment financing fund for any development or redevelopment project area or district, or project;

(5) Enter into any contracts or agreements, including agreements with bondholders, determined by the county commission to be necessary or convenient to implement the provisions and effectuate the purposes of project plans;

(6) Receive from the federal government or the state loans and grants for, or in aid of, a development or redevelopment project and to receive contributions from any other source to defray project costs;

(7) Exercise the right of eminent domain to condemn property for the purposes of implementing the project plan. The rules and procedures set forth in chapter fifty-four of this code shall govern all condemnation proceedings authorized in this article;

(8) Make relocation payments to those persons, businesses, or organizations that are displaced as a result of carrying out the development or redevelopment project;

(9) Clear and improve property acquired by the county commission pursuant to the project plan and construct public facilities on it or contract for the construction, development, redevelopment, rehabilitation, remodeling, alteration or repair of the property;

(10) Cause parks, playgrounds or water, sewer or drainage facilities, or any other public improvements, including, but not limited to, fire stations, community centers and other public buildings, which the county commission is otherwise authorized to undertake, to be laid out, constructed, or furnished in connection with the development or redevelopment project. When the public improvement of the county commission is to be located, in whole or in part, within the corporate limits of a municipality, the county commission shall consult with the mayor and the governing body of the municipality regarding the public improvement and shall pay for the cost of the public improvement from the tax increment financing fund;

(11) Lay out and construct, alter, relocate, change the grade of, make specific repairs upon, or discontinue public ways and construct sidewalks in, or adjacent to, the development or redevelopment project: *Provided*, That when the public way or sidewalk is located within a municipality, the governing body of the municipality shall consent to the same and if the public way is a state road, the consent of the commissioner of highways shall be necessary;

(12) Cause private ways, sidewalks, ways for vehicular travel, playgrounds or water, sewer or drainage facilities and similar improvements to be constructed within the development or redevelopment project for the particular use of the development or redevelopment project area or district, or those dwelling or working in it;

(13) Construct any capital improvements of a public nature;

(14) Construct capital improvements to be leased or sold to private entities in connection with the goals of the development or redevelopment project;

(15) Designate one or more official or employee of the county commission to make decisions and handle the affairs of development and redevelopment project areas or districts created by the county commission pursuant to this article;

(16) Adopt orders, ordinances or bylaws or repeal or modify such ordinances or bylaws or establish exceptions to existing ordinances and bylaws regulating the design, construction, and use of buildings within the development or redevelopment project area or district created by a county commission or governing body of a municipality under this article;

(17) Enter orders, adopt bylaws or repeal or modify such orders or bylaws or establish exceptions to existing orders and bylaws regulating the design, construction, and use of buildings within the development or redevelopment project area or district created by a county commission or governing body of a municipality under this article;

(18) Sell, mortgage, lease, transfer, or dispose of any property or interest therein, acquired by it pursuant to the project plan for development, redevelopment or rehabilitation in accordance with the project plan;

(19) Expend project revenues as provided in this article; and

(20) Do all things necessary or convenient to carry out the powers granted in this article.

§7-11B-5. Powers supplemental.

The powers conferred by this article are in addition and supplemental to the powers conferred upon county commissions and municipalities by the Legislature relating to the issuance of industrial and commercial development bonds and refunding bonds.

§7-11B-6. Application for development or redevelopment plan.

(a) An agency or a project developer may apply to a county commission or the governing body of a municipality for adoption of a development or redevelopment plan with respect to a development or redevelopment project to be developed in conjunction with a private project of a project developer. The application shall state the projects' economic impact, viability, estimated revenues and potential for job creation and such other information as the county commission or the governing body of the municipality may require.

(b) Copies of the application shall be made available to the public in the county clerk's office, or the municipal recorder's office when the application is filed with the governing body of a municipality.

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

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

(b) The county commission or municipality proposing creation of a development or redevelopment area or district shall then hold a public hearing at which interested parties are

afforded a reasonable opportunity to express their views on the proposed creation of a development or redevelopment project area or district and its proposed boundaries.

(1) Notice of the hearing shall be published once each week for three successive weeks immediately preceding the public hearing as a Class III legal advertisement in accordance with section two, article three, chapter fifty-nine of this code.

(2) The notice shall include the time, place and purpose of the public hearing, describe in sufficient detail the tax increment financing plan, the proposed boundaries of the development or redevelopment project area or district and the proposed tax increment financing obligations to be issued to finance the development or redevelopment project costs.

(3) Prior to the first day of publication, a copy of the notice shall be sent by first-class mail to the chief executive officer of all other local levying bodies having the power to levy taxes on property located within the proposed development or redevelopment project area or district.

(4) All parties who appear at the hearing shall be afforded an opportunity to express their views on the proposal to undertake and finance the project.

(c) After the public hearing, the county commission, or the governing body of the municipality, shall finalize the development or redevelopment project plan and the boundaries of the development or redevelopment project area or district and submit it to the director of the development office for his or her review and approval. The director, within sixty days after receipt of the plan, shall approve the plan as submitted, reject the plan, or return the plan to the county commission or governing body of the municipality for further development or review in accordance with instructions of the director of the development office. A plan may not be adopted by the county commission or the governing body of a municipality until after it has been approved by the executive director of the development office.

(d) Upon approval of the development or redevelopment plan by the development office, the county commission may enter an order, and the governing body of the municipality proposing the plan may adopt an ordinance, that:

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

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

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

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

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

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

(5) Approves the development or redevelopment plan;

(6) Establishes a tax increment financing fund as a separate fund into which all tax increment revenues and other revenues designated by the county commission, or governing body

of the municipality, for the benefit of the development or redevelopment project area or district shall be deposited, and from which all project costs shall be paid, which may be assigned to and held by a trustee for the benefit of bondholders if tax increment financing obligations are issued by the county commission, or the governing body of the municipality; and

(7) Provides that ad valorem property taxes on real and tangible personal property having a tax situs in the development or redevelopment project area or district shall be assessed, collected and allocated in the following manner for so long as any tax increment financing obligations payable from the tax increment financing fund, hereinafter authorized, are outstanding and unpaid: (A) For each tax year, the county assessor shall record in the land and personal property books both the base-assessed value and the current assessed value of the real and tangible personal property having a tax situs in the development or redevelopment project area or district;

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

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

(D) In no event shall the tax increment include any taxes collected from excess levies, levies for general obligation bonded indebtedness or any levies other than the regular levies provided for in article eight, chapter eleven of this code.

(e) Proceeds from tax increment financing obligations issued under this article may only be used to pay for costs of development and redevelopment projects to foster economic development in the development or redevelopment project area or district, or land contiguous thereto, including infrastructure and other public improvements prerequisite to private improvements, when such development or redevelopment project or projects would not reasonably be expected to occur without tax increment financing.

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

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

(h) No county commission shall establish a development or redevelopment project area or district any portion of which is within the boundaries of a municipality without the formal consent of the governing body of the municipality.

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

(j) The county commission may modify the boundaries of the development or redevelopment project area or district from time to time by entry of an order modifying the order creating the development or redevelopment project area or district.

(k) The governing body of a municipality may modify the boundaries of the development or redevelopment project area or district from time to time by amending the ordinance establishing the boundaries of the area or district.

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

§7-11B-8. Project plan – Approval.

(a) Upon the creation of the development or redevelopment area or district, the county commission or municipality creating the area or district shall cause the preparation of a project plan for each development or redevelopment area or district, and the project plan shall be adopted by order of the county commission, or ordinance adopted by the governing body of the municipality, after it is approved by the executive director of the development office. This process shall conform to the procedures set forth in this section.

(b) Each project plan shall include:

(1) A statement listing the kind, number, and location of all proposed public works or other improvements within the area or district and on land outside but contiguous to the area or district;

(2) A cost-benefit analysis showing the economic impact of the plan on each levying body that is at least partially within the boundaries of the development or redevelopment project area or district. This analysis shall show the impact on the economy if the project is not built, and is built pursuant to the development or redevelopment plan under consideration. The cost-benefit analysis shall include a fiscal impact study on every affected levying body, and sufficient information from the developer for the agency, if any proposing the plan, the county commission be asked to approve the project and the development office to evaluate whether the project as proposed is financially feasible.

(3) An economic feasibility study;

(4) A detailed list of estimated project costs;

(5) A description of the methods of financing all estimated project costs, including the issuance of tax increment obligations, and the time when the costs or monetary obligations related thereto are to be incurred;

(6) A certification by the county assessor of the base-assessed value of real and tangible personal property having a tax situs in a development or redevelopment project area or district;

(7) The type and amount of any other revenues that are expected to be deposited to the tax increment financing fund of the development or redevelopment project area or district;

(8) A map showing existing uses and conditions of real property in the development or redevelopment project area or district;

(9) A map of proposed improvements and uses in the area or district;

(10) Proposed changes of zoning ordinances, if any;

(11) Appropriate cross-references to any master plan, map, building codes, and municipal ordinances or county commission orders affected by the project plan;

(12) A list of estimated nonproject costs; and

(13) A statement of the proposed method for the relocation of any persons, businesses or organizations to be displaced.

(c) If the project plan is to include tax increment financing, the tax increment financing portion of the plan shall set forth:

(1) The amount of indebtedness to be incurred pursuant to this article;

(2) An estimate of the tax increment to be generated as a result of the project;

(3) The method for calculating the tax increment, which shall be in conformance with the provisions of this article, together with any provision for adjustment of the method of calculation;

(4) Any other revenues, such as payment in lieu of tax revenues, to be used to secure the tax increment financing; and

(5) Any other provisions as may be deemed necessary in order to carry out any tax increment financing to be used for the development or redevelopment project.

(d) If less than all of the tax increment is to be used to fund a development or redevelopment project or to pay project costs or retire tax increment financing, the project plan shall set forth the portion of the tax increment to be deposited in the tax increment financing fund of the development or redevelopment project area or district, and provide for the distribution of the remaining portion of the tax increment to the levying bodies in whose jurisdiction the area or district lies.

(e) The county commission or governing body of the municipality that established the tax increment financing fund shall hold a public hearing at which interested parties shall be afforded a reasonable opportunity to express their views on the proposed project plan being considered by the county commission or the governing body of the municipality.

(1) Notice of the hearing shall be published in a newspaper of general circulation in the county or the municipality, if the development or redevelopment project is located in a municipality, at least fifteen days prior to the hearing.

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

(f) Approval by the county commission of a development or redevelopment project plan must be within one year after the date of the county assessor's certification required by

subdivision (5), subsection (b) of this section. The approval shall be by order of the county commission or ordinance of the municipality, which shall contain a finding that the plan is economically feasible.

§7-11B-9. Project plan – amendment.

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

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

(1) Notice of the hearing shall be published in a newspaper of general circulation in the county or municipality in which the project is to be located once a week for three consecutive weeks prior to the date of the public hearing.

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

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

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

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

(a) No development or redevelopment project area or district may be in existence for a period longer than thirty years and no tax increment financing obligations may have a final maturity date later than the termination date of the area or district.

(b) The county commission or governing body of the municipality creating the development or redevelopment area or district may set a shorter period for the existence of the area or district. In this event, no tax increment financing obligations may have a final maturity date later than the termination date of the area or district.

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

(d) The county commission shall adopt, upon the expiration of the time periods set forth in this section, an order terminating the development or redevelopment project area or district created by the county commission: *Provided*, That no area or district shall be terminated so long as bonds with respect to the area or district remain outstanding.

(e) The governing body of county commission shall repeal, upon the expiration of the time periods set forth in this section, the ordinance establishing the development or redevelopment project area or district: *Provided*, That no area or district shall be terminated so long as bonds with respect to the area or district remain outstanding.

§7-11B-11. Costs of formation of development or redevelopment project area or district.

(a) The county commission, or the governing body of a municipality, may pay, but shall have no obligation to pay, the costs of preparing the project plan or forming the development or redevelopment project area or district created by them.

(b) If the county commission, or the governing body of the municipality, elects not to incur those costs, they shall be made project costs of the area or district and reimbursed from bond proceeds or other financing, or may be paid by developers, property owners or other persons interested in the success of the development or redevelopment project.

