

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

Form #5

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WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

AGENCY: West Virginia Development Office TITLE NUMBER: 145

CITE AUTHORITY: W. Va. Code § 7-22-7

RULE TYPE: PROCEDURAL INTERPRETIVE

EXEMPT LEGISLATIVE RULE

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 145

TITLE OF RULE BEING AMENDED: County Economic Opportunity Development Districts

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE
EFFECTIVE DATE OF THIS RULE IS November 4, 2013


Authorized Signature

**TITLE 145
PROCEDURAL RULE
DEVELOPMENT OFFICE**

2013 SEP -3 AM 11: 51

WEST VIRGINIA
SECRETARY OF STATE

**SERIES 14
COUNTY ECONOMIC OPPORTUNITY DEVELOPMENT DISTRICTS**

§145-14-1. General.

1.1. Scope. -- This procedural rule governs the establishment of economic opportunity development districts and establishes the procedures, standards, legal documents, fees and notice applicable to an applicant for the establishment of an economic opportunity development district.

1.2. Authority. -- W. Va. Code §7-22-7.

1.3. Filing Date. -- September 3, 2013.

1.4. Effective Date. -- November 4, 2013.

§145-14-2. Definitions.

For purposes of this rule:

2.1. "Applicant" means a county having established an economic opportunity development district in accordance with W. Va. Code §7-22-4 who is applying or has applied to the Director of the Development Office for approval of an economic opportunity development district project.

2.2. "Application" means a request from a county for approval of an economic opportunity development district project that is filed with the Director of the Development Office pursuant to W. Va. Code §7-22-7 and this rule, which provides all of the information and documentation required by this rule.

2.3. "Certificate of project" means a written statement issued to an applicant by the Director of the Development Office pursuant to W. Va. Code §7-22-7(e) and that evidences the Director's approval of the applicant's project application.

2.4. "Department of Commerce" means the Department of Commerce created in the executive branch of state government in W. Va. Code §5F-1-2(a).

2.5. "Development expenditures" means payments for government functions, programs, activities, facility construction, improvements and other goods and services which a district board is authorized to perform or provide pursuant to W. Va. Code §7-22-5.

2.6. "Development Office" means the West Virginia Development Office created in W. Va. Code §5B-2-1 *et seq.*, which is an agency that is incorporated in and administered as part of the Department of Commerce, as provided in W. Va. Code §5B-1-2.

2.7. "Director" means the Executive Director of the West Virginia Development Office.

2.8. "District" means an economic opportunity development district pursuant to W. Va. Code §7-22-4.

2.9. "District Board" means a district board created pursuant to W. Va. Code §7-22-10.

2.10. "Eligible property" means any taxable or exempt real property located in a district established pursuant to W. Va. Code §7-22-4.

2.11. "Remediation" means measures undertaken to bring about the reconditioning or restoration of property located within the boundaries of an economic opportunity development district that has been affected by exploration, mining, industrial operations or solid waste disposal and which measures, when undertaken, will eliminate or ameliorate the existing state of the property and enable the property to be commercially developed.

2.12. "Special District Excise Tax" means an excise tax imposed by ordinance upon the privilege of selling tangible personal property and rendering select services to a district and levied by a county having been authorized to impose the tax by the West Virginia Legislature for the benefit of an economic opportunity development district.

2.13. "West Virginia Code" or "W. Va. Code" means the Code of West Virginia, one thousand nine hundred thirty-one, as amended.

§145-14-3. Contents of Application.

An application for establishment of an economic opportunity development district shall, at a minimum, include the following:

3.1. The applicant's name.

3.2. The applicant's current address.

3.3. The applicant's telephone number, facsimile number and e-mail address.

3.4. The name of the proposed economic opportunity development district.

3.5. A true copy of the notice of hearing described in W. Va. Code §7-22-6.

3.6. The total cost of the project.

3.7. A reasonable estimate of the number of months needed to complete the project.

3.8. A general description of the capital improvements, additional or extended services and other proposed development expenditures to be made in the district as part of the project.

3.9. A description of the proposed method of financing the development expenditures, together with a description of the reserves to be established for financing ongoing development expenditures necessary to permanently maintain the optimum economic viability of the district following its inception; provided that the amount of the reserves may not exceed the amounts that would be required by prevailing commercial capital market considerations.

3.10. A description of the sources and anticipated amounts of all financing, including, but not limited to, proceeds from the issuance of any bonds or other instruments, revenues from the special district excise tax and enhanced revenues from property taxes and fees.

3.11. A description of the financial contribution of the county to the funding of development expenditures.

3.12. Identification of any businesses that the county expects to relocate their business locations from the district to another place in the state in connection with the establishment of the district or from another place in this state to the district; provided that for purposes of this rule, any entities shall be designated as "relocated entities."

3.13. Identification of any business currently conducting business in the proposed economic opportunity development district that the county expects to continue doing business there after the district is created.

3.14. A good faith estimate of the aggregate amount of consumer sales and service tax that was actually remitted to the Tax Commissioner by all business locations identified as provided in 3.12. and 3.13. of this rule with respect to their sales made and services rendered from their then current business locations that will be relocated from, or to, or remain in the district for the twelve full calendar months next preceding the date of the application; provided that for purposes of this article, the aggregate amount is designated as "the base tax revenue amount."

3.15. A good faith estimate of the gross annual district tax revenue amount.

3.16. Documents and facts showing for the proposed project;

3.16.a. How the project addresses economic problems in the area in which the project will be located.

3.16.b. A cost benefit analysis showing all costs and benefits both public and private.

3.16.c. The amount of private sector investment in the project and documents and fact which support a finding that without the support of sales tax increment financing the project would not be feasible.

3.16.d. How the economic opportunity districts excise tax dollars will leverage or be a catalyst for the effective use of private, other local government, or state or federal funding that is available.

3.16.e. Substantial and credible evidence that the project will be started and completed in a timely manner.

3.16.f. Which show that the project will directly or indirectly improve opportunities in the project area for the successful establishment or expansion of other industrial or commercial businesses.

3.16.g. How the project will directly or indirectly assist in the creation of additional long term employment opportunities in the area and the quality of jobs created in all phases of the project including wages and benefits.

3.16.h. If a project will meet any pressing need for the area or part of the area in which the

economic opportunity district is located.

3.16.i. Whether the county commission has a strategy for economic development in the county and whether the project is consistent with that strategy.

3.16.j. How the project helps to diversify the local economy.

3.16.k. How the project is consistent with the goals of this article.

3.16.l. Whether the project is economically and fiscally sound using recognized business standards of finance and accounting.

3.16.m. The ability of the county commission and the project developer or project team to carry out the project:

3.17. The proposed applications of any surplus from all funding sources to further the objectives of W. Va. Code §7-22-1 *et seq.* and this rule.

3.18. The Tax Commissioner's certification of:

3.18.a. The amount of consumer sales and service tax collected from businesses located in the economic opportunity district during the twelve calendar months preceding the calendar quarter during which the application will be submitted to the Development Office.

3.18.b. The estimated amount of economic opportunity district excise tax that will be collected in the first twelve months after the month in which the Tax Commissioner would first begin to collect the tax.

3.18.c. The estimated amount of economic opportunity district excise tax that will be collected during the first thirty-six months after the month in which the Tax Commissioner would first begin to collect that tax.

3.19. Any additional information that the Development Office may require.

§145-14-4. Timeline for Processing Applications.

4.1. The Development Office shall mark on the application the date it is received from the county.

4.2. The Development Office shall have thirty days from the date of receipt of a complete application or the date of any additional information requested by the Development Office, whichever is later. A complete application is an application that includes all the information required by section three of this rule.

4.3. The Development Office shall review all applications for conformance to statutory and regulatory requirements, the reasonableness of the proposed district project's budget and timetable for completion and the criteria stated in section 6 of this rule.

4.4. If the application is granted or denied, the Director of the Development Office shall promptly notify the applicant in writing of the decision, which shall be served on the applicant by certified mail, or by facsimile transmission and first class regular mail.

4.5. If the Director requests additional information from the applicant, the request shall be made in writing and served on the applicant by certified mail, or by facsimile transmission and first class regular mail.

4.6. The applicant shall have thirty days from the date of receipt of the request for additional information in which to provide the additional information. Failure to provide the requested additional information within the thirty day time period is cause for denial of the application.

§145-14-5. Timely filing; performance when last day to act is Saturday, Sunday or holiday of the State.

5.1. If any document required by this rule to be filed with the Director within a prescribed period or on or before a prescribed date, is delivered in person on or before such date to the Development Office in Charleston, West Virginia, during normal business hours of the Development Office, it shall be timely filed.