§7-11B-12. Overlapping districts prohibited.

The boundaries of any development and redevelopment project areas or districts shall not overlap with any other development or redevelopment project area or district.

§7-11B-13. Conflicts of interest; required disclosures and abstention.

(a) If any member of the governing body of the agency applying for a development or redevelopment project or a development or redevelopment project plan, a member of the county commission considering the application, a member of the governing body of a municipality considering the application, or an employee or consultant of the agency, county commission or municipality involved in the planning and preparation of a development or redevelopment plan, or a development or redevelopment project for a development or redevelopment project area or district, or a proposed development or redevelopment project area or district, owns or controls an interest, direct or indirect, in any property included in any development or redevelopment project area or district, or a proposed development or redevelopment project area or district, he or she shall disclose the same in writing to the clerk of the county commission, or to recorder of the municipality if he or she is an official or employee of the municipality, and shall also so disclose the dates, terms, and conditions of any disposition of any such interest, which disclosures shall be acknowledged by county commission, or the governing body of the municipality if he or she is an official or employee of the municipality, and entered upon the minutes books of the county commission, or the governing body of the municipality, acknowledging the disclosure.

(b) If an individual holds or held an interest required to be disclosed under subsection (a) of this section, then that individual shall refrain from any further official involvement in regard to the development or redevelopment plan, the development or redevelopment project or the development or redevelopment project area or district, shall abstain from voting on any matter pertaining to the development or redevelopment plan, the development or redevelopment project or the development or redevelopment project area or district, and shall abstain from communicating with other members concerning any matter pertaining to that plan, project or area.

(c) Additionally, no member of the county commission or governing body of a municipality considering a project or plan, no member of the governing body of an agency proposing a project or plan, or any employee of the county, municipality or agency shall acquire any interest, direct or indirect, in any property in a development or redevelopment project area or district, or a proposed development or redevelopment project area or district, after either: (1) The

individual obtains knowledge of the plan or project; or (2) the first published public notice of the plan, project or area, whichever first occurs.

§7-11B-14. Projects financed by tax increment financing considered to be public improvements subject to prevailing wage, local labor preference and competitive bid requirements.

(a) Any project acquired, constructed or financed, in whole or in part, by a county commission or municipality under this article shall be considered to be a “public improvement” within the meaning of the provisions of articles one-c and five-a, chapter twenty-one of this code.

(b) The county commission or municipality shall, except as provided in subsection (c) of this section, solicit or require solicitation of competitive bids and require the payment of prevailing wage rates as provided in article five-a, chapter twenty-one of this code and compliance with article one-c of said chapter for every project or infrastructure project funded pursuant to this article exceeding twenty-five thousand dollars in total cost.

(c) Following the solicitation of the bids, the construction contract shall be awarded to the lowest qualified responsible bidder, who shall furnish a sufficient performance and payment bond: *Provided*, That the county commission, municipality or other person soliciting the bids may reject all bids and solicit new bids on the project.

(d) This section does not:

(1) Apply to work performed on construction projects not exceeding a total cost of fifty thousand dollars by regular full-time employees of the county commission or the municipality: *Provided*, That no more than fifty thousand dollars shall be expended on an individual project in a single location in a twelve-month period;

(2) Prevent students enrolled in vocational educational schools from being used in construction or repair projects when such use is a part of the students’ training program;

(3) Apply to emergency repairs to building components and systems: *Provided*, That the term “emergency repairs” means repairs that, if not made immediately, will seriously impair the use of the building components and systems or cause danger to those persons using the building components and systems; or

(4) Apply to any situation where the county commission or municipality comes to an agreement with volunteers, or a volunteer group, by which the governmental body will provide construction or repair materials, architectural, engineering, technical or any other professional services and the volunteers will provide the necessary labor without charge to, or liability upon, the governmental body: *Provided*, That the total cost of the construction or repair projects does not exceed fifty thousand dollars.

(e) The provisions of subsection (b) of this section apply to privately owned projects or infrastructure projects constructed on lands not owned by the county commission, a municipality or a government agency or instrumentality when the owner or the owner’s agent or person financing the owner’s project receives money from the tax increment financing fund for the owner’s project.

§7-11B-15. Reports by county commissions and municipalities, contents, and publication; procedure to determine progress of project; reports by development office, content of reports; rule-making authority; development office to provide manual and assistance.

(a) Each year, the county commission, or its designee, and the governing body of a municipality, or its designee, that has approved a development or redevelopment project plan shall prepare a report giving the status of each plan and each development and redevelopment project included in the plan and file it with the executive director of the development office by the first day of October each year. The report shall include the following information:

(1) The aggregate amount and the amount by source of revenue in the tax increment financing fund;

(2) The amount and purpose of expenditures from the tax increment financing fund;

(3) The amount of any pledge of revenues, including principal and interest on any outstanding tax increment financing indebtedness;

(4) The base-assessed value of the development or redevelopment project, or the development or redevelopment project area or district, as appropriate;

(5) The assessed value for the current tax year of the development or redevelopment project property, or of the taxable property having a tax situs in the development or redevelopment project area or district, as appropriate;

(6) The assessed value added to base-assessed value of the development or redevelopment project, or the taxable property having a tax situs in the development or redevelopment area or district, as the case may be;

(7) Payments made in lieu of taxes received and expended;

(8) Reports on contracts made incidental to the implementation and furtherance of a development or redevelopment plan or project;

(9) A copy of any development or redevelopment plan, which shall include the required findings and cost-benefit analysis;

(10) The cost of any property acquired, disposed of, rehabilitated, reconstructed, repaired or remodeled;

(11) The number of parcels of land acquired by or through initiation of eminent domain proceedings;

(12) The number and types of jobs projected by the project developer to be created, if any, and the estimated annualized wages and benefits paid or to be paid to persons filling those jobs;

(13) The number, type and duration of the jobs created, if any, and the annualized wages and benefits paid;

(14) The amount of disbursements from the tax increment financing fund during the most recently completed fiscal year, in the aggregate and in such detail as the executive director of the development office may require;

(15) An annual statement showing payments made in lieu of taxes received and expended during the fiscal year;

(16) The status of the development or redevelopment plan and projects therein;

(17) The amount of outstanding tax increment financing obligations; and

(18) Any additional information the county commission or the municipality preparing the report deems necessary or that the executive director of the development office may by procedural rule require.

(b) Data contained in the report required by subsection (a) of this section shall be deemed a public record, as defined in article one, chapter twenty-nine-b of this code.

(1) The county commission's annual report shall be published on its web site, if it has a web site. If the county does not have a web site, the annual report shall be published on the web site of the development office.

(2) The municipality's annual report shall be published on its web site, if it has a web site. If the municipality does not have a web site, the annual report shall be published on the web site of the development office.

(c) After the close of the fiscal year, but on or before the first day of October each year, the county commission and the governing body of a municipality that approved a development or redevelopment plan shall publish in a newspaper of general circulation in the county or municipality, as appropriate, an annual statement showing for each development or redevelopment project or plan for which tax increment financing obligations have been issued:

(1) A summary of receipts and disbursements, by major category, of moneys in the tax increment financing fund during that fiscal year;

(2) A summary of the status of the development or redevelopment plan and each project therein;

(3) The amount of tax increment financing principal outstanding as of the close of the fiscal year; and

(4) Any additional information the county commission or municipality deems necessary or appropriate to publish.

(d) Five years after the establishment of a development or redevelopment plan, and every five years thereafter, the county commission or municipality that approved the plan shall hold a public hearing regarding that development or redevelopment plan and the projects created or to be created in the development or redevelopment project area or district pursuant to this article.

(1) The purpose of the public hearing is to determine if the development or redevelopment plan and the proposed project or projects are making satisfactory progress under the proposed time schedule contained within the approved plans for completion of the projects.

(2) Notice of this public hearing shall be given in a newspaper of general circulation in the county, or in the municipality for a municipal plan, once each week for four successive weeks immediately prior to the hearing.

(3) Public hearings on development and redevelopment plans and projects may be held as part of a regular or special meeting of the county commission, or governing body of the municipality, that adopted the plan.

(e) The executive director of the development office shall submit a report to the governor, the speaker of the House of Delegates and the president of the Senate no later than February first of each year. The report shall contain a summary of all information received by the executive director pursuant to this section.

(f) For the purpose of facilitating and coordinating the reports required by this section, the executive director of the development office may promulgate procedural rules in the manner provided in article three, chapter twenty-nine-a of this code, to ensure compliance with this section.

(g) The executive director of the development office shall provide information and technical assistance, as requested by a county commission or the governing body of a municipality, on the requirements of this article. The information and technical assistance shall be provided in the form of a manual, written in an easy-to-follow manner, and through consultations with staff of the development office.

(h) By the first day of October each year, each agency that proposed a development or redevelopment plan that was approved by a county commission, or the governing body of a municipality, and each county commission, or governing body of a municipality, that approved a development or redevelopment plan that was not proposed by an agency shall report to the executive director of the development office the name, address, phone number and primary line of business of any business that relocates to the development or redevelopment project area or district during the immediately preceding fiscal year of the state. The executive director shall compile and report the same to the governor, the speaker of the House of Delegates and the president of the Senate by the first day of February of the next calendar year.

§7-11B-16. Valuation of real property.

(a) Upon and after the effective date of the creation of a development or redevelopment project area or district, the county assessor of the county in which the area or district is located shall transmit to the county clerk a certified statement of the base value, total ad valorem regular levy rate, total general obligation bond debt service ad valorem rate, and total excess levy rate applicable for the development or redevelopment area or district.

(1) The assessor shall undertake, upon request of the county commission, or the governing body of the municipality, creating the development or redevelopment project area or district, an investigation, examination, and inspection of the taxable real and tangible personal property having a tax situs in the area or district and shall reaffirm or revalue the base value for assessment of the property in accordance with the findings of the investigation, examination and inspection.

(2) The county assessor shall determine, according to his or her best judgment from all sources available to him or her, the full aggregate assessed value of the taxable property in the area or district, which aggregate assessed valuation, upon certification thereof by the assessor to the clerk, constitutes the base value of the development or redevelopment project area or district.

(b) The county assessor shall give notice annually to the designated finance officer of each levying body having the power to levy taxes on property within each area or district of the current value and the incremental value of the property in the development or redevelopment project area or district.

(c) The assessor shall also determine the tax increment by applying the applicable ad valorem regular levy rates to the incremental value.

(d) The notice shall also explain that the entire amount of the tax increment allocable to property within the development or redevelopment project area or district will be paid to the tax increment financing fund of the development or redevelopment project area or district until it is terminated.

(e) The assessor shall identify upon the landbooks those parcels of property that are within each existing development or redevelopment project area or district, specifying on landbooks the name of each area or district.

§7-11B-17. Division of ad valorem real property tax revenue.

(a) For so long as the development or redevelopment project area or district exists, the county sheriff shall divide the ad valorem tax revenue collected, with respect to taxable property in the area or district, as follows:

(1) The assessor shall determine for each tax year:

(A) The amount of ad valorem property tax revenue that should be generated by multiplying the assessed value of the property for the then current tax year by the aggregate of applicable levy rates for the tax year;

(B) The amount of ad valorem tax revenue that should be generated by multiplying the base-assessed value of the property by the applicable regular ad valorem levy rates for the tax year;

(C) The amount of ad valorem tax revenue that should be generated by multiplying the assessed value of the property for the current tax year by the applicable levy rates for general obligation bond debt service for the tax year;

(D) The amount of ad valorem property tax revenue that should be generated by multiplying the assessed value of the property for the current tax year by the applicable excess levy rates for the tax year; and

(E) The amount of ad valorem property tax revenue that should be generated by multiplying the incremental value by the applicable regular levy rates for the tax year.

(2) The sheriff shall determine from the calculations set forth in subdivision (1) subsection (a) of this section the percentage share of total ad valorem revenue for each levying body according to paragraphs (B) through (D), subdivision (1), subsection (a) of this section, by dividing each of such amounts by the total ad valorem revenue figure determined by the calculation in paragraph (A), subdivision (1), Subsection (a) of this section; and

(3) On each date on which ad valorem tax revenue is to be distributed to the levying bodies, such revenue shall be distributed by:

(A) Applying the percentage share determined according to paragraph (B), subdivision (1), subsection (a) of this section to the revenues received and distributing such share to the levying bodies entitled to such distribution pursuant to current law;

(B) Applying the percentage share determined according to paragraph (C), subdivision (1), subsection (a) of this section to the revenues received and distributing such share to the levying bodies entitled to such distribution by reason of having general obligation bonds outstanding;

(C) Applying the percentage share determined according to paragraph (D), subdivision (1), subsection (a) of this section to the revenues received and distributing such share to the levying bodies entitled to such distribution by reason of having excess levies in effect for the tax year; and

(D) Applying the percentage share determined according to paragraph (E), subdivision (1), subsection (a) of this section to the revenues received and distributing such share to the tax increment financing fund of the development or redevelopment project area or district.

(b) In each year for which there is a positive tax increment, the county sheriff shall remit to the tax increment financing fund of the development or redevelopment project area or district that portion of the ad valorem property taxes collected that consists of the tax increment.

(c) Any additional moneys appropriated to the development or redevelopment project area or district pursuant to an appropriation by the county commission that created the district and any additional moneys dedicated to the fund from other sources shall be deposited to the tax increment financing fund for the development or redevelopment project area or district by the sheriff.

(d) Any funds deposited into the tax increment financing fund of the development or redevelopment project area or district may be used to pay project costs, principal and interest on bonds, and the cost of any other improvements in the development or redevelopment project area or district deemed proper by the county commission.

(e) Unless otherwise directed pursuant to any agreement with the holders of tax increment financing obligations, moneys in the tax increment financing fund may be temporarily invested in the same manner as other funds of the county commission, or the municipality, that established the fund.

(f) If less than all of the tax increment is to be used for project costs or pledged to secure tax increment financing as provided in the plan for the development or redevelopment project area or district, the sheriff shall account for that fact in distributing the ad valorem property tax revenues.

§7-11B-18. Payments in lieu of taxes and other revenues.

(a) The county commission or municipality that created the development or redevelopment project area or district shall deposit in the tax increment financing fund of the development or redevelopment project area or district all payments in lieu of taxes on tax exempt property located within the development or redevelopment project area or district.

(b) As a condition of receiving tax increment financing, the lessee of property that is exempt from property taxes because it is owned by this state, a political subdivision of this state or an agency or instrumentality thereof, the lessee shall execute a payment in lieu of tax agreement that shall remain in effect until the tax increment financing obligations are paid, during which period of time the lessee agrees to pay to the county sheriff an amount equal to the amount of ad valorem property taxes that would have been levied against the assessed value of the property were it owned by the lessee rather than a tax exempt entity. The portion of the payment in lieu of taxes attributable to the incremental value shall be deposited in the tax increment financing fund. The remaining portion of the in lieu payment shall be distributed among the levying bodies as follows:

(1) The portion of the in lieu tax payment attributable to the base value of the property shall be distributed to the levying bodies in the same manner as taxes attributable to the base value of other property in the area or district are distributed; and

(2) The portions of the in lieu tax payment attributable to levies for bonded indebtedness and excess levies shall be distributed in the same manner as those levies on other property in the area or district are distributed.

(c) Other revenues to be derived from the development or redevelopment project area or district may also be deposited in the tax increment financing fund at the direction of the county commission.

§7-11B-19. Tax increment obligations generally.

(a) Tax increment obligations may be issued by a county commission, or the governing body of the municipality, to pay project costs for projects included in the development or redevelopment plan approved by the development office and adopted by the county commission, or the governing body of the municipality, that are located in a development or redevelopment project area or district, or on land not in the district that is contiguous to the area or district.

(1) Tax increment financing obligations may be issued for project costs, as defined in section three of this article, which may include interest prior to and during the carrying out of a project and for a reasonable time thereafter, with such reserves as may be required by any agreement securing the obligations and all other expenses incidental to planning, carrying out and financing the project.

(2) The proceeds of tax increment financing obligations may also be used to reimburse the costs of any interim financing entered on behalf of projects in the development or redevelopment project area or district.

(b) Tax increment financing obligations issued under this article shall be payable solely from the tax increment or other revenues deposited to the credit of the tax increment financing fund of the development or redevelopment project area or district.

(c) Under no event shall tax increment financing obligations be secured or be deemed to be secured by the full faith and credit of the county commission or the municipality issuing the tax increment financing obligations.

(d) Every tax increment financing bond, note or other obligation issued under this article shall recite on its face that it is a special obligation payable solely from the tax increment and other revenues pledged for its repayment.

§7-11B-20. Tax increment financing obligations -- Authority to issue.

For the purpose of paying project costs, or for the purpose of refunding notes issued under this article for the purpose of paying project costs, the county commission or municipality creating the development or redevelopment project area or district may issue tax increment financing obligations payable out of positive tax increments and other revenues deposited to the tax increment financing fund of the development or redevelopment project area or district.

§7-11B-21. Tax increment financing obligations -- Authorizing resolution.

(a) Issuance of tax increment financing obligations shall be authorized by order of the county commission, or resolution of the municipality, that created the development or redevelopment project area or district.

(b) The order, or resolution, shall state the name of the development or redevelopment project area or district, the amount of tax increment financing obligations authorized, the type of obligation authorized, and the interest rate to be borne by the bonds, notes or other tax increment financing obligations.

(c) The order or ordinance may prescribe the terms, form, and content of the tax increment financing obligations and other particulars or information the county commission, or governing body of the municipality, issuing the obligations deems useful, or it may include by

reference the terms and conditions set forth in a trust indenture or other document securing the development or redevelopment project tax increment financing obligations.

§7-11B-22. Tax increment financing obligations - Terms, conditions.

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

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

(c) Tax increment financing obligations shall mature over a period not exceeding thirty years from the date of entry of the county commission's order, or the effective date of the municipal ordinance, creating the development or redevelopment project area or district and approving the development or redevelopment plan, or a period terminating with the date of termination of the development or redevelopment project area or district, whichever period terminates earlier.

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

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

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

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

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

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

(j) Insofar as they are consistent with subdivision (1), subsection (a) and subsections (b) and (c) of this section, the procedures for issuance, form, contents, execution, negotiation, and registration of county and municipal industrial or commercial revenue bonds set forth in article two-c, chapter thirteen of this code are incorporated by reference herein.

(k) The bonds may be refunded or refinanced and refunding bonds may be issued in any principal amount: *Provided*, That the last maturity of the refunding bonds shall not be later than the last maturity of the bonds being refunded.

§7-11B-23. Tax increment financing obligations – Security – marketability.

To increase the security and marketability of tax increment financing obligations, the county commission or municipality issuing the obligations may:

(1) Create a lien for the benefit of the holders of the obligations upon any public improvements or public works financed by the obligations; or

(2) Make such covenants and do any and all such actions, not inconsistent with the constitution of this state, which may be necessary, convenient or desirable in order to additionally secure the obligations, or which tend to make the obligations more marketable

according to the best judgment of the county commission or municipality issuing the tax increment financing obligations.

§7-11B-24. Tax increment financing obligations -- Special fund for repayment.

(a) Tax increment financing obligations issued by a county commission or municipality are payable out of the tax increment financing fund created for each development and redevelopment project area or district created under this article.

(b) The county commission or municipality issuing the tax increment financing obligations shall irrevocably pledge all or part of the tax increment financing fund to the payment of the obligations. The tax increment financing fund, or the designated part thereof, may thereafter be used only for the payment of the obligations and their interest until they have been fully paid.

(c) A holder of the tax increment financing obligations shall have a lien against the tax increment financing fund for payment of the obligations and interest on them and may bring suit to enforce the lien.

§7-11B-25. Tax increment financing obligations – Tax exemption.

Tax increment financing obligations issued under this article, together with the interest and income therefrom, shall be exempt from all state income taxes, whether imposed on individuals, corporations or other persons, from state business franchise taxes and from ad valorem property taxes.

§7-11B-26. Excess funds.

(a) Moneys received in the tax increment financing fund of the development or redevelopment project area or district in excess of amounts needed to pay project costs and debt service may be used by the county commission or municipality that created the development or redevelopment project area or district for other projects within the area or district, or distributed to the levying bodies as provided in this article.

(b) Upon termination of the area or district, all amounts in the tax increment financing fund of the area or district shall be paid over to the levying bodies in the same proportion that ad valorem property taxes on the base value was paid over to those levying bodies for the tax year in which the area or district is terminated.

§7-11B-27. Computation of local share for support of public schools when tax increment financing is used.

For purposes of any computation made in accordance with the provisions of section eleven, article nine-a, chapter eighteen of this code, for a county in which there is tax increment financing in effect pursuant to this article, the assessed value shall be the current assessed value minus the amount of assessed value used to determine the tax increment amount, minus any other adjustments allowed by section eleven of said article nine-a.

§7-11B-28. Effective Date.

Notwithstanding the effective date of this act of the Legislature, this article shall not become operational and shall have no force and effect until the day the people ratify an amendment to the constitution of this state authorizing tax increment financing secured by ad valorem property taxes.

Appendix B: Sample Project Application Form to be submitted by an Outside Developer to a County or Class I or II Municipality

**Sample County/Sample Municipality, Sample, West Virginia
Application for Consideration of Projects for Tax Increment Financing**

Any entity wishing to pursue tax increment financing secured by property tax dollars must complete the following application.

The application must be accompanied by the requested additional information and documentation. If the applicant is unable to provide any of the requested information, that must be documented, and the justification submitted along with the application.

Private developers will be expected to pay for any costs incurred by Sample County/Sample Municipality during the application process that are allowable costs under the West Virginia Tax Increment Financing Act. Public entities (federal, state, or local) proposing projects may be expected to help defray application costs under an agreement with Sample County/Sample Municipality; however, such costs may be repaid to these public entities from the TIF fund.

Information on Person Preparing the Application:

Name _____
Title _____
Business Name _____
Business Address _____
Phone Number _____
Fax Number _____
Email Address _____

Contact Information of Person Who Can Answer Questions Regarding this Document and its Attachments:

Name _____
Title _____
Business Name _____
Business Address _____
Phone Number _____
Fax Number _____
Email Address _____

Legal Counsel

Contact Person _____

Firm Name _____
Firm Address _____
Phone Number _____
Fax Number _____
Email Address _____

Project Developer Information:

Is the applicant a sole proprietorship, corporation, partnership, or other legal entity?

1. If applicant is a corporation, please enclose a copy of the articles of incorporation, and any amendments thereto, and answer the following:

State of Incorporation _____

Date of Incorporation _____

Is applicant authorized to do business in West Virginia? (YES or NO) _____
If YES, please enclose a copy of any necessary certifications.

Is applicant a publicly-traded or private corporation? _____
If PUBLIC, how and where is stock traded? _____

List the following information for each officer and director of the company:

Name	Title	Address	Telephone
------	-------	---------	-----------

_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

2. If Applicant is a partnership, please provide a copy of the partnership agreement and complete the following:

State of Organization _____

Date of partnership agreement _____

Is applicant a general or limited partnership? _____

Has applicant done business in West Virginia? (YES or NO) _____
If YES, please state date, location, and type of business conducted:

List the following information for each general or limited partner:

Name	Address	Telephone

3. If Applicant is a limited liability company or other entity, please provide a copy of the current articles of organization and complete the following:

State of Organization _____

Date of Organization _____

Is applicant authorized to do business in West Virginia? (YES or NO) _____
If YES, please enclose a copy of any necessary certifications.

Has applicant done business in West Virginia? (YES or NO) _____
If YES, please state date, location, and type of business conducted:

List the following information for each member:

Name	Address	Telephone

Financial Statements

The applicant must attach a complete report, prepared in accordance with generally accepted accounting practices, reflecting current financial conditions of: (1) the applicant, (2) any entity that owns a ten percent or greater equity interest in the applicant, and (3) any person or business entity guaranteeing the performance of the applicant. This report must include audited balance sheets and annual statements for each of the five most recent years. If financial statements are **unaudited**, please submit the last five years' federal income tax returns. If any of these persons is a pass-through entity for federal income tax purposes, please submit, for the most recent five years, copies of federal form 1065, including all schedules filed, or federal form 1120S, including all schedules filed, and copies of federal form 8825.