5.2. If any document required by this rule to be filed with the Director within a prescribed period or on or before a prescribed date, is after such period or such date, delivered by United States mail to the Director, the date of the United States Postal Service postmark stamped on the cover in which such document is mailed is the date of delivery, provided the following mailing requirements are met:

5.2.a. The postmark date falls within the prescribed period or on or before the prescribed date for filing of the document.

5.2.b. The document was within the time prescribed in subdivision 5.2.a., deposited in the mail in the United States in an envelope or other appropriate wrapper, postage prepaid, properly addressed to the Director or the Development Office.

5.3. For purposes of this section, if any document is sent by United States registered or certified mail, the date of registration or certification is the postmark date.

5.4. When the last day to act falls on a Saturday, Sunday or legal holiday in this State, the act shall be timely if done in the next day that is not a Saturday, Sunday or legal holiday in this State.

§145-14-6. Criteria for considering applications.

The Director of the Development Office shall use the following criteria when determining whether to grant or deny an application for establishment of an economic opportunity development district:

6.1. The quality of the proposed project and how it addresses economic problems in the area in which the project will be located.

6.2. The merits of the project determined by a cost-benefit analysis that incorporates all costs and benefits, both public and private.

6.3. Whether the project is supported by significant private sector investment and substantial credible evidence that, but for the existence of sales tax increment financing, the project would not be feasible.

6.4. Whether the economic opportunity development district excise dollars will leverage or be the catalyst for the effective use of private, other local government, state or federal funding that is available.

6.5. Whether there is substantial and credible evidence that the project is likely to be started and completed in a timely fashion.

6.6. Whether the project will, directly or indirectly, improve the opportunities in the area where the project will be located for the successful establishment or expansion of other industrial or commercial businesses.

6.7. Whether the project will, directly or indirectly, assist in the creation of additional long-term employment opportunities in the area and the quality of jobs created in all phases of the project, to include, but not limited to, wages and benefits.

6.8. Whether the project will fulfill a pressing need for the area, or part of the area, in which the economic opportunity district is located; provided that the Development Office should consider whether the economic development project is large enough to require that it contain a mixed used development provision consisting of a housing component with at least ten percent of the housing units in the district allocated for affordable housing.

6.9. Whether the county has a strategy for economic development in the county and whether the project is consistent with that strategy.

6.10. Whether the project helps to diversify the local economy.

6.11. Whether the project is consistent with the goals of W. Va. Code §7-22-1 *et seq.*

6.12. Whether the project is economically and fiscally sound using recognized business standards of finance and accounting.

6.12.a. Whether the project will provide in the relevant time periods of twenty-four or forty-eight months, the minimum capital investment required by W. Va. Code 7-22-7(a)(13).

6.13. Provided, that no project may be approved by the development office unless the amount of all development expenditures proposed to be made in the first twenty-four months following the creation of the district results in capital investment of more than \$75 million in the district and the county submits clear and convincing information, to the satisfaction of the development office, that the investment will be made if the development office approves the project and the Legislature authorizes the county commission to levy an excise tax on the sale of goods and services made within the economic opportunity district.

6.14. Provided, that no project involving remediation may be approved by the Development Office unless the amount of all development expenditures proposed to be made in the first forty-eight months following the creation of the district results in capital investment of more than \$75 million in the district and unless the county commission submits clear and convincing information, to the satisfaction of the development office, that the proposed remediation expenditures to be financed by the issuance of bonds or notes pursuant to section sixteen of this article do not constitute more than twenty-five percent of the total development expenditures associated with the project.

6.15. Any other criteria that the Development Office establishes.

§145-14-7. Certification of Project.

7.1. If the Director approves an application, the Director shall issue the applicant a written certificate evidencing the Director's approval.

7.2. The certificate shall expressly state the following:

7.2.a. The name of the county.

7.2.b. The name of the proposed economic opportunity development district.

7.2.c. The date the certificate was issued.

7.2.d. The base tax revenue amount.

7.2.e. The gross annual district tax revenue amount.

7.2.f. The estimated net annual district tax revenue, which is calculated in accordance with W. Va. Code §7-22-7(e).

§145-14-8. Re-certification Enlarging Geographical Boundaries.

8.1. If the Director approves an application to expand the geographical boundaries of a previously certified district, the Director shall issue to the applicant a written certificate evidencing approval of the expansion.

8.2. The certificate shall expressly state all items identified in subsection 7.2 of this rule.