Surety Information

Has any surety or bonding company ever been required to perform on your default? (YES or NO) _____

If YES, attach a statement naming the surety or bonding company, date, amount of bond, and the circumstances surrounding the default and performance.

Bankruptcy Information

Have you ever been declared bankrupt? (YES or NO) _____

If YES, state date, court jurisdiction, which bankruptcy chapter, amount of liabilities, and amount of assets.

Prior or Pending Litigation

Provide detailed information regarding prior or pending litigation, liens, or claims against the applicant, as they pertain to applicant's development experience.

Tax Payment Information

Is the Applicant current on payment of all taxes? (Municipal, county, federal, school, payroll taxes (including unemployment compensation and workers compensation premiums), sales and use taxes, etc.? (YES or NO) _____

If NO, please explain.

Applicant's Tax Information

Federal Tax ID Number _____

Project Developer Experience

Please provide information on similar projects with which the applicant has been involved. Include information on the location of the project, the cost breakdown, any cost overruns, financing methods, the completion date (or estimated completion date, if still in progress), and any other information necessary to assess the success and scope of the project.

Please provide the names and pertinent experience of all employees or principals of the applicant who will be directly involved in the development and execution of this project.

Bond Counsel, Investment Bank, or Commercial Bank

Provide contact information for any bond counsel, investment bank, and/or commercial bank who may have provided analysis on the financial feasibility of this project.

Include name, firm, address, phone number, fax number, and email address for each individual.

The Project – Please submit the following additional information along with this application form to the county commission or governing body of the municipality in order for the proposed project to be considered for tax increment financing:

- A detailed description of the project.
- A list of estimated project costs and the sources of financing to be used for this project. Include a written justification for the use of tax increment financing, including findings that this project would not otherwise be fully funded.
- Evidence of the financial feasibility of this project. If the project expects to rely on the issuance of TIF obligations, provide a preliminary assessment from a bond counsel and/or an underwriter as to whether such bonds or notes could be sold.
- A project development schedule (timeline).
- Detailed information about the jobs estimated to be created by this project in the project area or district including the types of jobs, wages and benefits, and whether these jobs are construction jobs, permanent jobs, temporary or seasonal jobs, part-time or full-time. Part-time jobs must be aggregated and expressed as full-time equivalent positions.
- Attach maps showing 1) the current uses and conditions of the development or redevelopment project area or district and 2) the proposed improvements and uses of the area or district.
- A list of any public improvements that will be needed in addition to the private developer's project.
- An estimate of the fiscal impact of this project on the local levying bodies over the life of the development or redevelopment project area or district. This includes the effect on schools, roads, public safety, etc.
- Any other information that may be useful or necessary to evaluate this project properly and fairly.

Appendix C: Sample Inducement Resolution

AT A REGULAR SESSION OF THE COUNTY COMMISSION
OF _____ COUNTY, WEST VIRGINIA,
HELD FOR SAID COUNTY AT THE COURTHOUSE
THEREOF, ON _____,
THE _____ DAY OF _____, A.D., 20__

MEMBERS: _____, PRESIDENT,
_____ and _____,
COMMISSIONERS OF THE COUNTY

ORDER TAKING OFFICIAL ACTION WITH RESPECT TO THE PROPOSED
ISSUANCE OF _____ BONDS BY THE COUNTY COMMISSION
OF _____ COUNTY, WEST VIRGINIA, TO FINANCE THE
ACQUISITION, INSTALLATION, CONSTRUCTION AND IMPROVEMENT OF
CERTAIN _____ FACILITIES _____ AT _____

_____.

WHEREAS, The County Commission of _____ County, West
Virginia (the "County Commission") is a governmental body of the State of West
Virginia and empowered and authorized by the West Virginia Tax Increment Financing
Act (Chapter 17, Article 11B, Section 1, et seq., the Code of West Virginia, 1931, as
amended) (the "Act"), among other things, in furtherance of the public purposes as found
and determined by the Legislature of West Virginia, as set forth in Section 2 of the Act,
to finance the acquisition, installation, construction and improvement of
_____ facilities, as defined in the Act, including, but not limited to,
_____ facilities, and to issue bonds pursuant to the Act to provide funds
for such financing; and

WHEREAS, _____ ("XYZ") has advised
the County Commission that it has under consideration the acquisition, installation,
construction and improvement of _____ facilities, which
facilities are generally described in Appendix A hereto (the "Project"), and has requested
the County Commission to authorize the issuance and sale of bonds (the "Bonds")
pursuant to the Act in such amounts as may be necessary to finance [a portion of] the cost
of the Project presently estimated to be in an aggregate principal amount not to exceed
\$_____.

NOW, THEREFORE, BE IT ORDERED BY THE COUNTY
COMMISSION OF _____ COUNTY, WEST VIRGINIA, AS FOLLOWS:

1. It is hereby found and determined that the acquisition, installation, construction and improvement of the Project is desirable to protect the health and welfare of the citizens of _____ County and the State of West Virginia and to encourage economic growth and development in _____ County and the State of West Virginia.

2. It is hereby further found and determined that the site of the Project is located entirely within _____ County, West Virginia.

3. The County Commission shall assist XYZ in the acquisition, installation, construction and improvement of the Project by authorizing the issuance of the Bonds in one or more series in an aggregate amount necessary to finance the cost of the Project, but not to exceed \$ _____.

4. The County Commission, including the President and the Clerk of the County Commission, will cooperate with XYZ, and such parties as XYZ may select for the purpose of assisting or participating in the sale of the Bonds on the best terms reasonably obtainable, and if arrangements therefore satisfactory to XYZ can be made, the County Commission will adopt such orders, resolutions and proceedings and authorize the execution and delivery of such instruments and the taking of such further actions as may be necessary or advisable to the authorization, issuance and sale of the Bonds, all as shall be authorized by law and mutually satisfactory to the County Commission and XYZ.

5. The County Commission will designate one or more banks located either within or without the State of West Virginia at the direction of XYZ to serve as Trustee and will enter into a trust agreement (and provisions therein), as permitted or authorized by law, as shall be mutually satisfactory to the County Commission and XYZ.

6. It is intended by the County Commission that the adoption of this order shall constitute "some other similar official action" toward the issuance of the Bonds within the meaning of Section 142 of the Internal Revenue Code of 1986, as amended, and any applicable Treasury Regulations.

7. It having been represented to the County Commission that it is necessary to proceed immediately with the acquisition, construction and installation of the Project, the County Commission hereby authorizes XYZ to proceed with plans for such acquisition, construction, and installation, [to enter into contracts for the same] and to take such other steps as it deems necessary or appropriate in connection therewith. The County Commission agrees that XYZ shall be reimbursed from the proceeds of the Bonds for all costs so incurred by it which are eligible costs under the Act.

8. The County Commission hereby finds and declares that County Commission shall not incur any costs with respect to the Project or the above-described Bonds, except for such costs as shall be reimbursed by XYZ regardless of whether the Bonds are issued. It is understood and agreed by and between the County Commission

and XYZ that the provisions hereof are not intended to, and shall not be construed or interpreted to, either (i) obligate, or authorize the expenditure of, any funds or moneys of the County Commission derived from any source whatsoever other than the proceeds from issuance and sale of the Bonds, as provided for in this Order, or the tax increment as defined by the Act, and/or the proceeds from the sale, or otherwise arising from, the Project acquired and constructed by or on behalf of XYZ with the proceeds from such Bonds, or (ii) create any personal liability of the employees, agents, or members of the County Commission.

9. This Order shall take effect immediately.

Order dated this ____ day of _____, 20 ____.

THE COUNTY COMMISSION OF
_____ COUNTY, WEST VIRGINIA

By: _____
President

ATTEST:

By: _____
Clerk

APPROVED BY:

Counsel to the Commission

ATTACHMENT A

Project Description

The Project consists of the acquisition, construction, and installation of

Appendix D: Cover Sheet for West Virginia Development Office - Approval of a Development or Redevelopment Project Area or District

County or Municipality _____

Contact Person at the County or Municipality _____

Title _____

Address _____

Phone Number _____

Fax Number _____

Email Address _____

Name of the proposed development or redevelopment project area or district:

Description of boundaries of the proposed project area or district with sufficient detail to ensure there is no ambiguity about the proposed area. Please also include a map of the proposed project area or district.

Base-assessed value of the taxable property in the proposed development or redevelopment area or district (as certified by the county assessor)

\$ _____

Submit this cover sheet with the following information to the West Virginia Development Office for approval of a proposed development or redevelopment project area or district:

A resolution, order, or ordinance that the real property within the proposed development or redevelopment project area or district will be benefited by the elimination or prevention of the spread of slums, blighted, deteriorated, or deteriorating areas; by increasing employment; and/or by encouraging commerce and industry to stay in this area.

Verification and results of the public hearings.

- A copy of the county assessor's certification of the base-assessed value of the taxable property in the development or redevelopment project area or district. This "base-assessed value" is defined as the annual taxable assessed value of all real and tangible personal property within the proposed development or redevelopment project area or district, as shown on the records of the assessor on July 1st preceding the formation of the development or redevelopment project area or district.
- A description of the process to be used to allocate any excess increment that accrues in the TIF fund for this development or redevelopment project area or district that is not tied to a specific project proposal.
- If the application is submitted by a county, the county must provide all municipalities included in the boundaries of the proposed development or redevelopment project area or district thirty (30) days to review the proposed project area or district and must obtain their approval in the form of a resolution. The county must include a copy of the resolution(s).
- If the application is being submitted by a class I or II municipality, the municipality must allow the county or counties included in the boundaries of the proposed development or redevelopment project area or district thirty (30) days to review the proposed project area or district. The county or counties may request further information, provide guidance, or make other formal requests. The class I or II municipality must include any such communications from the county or counties with this application.

Appendix E: Application for West Virginia Development Office Approval of a Development or Redevelopment Project Proposal (Attached)

WEST VIRGINIA TAX INCREMENT FINANCING

SECTION I.

APPLICATION

A. APPLICANT INFORMATION	
1. County or Municipality:	
2. Contact Person/Title:	
3. Address:	
4. Telephone Number: ()	
Fax Number: ()	
Email Address: ()	
5. Name of the proposed development or redevelopment project:	

B. AUTHORIZED REPRESENTATIVE OF APPLICANT	
If project was originally proposed by an entity other than the county or municipality listed above, please provide a contact name and information for someone who can answer questions about the project proposal:	
1. Name/Title:	
2. Company or Organization Name:	
3. Address:	
4. Telephone Number: ()	
Fax Number: ()	
Email Address: ()	

C. PROJECT AREA OR DISTRICT	
Name of development or redevelopment project area or district in which this project will be located:	
Base assessed value of the taxable property from which the increment will be drawn to finance this project (as certified by the county assessor).	\$

Submit this cover sheet with the following information to the West Virginia
Development Office for approval of a development or redevelopment project proposal.

B: ESTIMATES

Projected increase in value of the taxable property in the development or redevelopment project area or district upon successful completion of the project plan:

\$ _____

Resulting Tax Increments:

\$ _____

Number of jobs to be created by this project in the project area or district.

1. JOB CATEGORY:

WAGES:

BENEFITS:

CONSTRUCTION JOBS:

PERMANENT:

TEMPORARY OR SEASONAL:

PART-TIME:

Part-time jobs must be aggregated and expressed as full-time equivalent positions.

FULL-TIME:

2. JOB CATEGORY:

WAGES:

BENEFITS:

CONSTRUCTION JOBS:

PERMANENT:

TEMPORARY OR SEASONAL:

PART-TIME:

Part-time jobs must be aggregated and expressed as full-time equivalent positions.

FULL-TIME:

3. JOB CATEGORY:

WAGES:

BENEFITS:

CONSTRUCTION JOBS:

PERMANENT:

TEMPORARY OR SEASONAL:

PART-TIME:

Part-time jobs must be aggregated and expressed as full-time equivalent positions.

FULL-TIME:

C: PUBLIC IMPROVEMENTS

(In addition to the private developer's project.)

TYPE	COST	LOCATION
TYPE	COST	LOCATION
TYPE	COST	LOCATION
TYPE	COST	LOCATION
TYPE	COST	LOCATION
TYPE	COST	LOCATION
TYPE	COST	LOCATION

D. ESTIMATED BREAKDOWN OF PROJECT COSTS

	TOTAL	PROPOSED METHOD FOR FINANCING
1. Capital Costs	\$ _____	_____
2. Financing Costs	\$ _____	_____
3. Professional Services	\$ _____	_____
4. Administrative Costs	\$ _____	_____
5. Relocation Costs	\$ _____	_____
6. Environmental Impact Studies/Analyses	\$ _____	_____
7. Public Information	\$ _____	_____
8. Construction of Public Works	\$ _____	_____
9. Associated Costs with the sale/lease of county or municipal property that results in a loss for the county or municipality.	\$ _____	_____
10. A list of nonproject costs	\$ _____	_____
	\$ _____	_____
	\$ _____	_____
	\$ _____	_____
Total Project Cost----->	\$ _____	_____

11. Other sources of financing

E. FINANCING					
OTHER SOURCES:	AMOUNT	RATE	TERM	COLLATERAL	STATUS (PLEASE ATTACH COMMITMENT LETTERS)
1)					
2)					
3)					
4)					
5)					
6)					

F. ALTERNATE FUNDING

What alternate sources of funding have been explored? Why are they unavailable for this project?

F. ALTERNATE FUNDING (Continued)

G. TAX INCREMENT FINANCING OBLIGATIONS

If TIF obligations are expected to be issued, the following information must also be included:

- 1. Amount of indebtedness to be incurred. \$ _____

 - 2. Other revenues to be used to finance debt (including payments in lieu of taxes - identify source(s)).

 - 3. Type/amount of other monies to be deposited in TIF fund for the development or redevelopment project area or district.

 - 4. If less than the full tax increment is to be used, explain how the excess will be used or distributed.

 - 5. Terms for early repayment of the TIF obligations. _____

 - 6. Attach a letter from a bond counsel and/or financial underwriter stating that the proposed project could support tax increment financing bonds or other obligations and the terms and conditions of such offering.
- Name: _____
- Firm: _____
- Address: _____

- Telephone: _____ Fax: _____

SECTION III. ATTACHMENTS

PLEASE PROVIDE THE FOLLOWING ATTACHMENTS

1. Map showing the existing uses and conditions of the real property in the project area or district.
2. A map showing proposed improvements and uses of the land in the project area or district and the boundaries of the property within the development or redevelopment project area or district whose increment will be used for this project.
3. A resolution, order, or ordinance finding that the project is not reasonably expected to occur without the use of tax increment financing.
4. Copy of the certification by the county assessor of the base assessed value of the property whose increment will be used for this project.
5. If the current assessed value is different from the base assessed value, a copy of the certification by the county assessor of the current assessed value of the property in the development or redevelopment area or district that will be used to help support TIF obligations for this project.
6. Verification and results of the public hearings.
7. Analysis of costs to other communities or area in West Virginia as a result of this development.
8. Other information including the effect on the economic that may be necessary or useful to determine whether the project is financially feasible.
9. A memorandum of understanding (MOU) between the developer and the county or municipality about how the competitive bidding process will be conducted.
10. A relocation plan for any displaced persons, businesses, or organizations.
11. Proposed changes to zoning ordinances, if any.
12. Appropriate cross-references to any master plan, map, building codes, and municipal ordinance or county orders affected by the project.
13. If the application is being submitted by a county, the county must provide all municipalities included in the boundaries of the development or redevelopment project area or district thirty (30) days to review the proposed project and must obtain their approval in the form of a resolution. Likewise, if the application is being submitted by a class I or II municipality, the municipality must allow the county or counties included in the development or redevelopment project area or district thirty (30) days to review the proposed project. The county or municipality must include a copy of the resolution(s).
14. The county or counties may request further information, provide guidance, or make other formal requests. The class I or II municipality must include any such communications from the county or counties with this application.
15. If the project was proposed by an entity other than the county or municipality submitting this application, the following, as applicable, must also be submitted:
 - a. Information about the project developer, including corporation, partnership, limited partnership, limited liability company or limited liability partnership papers, if applicable.
 - b. Copies of audited financial statements or federal income tax returns of the developer for the most recent five years. In the event the developer is a partnership, limited liability company or other pass-through entity that does not file federal income tax returns, copies of federal forms 1065, including all schedules filed, or federal form 1120S and all schedules filed, and federal form 8825 shall be filed in lieu of audited financial statements;
 - c. Information on similar projects the company has done in the past and the relevant experience of individuals who will be working on this project.
16. Analysis showing the fiscal impact on each local levying body. (Small analysis is included in Appendix F.) The analysis will consider the costs incurred by the local levying bodies and how those costs will be offset/funded. Possible costs include the effect on schools, public services, utilities. etc.
17. A letter from a bond counsel and/or financial underwriter stating that the proposed project could support tax increment financing bonds or other obligations and the terms and conditions of such offering.

Appendix F: Sample Order and Ordinance

See the West Virginia Municipal League's website at www.wvml.org.

Appendix G: Glossary of Terms

Definitions based on those in the West Virginia Tax Increment Financing Act, §7-11B-3.

Base-assessed value

- A) The taxable assessed value of all real and tangible personal property of a project developer having a tax situs within a development or redevelopment project area or district, as shown upon the landbooks and personal property books of the assessor on the first day of July of the year preceding the formation of the development or redevelopment project area or district; or
- B) The annual taxable assessed value of all real and tangible personal property having a tax situs within a development or redevelopment project area or district, as shown upon the landbooks and personal property books of the assessor on the first day of July of the year preceding the formation of the development or redevelopment project area or district.

Blighted area - An area in which the structures, buildings or improvements, by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for access, ventilation, light, air, sanitation, or open spaces, high density of population and overcrowding or the existence of conditions which endanger life or property, are detrimental to the public health, safety, morals or welfare. A blighted area includes:

A) Any area which, by reason of the presence of a substantial number of substandard, slum, deteriorated or deteriorating structures, predominance of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility, or usefulness, unsanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, defective or unusual conditions of title, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, substantially impairs or arrests the sound growth of a municipality, retards the provision of housing accommodations, or constitutes an economic or social liability and is a menace to the public health, safety, morals or welfare in its present condition and use, or

B) Any area that is predominantly open and which because of lack of accessibility, obsolete platting, diversity of ownership, deterioration of structures or of site improvements, or otherwise, substantially impairs or arrests the sound growth of the community.

Conservation area - Any improved area within the boundaries of a development or redevelopment project area or district located within the territorial limits of a municipality or county in which fifty percent (50%) or more of the structures in the area have an age of thirty-five (35) years or more. A conservation area is not yet a blighted area but is detrimental to the public health, safety, morals or welfare and may become a blighted area because of any one or more of the following factors: (1) Dilapidation; (2) obsolescence; (3) deterioration; (4) illegal use of individual structures; (5) presence of structures below minimum code standards; (6) abandonment; (7) excessive vacancies; (8) overcrowding of structures and community facilities; (9) lack of ventilation, light or sanitary facilities; (10) inadequate utilities; (11) excessive land coverage; (12) deleterious

land use or layout; (13) depreciation of physical maintenance; and (14) lack of community planning. A conservation area shall meet at least three of the preceding factors.

County commission – The governing body of a county of the state.

Current assessed value

- A) The annual taxable assessed value of all real and tangible personal property of a developer having a tax situs within a development or redevelopment project area or district as shown upon the landbook and personal property records of the assessor; or
- B) The annual taxable assessed value of real and tangible personal property having a tax situs within a development or redevelopment project area or district as shown upon the landbook and personal property records of the assessor.

Development office – The West Virginia Development Office.

Development project or redevelopment project – A project undertaken by a county commission or the governing body of a municipality in a development or redevelopment project area or district for eliminating or preventing the development or spread of slums or deteriorated, deteriorating or blighted areas, for discouraging the loss of commerce, industry or employment, for increasing employment, or for any combination thereof in accordance with a tax increment financing plan. A development or redevelopment project may include one or more of the following:

- A) The acquisition of land and improvements, if any, within the development or redevelopment project area or district and clearance of the land so acquired; or
- B) The development, redevelopment, revitalization or conservation of the project area whenever necessary (1) to provide land for needed public facilities, public housing, or industrial or commercial development or revitalization, (2) to eliminate unhealthful unsanitary or unsafe conditions, (3) to lessen density, mitigate or eliminate traffic congestion, reduce traffic hazards, eliminate obsolete or other uses detrimental to public welfare, or (4) to otherwise remove or prevent the spread of blight or deterioration;
- C) Financial or other assistance in the relocation of persons and organizations displaced as a result of carrying out the development or redevelopment project and other improvements necessary for carrying out the project plan, together with those site improvements that are necessary for the preparation of any sites and making any land or improvements acquired in the development or redevelopment project area or district available, by sale or lease, for public housing or for development, redevelopment or rehabilitation by private enterprise for commercial or industrial uses in accordance with the plan;
- D) The construction of capital improvements within a development or redevelopment project area or district designed to increase or enhance the development of commerce, industry or housing within the project area or district; or

- E) Any other projects the county commission, the governing body of the municipality, or the proposing agency deems appropriate to carry out the West Virginia Tax Increment Financing Act.

Development or redevelopment project area or district - An area proposed by one or more agencies as a development or redevelopment project area or district, which may include one or more counties, one or more municipalities or any combination thereof, that has been approved by the county commission of each county in which the project area is located if the project is located outside the corporate limits of a municipality, or by the governing body of a municipality if the project area is located within a municipality, or by both the county commission and the governing body of the municipality when the development or redevelopment project area or district is located both within and without a municipality.

Economic development area - Any area or portion of an area located within the territorial limits of a municipality or county that is not a blighted or conservation area for which the county commission or governing body of the municipality finds development or redevelopment will not be solely used for development of commercial businesses that will unfairly compete in the local economy and that development or redevelopment is in the public interest because it will:

- A) Discourage commerce, industry or manufacturing from moving their operations to another state;
- B) Result in increased employment in the municipality or county, whichever is applicable; or
- C) Result in preservation or enhancement of the tax base of the county or municipality.

Governing body of a municipality - The city council of a class I or class II municipality in this state.

Incremental value - For any development or redevelopment project area or district, the incremental value is the difference between the base-assessed value and the current assessed value. The incremental value will be positive if the current assessed value exceeds the base-assessed value, and the incremental value will be negative if the current assessed value is less than the base-assessed value.

Local levying body - The county board of education, the county commission, and the governing body of a municipality when the development or redevelopment project area or district is located, in whole or in part, within the boundaries of the municipality.

Obligations or tax increment financing obligations – Bonds, loans, debentures, notes, special certificates, or other evidences of indebtedness issued by a county commission or governing body of a municipality pursuant to the West Virginia Tax Increment Financing Act to carry out a development or redevelopment project or to refund outstanding obligations under that Act.

Order - An order of the county commission adopted in conformity with the provisions of the West Virginia Tax Increment Financing Act and as provided in chapter seven of the West Virginia code.

Ordinance - A law adopted by the governing body of a municipality in conformity with the provisions of the West Virginia Tax Increment Financing Act and as provided in chapter eight of the West Virginia code.

Payment in lieu of taxes - Those estimated revenues from real property and tangible personal property having a tax situs in the area selected for a development or redevelopment project, which revenues according to the development or redevelopment project or plan are to be used for a private use, which levying bodies would have received had a county or municipality not adopted one or more tax increment financing plans, and which would result from levies made after the date of adoption of a tax increment financing plan during the time the current assessed value of all taxable real and tangible personal property in the area selected for the development or redevelopment project exceeds the total base-assessed value of all taxable real and tangible personal property in the development or redevelopment project area or district until the designation is terminated as provided in the West Virginia Tax Increment Financing Act.

Private project - Any project that is subject to ad valorem property taxation in this state or to a payment in lieu of tax agreement that is undertaken by a project developer in accordance with a tax increment financing plan in a development or redevelopment project area or district.

Project - Any facility requiring an investment of capital, including extensions, additions or improvements to existing facilities including water or wastewater facilities, and the remediation of contaminated property as provided for in W. Va. Code § 22-22-1 *et seq.*, but does not include performance of any governmental service by a county or municipal government.

Project Costs - Expenditures made in preparation of the development or redevelopment project plan and made, or estimated to be made, or monetary obligations incurred, or estimated to be incurred, by the county commission which are listed in the project plan as costs of public works or improvements within a development or redevelopment project area or district, plus any costs incidental thereto. Project costs include, but are not limited to:

- A) Capital costs, including, but not limited to, the actual costs of the construction of public works or improvements, new buildings, structures and fixtures, the demolition, alteration, remodeling, repair or reconstruction of existing buildings, structures and fixtures, environmental remediation, parking and landscaping, the acquisition of equipment, and site clearing, grading and preparation;
- B) Financing costs, including, but not limited to, interest paid to holders of evidences of indebtedness issued to pay for project costs, all costs of issuance and any redemption premiums, credit enhancement or other related costs;

- C) Real property assembly costs, meaning any deficit incurred resulting from the sale or lease, as lessor, by the county commission or governing body of a municipality of real or personal property having a tax situs within a development or redevelopment project area or district for consideration that is less than its cost to the county commission or governing body of the municipality;
- D) Professional service costs, including, but not limited to, those costs incurred for architectural planning, engineering and legal advice and services;
- E) Imputed administrative costs, including, but not limited to, reasonable charges for time spent by county employees or municipal employees in connection with the implementation of a project plan;
- F) Relocation costs, including, but not limited to, those relocation payments made following condemnation and job training and retraining;
- G) Organizational costs, including, but not limited to, the costs of conducting environmental impact and other studies, and the costs of informing the public with respect to the creation of a project development area and the implementation of project plans;
- H) Payments made, in the discretion of the county commission or the governing body of a municipality, which are found to be necessary or convenient to creation of development or redevelopment project areas or districts or the implementation of project plans; and
- I) That portion of costs related to the construction of environmental protection devices, storm or sanitary sewer lines, water lines, amenities or streets or the rebuilding or expansion of streets, or the construction, alteration, rebuilding or expansion of which is necessitated by the project plan for a development or redevelopment project area or district, whether or not the construction, alteration, rebuilding or expansion is within the project area or district or on land contiguous thereto.

Project developer - Any person who engages in the development of projects in the state.

Development or redevelopment project area or district - A contiguous geographic area within a county, or within two contiguous counties, or within a municipality or two or more municipalities, or any combination of the aforementioned, in which a development or redevelopment project will be undertaken, as defined and created by order of the county commission, or county commissions in the case of an area located in two counties, or ordinance of the governing body of the municipality, or governing bodies in the case of an area located in two municipalities, or the county commission and the governing body of a municipality when the project area or district encompasses an area part of which is in a municipality and part of which is outside the corporate limits of any municipality.

Project plan - The plan for a development or redevelopment project that is adopted by a county commission or governing body of a municipality in conformity with the

requirements of the West Virginia Tax Increment Financing Act and chapter seven (7) or eight (8) of the West Virginia code.

Real property - All lands, including improvements and fixtures on them, and property of any nature appurtenant to them or used in connection with them, and every estate, interest, and right, legal or equitable, in them, including terms of years and liens by way of judgment, mortgage or otherwise, and indebtedness secured by the liens.

Redevelopment Area - An area designated by a county commission, or the governing body of a municipality, in respect to which the commission or governing body has made a finding that there exist conditions which cause the area to be classified as a blighted area, a conservation area, an economic development area or a combination thereof, which area includes only those parcels of real property directly and substantially benefited by the proposed redevelopment project located within the development or redevelopment project area or district, or land contiguous thereto.

Redevelopment plan - The comprehensive program under the West Virginia Tax Increment Financing Act of a county or municipality for redevelopment intended by the payment of redevelopment costs to reduce or eliminate those conditions, the existence of which qualified the redevelopment project area or district as a blighted area, conservation area, economic development area or combination thereof, and to thereby enhance the tax bases of the levying bodies which extend into the redevelopment project area or district. Each redevelopment plan shall conform to the requirements of the West Virginia Tax Increment Financing Act.

Tax increment –

- A) The amount of regular levy property taxes attributable to the amount by which the current assessed value of a private project in a development or redevelopment project area or district exceeds the base-assessed value, if any, of the private project; or
- B) The amount of regular levy property taxes attributable to the amount by which the current assessed value of real and tangible personal property having a tax situs in a development or redevelopment project area or district exceeds the base-assessed value of the property.

Tax increment financing fund (TIF fund) - A separate fund for a development or redevelopment project area or district established by the county commission, or governing body of the municipality, that issues tax increment financing obligations into which all tax increment revenues and other pledged revenues are deposited and from which projected project costs, debt service and other expenditures authorized by the West Virginia Tax Increment Financing Act are paid.

Total ad valorem property tax regular levy rate - The aggregate levy rate of all levying bodies on all taxable property having a tax situs within a development or redevelopment project area or district in a tax year but does not include excess levies, levies for general obligation bonded indebtedness or any other levies that are not regular levies.

Appendix H. Competitive Bids, Local Labor Preference and Prevailing Wage Requirements

Any project acquired, constructed or financed, in whole or in part, by a county commission or municipality under the West Virginia Tax Increment Financing Act is considered to be a “public improvement” and the project must comply with West Virginia laws pertaining to (1) payment of prevailing wages, (2) use of local labor, and (3) either the competitive bidding or design-build method of construction.

A private developer whose project is financed, in whole or in part, by TIF must comply with these requirements.

How the project is described in public announcements will influence how these rules apply. The public announcements must carefully and accurately describe the project to be financed, in whole or in part, with TIF dollars.

A. Competitive Bidding

General rule. -- Generally, a county commission or municipality must solicit, or require the solicitation of, competitive bids for every project funded with TIF dollars when the cost of the project exceeds \$25,000. *See*, W. Va. Code § 7-11B-14(b).

Exceptions. -- The general rule does not:

(1) Apply to work performed on construction projects not exceeding a total cost of \$50,000 by regular full-time employees of the county commission or the municipality, provided that no more than \$50,000 is expended on an individual project in a single location in a twelve-month period;

(2) Prevent students enrolled in vocational educational schools from being used in construction or repair projects when their use is a part of the students' training program;

(3) Apply to emergency repairs to building components and systems. As used here, the term "emergency repairs" means repairs that, if not made immediately, will seriously impair the use of the building components and systems or cause danger to those persons using the building components and systems; or

(4) Apply to any situation where the county commission or municipality comes to an agreement with volunteers, or a volunteer group, by which the governmental body will provide construction or repair materials, architectural, engineering, technical or any other professional services and the volunteers will provide the necessary labor without charge to, or liability upon, the governmental body provided the total cost of the construction or repair projects does not exceed \$50,000.

Bids for construction contracts must be solicited, opened and awarded in conformity with the requirements of W. Va. Code §§ 5-22-1 and 5-22-2, except design-build projects that are governed by W. Va. Code § 5-22A-1 *et seq.* These rules include:

A vendor who has been debarred pursuant to the provisions of W. Va. Code § 5A-3-33a through 5A-3-33f may not bid on or be awarded a contract.

All bids submitted must include a valid bid bond or other surety as approved by the county commission or municipality, as appropriate.

The public entity accepting public contract bids must, in its resolution providing for the contract or purchase and for the advertisement for bids, designate the time and place that the bids will be received and shall at that time and place publicly open the bids and read them aloud.

No public entity may accept or take any bid, including receiving any hand-delivered bid, after the time advertised to take bids.

No bid may be opened on days which are recognized as holidays by the United States postal service.

No bids may be accepted or considered that do not contain a valid bid bond or other surety approved by the county commission or municipality, as appropriate.

The provisions and requirements of W. Va. Code §§ 5-22-1 and 5-22-2, the requirements stated in the advertisement for bids and the requirements on the bid form may not be waived by any county commission or municipality.

The county commission or municipality may only reject an erroneous bid after the opening if all of the following conditions exist:

- (1) An error was made;
- (2) The error materially affected the bid;
- (3) Rejection of the bid would not cause a hardship on the public entity involved, other than losing an opportunity to receive construction projects at a reduced cost; and
- (4) Enforcement of the bid in error would be unconscionable.

If a county commission or municipality rejects a bid, it must maintain a file of documented evidence demonstrating that all the conditions set forth in the preceding paragraph existed.

If the county commission or municipality determines the bid to be erroneous, it must return the bid security to the contractor.

A contractor who withdraws a bid may not resubmit a bid on the same project. If the bid withdrawn is the lowest bid, the next lowest bid may be accepted.

Privately owned projects. -- The competitive bidding requirements discussed above and the prevailing wage requirements discussed later in this part apply to privately owned projects constructed on lands not owned by the county commission, a municipality or a government agency or instrumentality when the owner or the owner's agent or person financing the owner's project receives money from the TIF fund for the owner's project. *See*, W. Va. Code § 7-11B-14(e).

Additionally, competitive bidding may be required even though the project does not receive TIF funds. Decisions of the West Virginia Supreme Court of Appeals provide that in determining whether the state or its agencies are involved in a construction project sufficient to invoke the competitive bidding protections of W. Va. Code § 5-22-1, the courts will examine:

- (1) Whether the state or its agency initiated the construction project;
- (2) The extent of control retained by the state or its agency during the development and construction phases;
- (3) The extent to which the project will be used for a public purpose;
- (4) Whether public funds are used either directly for the costs of construction or indirectly by means of a lease arrangement which contemplates payments essentially covering the amount of the construction; and
- (5) All other relevant factors bearing on the issue of whether the construction is properly viewed as government construction. *See, Affiliated Constr. Trades Found. v. University of W. Va. Bd. of Trustees*, 210 W. Va. 456, 557 S.E.2d 863 (2001).

An additional exception to compliance with the competitive bidding requirements exists when the work is done pursuant to and in compliance with the West Virginia Design-Build Procurement Act.

B. West Virginia Design-Build Procurement Act

The West Virginia Legislature has recognized that the design-bid-build method provides a viable delivery method for public projects and has expressly allowed county commissions and municipalities to enter into design-build contracts for public projects provided they comply with the requirements of the West Virginia Design-Build Act. *See*, W. Va. Code § 5-22A-3.

Provisions of the Design-Build Procurement Act must be used to select design-builders for authorized projects that are constructed and owned, potentially owned, or ultimately owned by the county commission or municipality, see W. Va. Code § 5-22A-1. Since design-build is an alternative to competitive bidding available to county commissions and municipalities, it follows that under W. Va. Code § 7-11B-14, the county commission or municipality, as applicable, may authorize a private developer to use the design-build method rather than competitive bid method when the project will be funded, in whole or in part, with TIF dollars.

Key terms defined in the Act. -- To understand how design-build works, it is important to understand how certain key terms used in the Act are defined:

(1) "Design-build" means providing responsibility within a single contract for design, construction or alteration of a building or buildings, together with incidental approaches, structures and facilities to be constructed, where services within the scope of the practice of professional engineering or architecture, as defined by the laws of the State of West Virginia, are performed by an engineer or architect duly registered in the State of West Virginia and where services within the scope of construction contracting, as defined by the laws of the State of West Virginia, are performed by a contractor qualified and licensed under the applicable statutes. The design-build method of construction may not be used for construction projects such as highway, water or sewer projects. *See*, W. Va. Code § 5-22A-2.

(2) "Design-build contract" means a contract between a county commission, municipality, or private developer, as applicable, and a design-builder to furnish the architecture, engineering, and related services as required, for a given public project, and to furnish the labor, materials and other construction of services for the same public project or TIF project. *See*, W. Va. Code § 5-22A-2. A design-build contract may be conditional upon subsequent refinements in scope and price, and may permit the agency to make changes in the scope of the project without invalidating the design-build contract.

(3) "Design-builder" means a person, whether natural person, partnership, joint venture, corporation, professional corporation, business association, or other legal entity, that proposes to design and construct any public project or TIF project governed by the Design-Build Procurement Act. *See*, W. Va. Code § 5-22A-2.

(4) "Firm" means any individual, firm, partnership, corporation, limited liability company, limited liability partnership, association, joint venture, or other legal entity permitted by law to practice engineering, architecture or construction contracting in the State of West Virginia. W. Va. Code § 5-22A-2.

(5) "Performance criteria" means the requirements for the public project or TIF project, including as appropriate, aesthetics, capacity, durability, production standard, ingress and egress requirements or other criteria for the intended use of the

public project or TIF project, expressed in performance-oriented drawings and specifications suitable to allow the design-builder to make a proposal. *See*, W. Va. Code § 5-22A-2.

(6) "Performance criteria developer" means an architect or engineer duly registered in accordance with the laws of the State of West Virginia and, if applicable, the architect's or engineer's employer, company, partners, joint venturers, affiliates or subcontractors retained by the agency to develop performance criteria. *See*, W. Va. Code § 5-22A-2.

(7) "Project" means that project described in the public announcement. W.Va. Code § 5-22A-2.

(8) "Proposal" means an offer to enter into a design-build contract. *See*, W.Va. Code § 5-22A-2.

(9) "Request for proposals" means the document or publication whereby a county commission, municipality, or private developer, as appropriate, solicits proposals for a design-build contract. *See*, W. Va. Code § 5-22A-2.

(10) "Substantial completion" means the stage in the progress of the work when the work or designated portion thereof is sufficiently complete in accordance with the design-build contract so the county commission, municipality, or private developer, as appropriate, can occupy or utilize the work for its intended use. W. Va. Code § 5-22A-2.

(11) "Work" means the construction and services required by the design-build contract, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the design-builder to fulfill the design-builder's obligations. The work may constitute the whole or a part of the project. W.Va. Code § 5-22A-2.

Administrative Rules for the Award of Design-Build Contract. -- Pursuant to W.Va. Code § 5-22A-6, the West Virginia Department of Administration has promulgated rules for the award of design-build contracts. A county commission or municipality may elect to follow the Department of Administration's rules or to promulgate its own rules. The rules must include:

(1) The procedures to select or designate a performance criteria developer and prepare performance criteria;

(2) The procedures for the preparation and contents of requests for proposals;

(3) The procedures for preparing and submitting proposals;

(4) The procedures for evaluating proposals;

(5) The procedures for negotiations between the county commission, municipality, or private developer, as appropriate, and those submitting proposals prior to the acceptance of a proposal, if any such negotiations are contemplated;

(6) The procedures for awarding and executing design-build contracts;

(7) The procedures for awarding design-build contracts in the event of public emergencies, as defined in the applicable statutes; and

(8) The procedures for acting on formal protests relating to the solicitation or award of design-build contracts.

Conditions for Design-Build Contract. -- A county commission, municipality, or private developer, as appropriate, may not enter into a design-build contract for a public project or TIF project unless:

(1) The county commission or the municipality, prior to issuing requests for proposals, or authorizing a private developer to issue requests for proposals, has elected to follow the Department of Administration's rules or has promulgated and published its own rules consistent with the Design-Build Procurement Act for the solicitation and award of design-build contracts. The county commission, municipality, or private developer, as appropriate, must adhere to the West Virginia Design-Build Procurement Act and these rules;

(2) The county commission or municipality, as appropriate, for each public project or TIF project procured pursuant to the Design-Build Procurement Act, must determine that it is in the best interest of the public to enter into a design-build contract to complete the public project or TIF project; and

(3) The Design-Build Board, established pursuant to W. Va. Code § 5-22A-4, must determine that the public project or TIF project is appropriate as a design-build project utilizing the following mandatory criteria, as provided for in W. Va. Code § 5-22A-5, *see*, W.Va. Code § 5-22A-3:

(A) The county commission, municipality, or private developer, as appropriate, requires a project design and construction timeline that is faster than the traditional design-bid build process would allow;

(B) The project requires close coordination of the design and construction expertise or an extreme amount of coordination; and

(C) The county commission or municipality, or private developer, as appropriate, requires early cost commitments.

Design-builder qualifications. -- Each design-builder must be duly licensed and registered to do business in the State of West Virginia and must be a licensed architect or engineer or a general contractor in this state. *See* W. Va. Code § 5-22A-7.

Design-builder powers. -- Each design-builder must have the following rights and powers:

(1) The design-builder must assign or sublet the responsibility for professional design services to a firm duly licensed and registered to provide professional design services in the State of West Virginia. The firm must carry, at all times,

professional design liability insurance in an appropriate amount as designated by the county commission or municipality. This professional may be a full or part-time employee of the design-builder. W. Va. Code § 5-22A-7(1).

(2) The design-builder must assign or sublet responsibility for construction or other services requiring a contractor's license to persons or entities duly registered, licensed or otherwise qualified to provide those services in this state. W. Va. Code § 5-22A-7(2).

(3) The design-builder may contract with the county, municipality, or private developer, as appropriate, to provide professional services or construction services that the design-builder is not itself licensed, registered or otherwise authorized to provide so long as those services are assigned or sublet to a firm that is a member of the design-build team and is registered, licensed and qualified to provide those services in this state. *See* W. Va. Code § 5-22A-7(3).

Development of Performance Criteria.

Each request for proposal must contain performance criteria prepared by an architect or engineer duly registered in accordance with the laws of the State of West Virginia, referred to as the "performance criteria developer." *See*, W. Va. Code § 5-22A-8(a).

If the performance criteria developer is not an employee of the county commission, municipality, or private developer of the TIF project, as appropriate, then the performance criteria developer and his or her employer, company, partners, joint venturers, affiliates or consultants are disqualified from submitting a proposal to enter into the design-build contract and the design-builder will not be permitted to delegate services under the design-build contract to the performance criteria developer or its consultants.

The performance criteria developer must be retained by the county commission, municipality, or private developer of the TIF project, as appropriate, through final completion of the project to monitor adherence to the performance criteria. *See*, W. Va. Code § 5-22A-8(a).

The performance criteria developer may be an employee of the county commission, municipality, or private developer of the TIF project, as appropriate, and to the extent allowed by law may delegate the development of specific aspects of the design criteria to an architect or engineer duly registered with the State of West Virginia and his or her employer, company, partners, joint venturers, affiliates or other consultants. W. Va. Code § 5-22A-8(b).

If the performance criteria developer is not an employee of the county commission, municipality, or private developer of the TIF project, as appropriate, the performance criteria developer shall be selected in accordance with the requirements of W. Va. Code § 5G-1-1 *et seq.* (procurement of architect-engineer services). *See*, W. Va. Code § 5-22A-8(b).

Scope of Design-Build Project.

The county commission or municipality, and the private developer of the TIF project, as appropriate, in consultation with the performance criteria developer, must

determine the scope and level of detail required for the performance criteria. *See*, W. Va. Code § 5-22A-9(a).

The performance criteria must be detailed enough to permit qualified persons to submit proposals in accordance with the request for proposals, given the nature of the public project or the TIF project, and the level of design to be provided in the proposal. *See*, W. Va. Code § 5-22A-9(a).

The performance criteria developer must review the program furnished by the county commission, municipality, or private developer of the TIF project, as appropriate, to ascertain the requirements of the project and must arrive at a mutual understanding of the requirements with the county commission or municipality, and the private developer of the TIF project, as appropriate. *See*, W. Va. Code § 5-22A-9(b).

Based on the mutually agreed-upon program, schedule and construction budget requirements, the performance criteria developer shall prepare for approval by the county commission or municipality, and the private developer of the TIF project, as appropriate, documents indicating the scale and relationship of project components. *See*, W. Va. Code § 5-22A-9(c).

Solicitation of proposals.

Design-build proposals must be solicited from not less than three design-builders. W. Va. Code § 5-22A-10.

A request for proposal must be prepared for each design-build contract and shall consist of, but not be limited to:

(1) The identity of the county commission, municipality, or private developer of the TIF project, as appropriate, that will award the design-build contract;

(2) The procedures to be followed for submitting proposals, the criteria for evaluation of proposals and their relative weight, and the procedures for making awards, including a reference to the requirements of this article, the rules promulgated herein and any regulations pertaining to the county commission or municipality;

(3) The proposed terms and conditions for the design-build contract;

(4) The performance criteria;

(5) The description of the drawings, specifications or other information to be submitted with the proposal, with guidance as to the form and level of completeness of the drawings, specifications or submittals that will be acceptable;

(6) A schedule for planned commencement and completion of the design-build contract;

(7) Budget limits for the design-build contract, if any;

(8) Design-builder qualifications; and

(9) Requirements for performance bonds, payment bonds and insurance.

The request for proposals may include any other information that the county commission, municipality, or private developer of the TIF project, as appropriate, at its discretion, chooses to supply, including, but not limited to, surveys, soils reports, drawings or models of existing structures, environmental studies, photographs or references to public records. *See*, W. Va. Code § 5-22A-10.

Notice of requests for proposals must be advertised using the following procedures:

(1) The notice may be published by any advertising medium the county commission or municipality deems advisable.

(2) Additionally, the county commission, municipality, or private developer of the TIF project, as appropriate, may send requests to prospective design-builders.

Design-Build Proposals.

Proposals must be sealed and may not be opened until expiration of the time established for making proposals, as set forth in the request for proposals.

Requests for proposals must require and be accompanied by a bid bond not to exceed five percent of the maximum cost of the design-build contract, as established by the proposal.

In the event the proposal is accepted and the design-builder fails to execute the design-build contract, the bid bond is forfeited. *See*, W. Va. Code § 5-22A-11.

To the extent required, the request for proposal must identify each firm to whom the design-builder proposes to sublet obligations under the design-build contract.

(1) At a minimum, each proposal must identify each firm responsible for the design and primary construction and their affiliation to the design-builder.

(2) Proposals must establish a cost of the design-build contract that will not be exceeded if the proposal is accepted without change.

(3) After award of the proposal, the maximum cost of the proposal may be converted to fixed prices by negotiated agreement between the county commission, municipality, or private developer of the TIF project, as appropriate, and the design-builder. W. Va. Code § 5-22A-11.

Prior to the award of the design-build contract, all drawings, specifications and other information submitted in the proposal shall remain the property of the design-builder submitting the proposal. Additionally, prior to the award of the design-build contract, the county commission, municipality, or private developer of the TIF project, as appropriate, must maintain the secrecy and confidentiality of all information contained in the proposal. *See*, W. Va. Code § 5-22A-11.

Once a proposal is accepted, the disclosure of the proposal and the information in the proposal, and the ownership of the drawings, specifications and information therein, shall be determined in accordance with existing law and the terms of the design-build contract. W. Va. Code § 5-22A-11.

Proposals may not be amended during the review process. W. Va. Code § 5-22A-11.

At the discretion of the county commission or municipality, a stipend may be paid to the design-builders not ultimately selected. *See*, W. Va. Code § 5-22A-11.

Acceptance of design-build proposal.

Proposals must be submitted to the county commission, municipality, or private developer of the TIF project, as appropriate, as applicable.

Clarification may be required to ensure conformance of proposals with the performance criteria. In seeking clarification, the performance criteria developer may not reveal any aspect of any proposal to any other design-builder. W. Va. Code § 5-22A-12.

The performance criteria developer must certify each proposal in regard to compliance with the performance criteria. W. Va. Code § 5-22A-12.

No proposal or design-build contract may be accepted unless the county commission or municipality, as appropriate, determines that there was adequate competition for the contract. *See*, W. Va. Code § 5-22A-12.

After receiving and evaluating all proposals submitted based upon the criteria and procedures set forward in the request for proposals, the county commission, municipality, or private developer of the TIF project, as appropriate, must accept the proposal that receives the best score, as set forth in the rules provided for in section 5-22A-6 of the Act. *See*, W. Va. Code § 5-22A-12.

Acceptance of a proposal must be by written notice to the design-builder that submitted the accepted proposal. *See*, W. Va. Code § 5-22A-12.

(1) At the same time notice of acceptance is delivered, the purchasing division or agency, as applicable, shall also inform, in writing, the unsuccessful design-builders that their proposals were not accepted.

(2) When a design-builder receives notification that its proposal was not accepted, the design-builder may, within three days after receipt of such notification, request in writing a copy of the best score and all other factors used or considered in the selection process.

Construction Phase.

The performance criteria developer must visit the site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the work completed and to determine in general if the work is being performed in a manner indicating that work, when completed, will be in accordance with the design-build contract. W. Va. Code § 5-22A-13.

On the basis of such on-site observations, the performance criteria developer shall keep the county commission or municipality and the private developer of the TIF project, as appropriate, informed of the progress of the work on the project and shall endeavor to guard the county commission, municipality, or private developer of the TIF project, as appropriate, against defects and deficiencies in such work. *See*, W. Va. Code § 5-22A-13.

The performance criteria developer shall assist the county commission, municipality, or private developer of the TIF project, as appropriate, in determining whether it shall reject work which does not conform to the design-build contract. *See*, W. Va. Code § 5-22A-13.

The performance criteria developer shall assist the county commission, municipality, or private developer of the TIF project, as appropriate, in conducting inspections, to determine the date or dates of substantial completion and of final completion, and shall review and approve, or take other appropriate action regarding the contractor's list of items to be completed or corrected, and shall forward the list to the county commission, municipality, or private developer of the TIF project, as appropriate, for final disposition.

Final Certification.

The performance criteria developer shall issue to the county commission or municipality and the private developer of the TIF project, as appropriate, a final certification in writing with respect to final acceptance of the project. *See*, W. Va. Code § 5-22A-13.

Withdrawal of proposals.

At the option of the design-builder, proposals may be withdrawn for any reason at any time prior to their opening without forfeiture of the security. W. Va. Code § 5-22A-14.

Once opened, a proposal may be withdrawn for any reason prior to acceptance with forfeiture of the bid bond. W. Va. Code § 5-22A-14.

C. Payment of Prevailing Wage

The policy of the State of West Virginia is that a wage of no less than the prevailing hourly rate of wages for work of a similar character in the locality in this state in which the construction is performed, shall be paid to all workmen employed by or on behalf of any public authority engaged in the construction of public improvements, W. Va. Code § 21-5A-2, or any project funded in whole or in part by TIF, *see*, W. Va. Code § 7-11B-14.

As used here, "construction" means any construction, reconstruction, improvement, enlargement, painting, decorating, or repair of any public improvement or TIF project let to contract. *See*, W. Va. Code §§ 7-11B-14 and 21-5A-1(2). The term does not include temporary or emergency repairs.

(3) The term "locality" means the county where the construction is to be performed, except that if there is not available in the county a sufficient number of competent skilled laborers, workmen and mechanics to perform such construction efficiently and properly, and may include one or more counties in this state adjacent to the one in which the construction is to be performed and from which such skilled laborers, workmen and mechanics may be obtained in sufficient numbers to perform the construction. With respect to construction of public improvements with the state road commission, "locality" may be construed to include one or more counties in this state adjacent to the one in which the construction or public improvement is to be performed and

from which skilled laborers, workmen and mechanics may be accessible for work on such construction on public improvements.

(4) The term "public improvement," as used in this article, shall include all buildings, roads, highways, bridges, streets, alleys, sewers, ditches, sewage disposal plants, waterworks, airports, and all other structures upon which construction may be let to contract by the State of West Virginia or any political subdivision thereof.

(5) The term "construction industry," as used in this article, shall mean that industry which is composed of employees and employers engaged in construction of buildings, roads, highways, bridges, streets, alleys, sewers, ditches, sewage disposal plants, waterworks, airports, and all other structures or works whether private or public on which construction work is performed.

The question of whether West Virginia's wage act, requiring payment of the prevailing wage in the construction of public improvements, W. Va. Code § 21-5A-1, *et seq.*, applies in any given situation is not resolved simply with reference to the signing parties on a particular contract. This is because the real parties in interest may not be signatories to the contracts governing the construction project. The practicalities of modern-day financing may require certain third-party arrangements that tend to shield, in some instances, the full extent of the involvement of the actual party in interest. This necessitates that the examining court must look behind the mere paperwork to examine a host of factors in determining the applicability of the wage act in any given case.

As a fundamental matter, under W. Va. Code § 21-5A-2, the provisions requiring payment of prevailing wages can only be invoked when a construction project that constitutes a public improvement and which involves workers employed by or on behalf of a public authority is involved.

The key to defining a "public improvement," for purposes of determining the applicability of laws requiring payment of the prevailing wage when building such an improvement, is the interwoven concepts of public use and public benefit.

In general, the determination whether a lease-construction contract calls for construction of a public building or public work likely will depend on the details of the particular arrangement. These may include such factors as the length of the lease, the extent of government involvement in the construction project, the extent to which the construction will be used for private rather than public purposes, the extent to which the costs of construction will be fully paid for by the lease payments, and whether the contract is written as a lease solely to evade the requirements of the Davis-Bacon Act, 40 U.S.C.S. § 276a - 276a-5, (federal prevailing wage act). The fact that a novel financing mechanism is employed should not in itself defeat the reading of such a contract as being a contract for construction of a public building or public work.

The issue of whether a public improvement is involved within the meaning of West Virginia's prevailing wage act, W. Va. Code § 21-5A-1, *et seq.* (1996), must be determined by examining:

- (1) Whether a public entity initiated the construction project;
- (2) The extent of control retained by the public entity during the development and construction phases;
- (3) The extent to which the project will be used for a public purpose;
- (4) Whether public funds are used either directly for the costs of construction or indirectly by means of a lease arrangement which contemplates payments essentially covering the amount of the construction;
- (5) Whether the contract is written as a lease solely to evade the requirements of the prevailing wage act; and
- (6) All other relevant factors bearing on the ultimate issue of whether the project is indeed a public project notwithstanding novel financing mechanisms.

The absence of a public authority as signatory to a document examined in connection with the issue of the applicability of West Virginia's prevailing wage act, W. Va. Code § 21-5A-1, *et seq.*, does not in itself defeat application of the act. Where sufficient facts are submitted to demonstrate that the workers are involved in construction on behalf of any public authority, the act may still apply. In determining the factual issue of whether the construction is on behalf of the public authority, the trial court should consider whether a public entity initiated the underlying project and all other relevant factors including whether public funding is involved and whether the intended use is for a public purpose.

The term "public authority," like the term "public improvement," cannot be used as a shield to prevent the prevailing wage act, W. Va. Code § 21-5A-1, *et seq.*, from operating when the public entity for whom the construction is being performed is not a party to a contract. It only stands to reason that if the wage act was intended to extend to those workers who are doing work on behalf of a public authority, then the mere lack of a signature by that public authority to a contract should not be permitted to operate in such a fashion to circumvent the intent of West Virginia to fairly compensate those laborers.

The wage act, W. Va. Code § 21-5A-1, *et seq.*, as currently written, requiring the payment of the prevailing wage to workers involved in a public improvement project, clearly hinges its operation on the existence of a contract having been signed by a public authority. W. Va. Code § 21-5A-6. Barring statutory amendment to section six to include language indicating that an entity acting on behalf of a "public authority" can sign a contract which invokes the protections of the wage act, the appellate court is compelled to read in such language in the interest of upholding the laudatory policy advanced by the wage act of establishing a floor for the workers engaged in construction for the public's benefit.

In those instances where it is exceedingly clear that a public entity who qualifies as a "public authority" under W. Va. Code § 21-5A-1(1) is intimately involved with the construction at issue, a trial court may be permitted to reach a conclusion that the prevailing wage act, W. Va. Code § 21-5A-1, *et seq.*, should apply notwithstanding the absence of a public authority's actual signature on a subject contract, where it can be demonstrated that a contracting party is acting on behalf of the public authority.

The concepts for determining the existence of a "public improvement," such as identifying who initiated the project; examining the degree of control exercised by a public entity in the planning and development stages; and looking to the nature of the use to which the project will be put, will similarly be useful in deciding whether a third party is acting on behalf of a public authority in entering into contracts involving public improvement-type projects. There is no compelling reason not to extend the protections of the prevailing wage act, W. Va. Code § 21-5A-1, *et seq.*, in such instances where a public authority is operating behind the scenes to accomplish purposes that qualify as public in nature. Moreover, the wage act should be interpreted in this fashion to prohibit the clear intent of the statute from being violated.

In determining whether the state or its agencies are involved in a construction project sufficient to invoke the competitive bidding protections of W. Va. Code § 5-22-1, a trial court will examine:

- (1) Whether the state or its agency initiated the construction project;
- (2) The extent of control retained by the state or its agency during the development and construction phases;
- (3) The extent to which the project will be used for a public purpose;
- (4) Whether public funds are used either directly for the costs of construction or indirectly by means of a lease arrangement which contemplates payments essentially covering the amount of the construction; and
- (5) All other relevant factors bearing on the issue of whether the construction is properly viewed as government construction.

When a public entity such as the state, or its agencies, initiates a construction project, which upon completion will serve the interests of the state, its agencies, or the public in general, it is incumbent upon the state and/or its agencies to require that the project complies with the requirements of the competitive bidding statute. W. Va. Code § 5-22-1. The state or its agencies cannot escape the requirements of the bidding statute by involving a third party for the purpose of general construction responsibilities or for the purpose of obtaining the necessary funding.

To determine whether the state or its agencies are involved in a construction project sufficient to invoke the provisions of W. Va. Code § 5G-1-3, governing the procurement of architectural and engineering services, a trial court will examine:

- (1) Whether the state or its agencies initiated the construction project;
- (2) The extent of control retained by the state or its agencies during the development and construction phases;
- (3) The extent to which the project will be used for a public purpose;
- (4) Whether public funds are used either directly for the costs of construction or indirectly by means of a lease arrangement which contemplates payments essentially covering the amount of the construction; and
- (5) All other relevant factors bearing on the issue of whether the construction is properly viewed as government construction.

D. Local Labor Preferences.

West Virginia policy requires that residents of local labor markets be employed for the construction of public improvement projects that utilize, directly or indirectly, taxpayer funding, in whole or in part. W. Va. Code § 21-1C-3.

Employers must hire at least seventy-five percent (75%) of employees for public improvement construction projects from the local labor market, to be rounded off, with at least two employees from outside the local labor market permissible for each employer per project.

For purposes of this requirement:

(1) “Construction project” means any construction, reconstruction, improvement, enlargement, painting, decorating or repair of any public improvement let to contract in an amount equal to or greater than \$500,000, W. Va. Code § 21-1C-2(1), or any project that is funded, in whole or in part, with TIF, W. Va. Code § 7-11B-14. The term “construction project” does not include temporary or emergency repairs. W. Va. Code § 21-1C-2(1).

(2) “Employer” means any person, firm or corporation employing one or more employees on any public improvement and includes all contractors and subcontractors. W. Va. Code § 21-1C-2(3).

(3) “Local labor market” means every county in West Virginia and all counties bordering West Virginia that fall within seventy-five miles of the border of West Virginia. W. Va. Code § 21-1C-2(4).

(4) “Public improvement” includes the construction of all buildings, roads, highways, bridges, streets, alleys, sewers, ditches, sewage disposal plants, waterworks, airports and all other structures that may be let to contract by, or on behalf of, a public authority, including improvements funded, in whole or in part, by federal funds or TIF. *See*, W. Va. Code §§ 7-11B-14 and 21-1C-2(6).

Any employer unable to employ the minimum number of employees from the local labor market must inform the nearest office of the Bureau of Employment Programs’ Division of Employment Services of the number of qualified employees needed and provide a job description of the positions to be filled. *See*, W. Va. Code § 21-1C-4(b).

If, within three business days following the placing of a job order, the Division is unable to refer any qualified job applicants to the employer or refers less qualified job applicants than the number requested, then the Division must issue a waiver to the employer stating the unavailability of applicants and shall permit the employer to fill any positions covered by the waiver from outside the local labor market. *See*, W. Va. Code § 21-1C-4(c). This waiver may be either oral or in writing and must be issued within the prescribed three days. *Id.* A waiver certificate shall be sent to both the employer for its permanent project records and to the public authority. *Id.*