



WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

Senator Joseph Minard, Cochair
Delegate Bonnie Brown, Cochair
Debra A. Graham, Chief Counsel
Felisha N. Sutherland, Administrative Assistant

Rita A. Pauley, Associate Counsel
Brian Skinner, Associate Counsel
Charles Roskovensky, Associate Counsel
Jay Lazell, Associate Counsel

MEMORANDUM

Date: July 19, 2010
From: Debra A. Graham, Chief Counsel
To: Senator Unger
Subject: Committee Substitute for Senate Bill No. 88 (2008)

At the meeting on Friday, you requested that I obtain information on Committee Substitute for Senate Bill No. 88, Creating Brownfield Economic Development Districts. I have enclosed a copy of the bill history, the three roll call votes on the bill, the introduced bill, the Committee Substitute, the House Finance amendment which was adopted, and the enrolled bill. If you need any further information please let me know.

West Virginia Legislature Bill Status

Bill History Report First to Last

SESSION: 2008 RS

S B 88 Creating brownfield economic development districts

By Senators Oliverio and Unger

Topical Subject(s) : Economic Development and Mines and Minerals

Citations Affected : 5 B- 2 - 6 a

Same As / Similar to : NONE

Fiscal Note Requested: NO

Date	Journal Page	History--First to Last
1/9/2008		Filed for introduction
1/9/2008		To Economic Development then Finance
1/9/2008	28	Introduced in Senate
1/9/2008	28	To Economic Development then Finance
1/9/2008	28	To Economic Development
2/21/2008	12	Reported do pass, but first to Finance
2/21/2008	13	Unanimous consent
2/21/2008	13	Immediate consideration
2/21/2008		On 1st reading
2/21/2008	13	Read 1st time
2/21/2008	13	On second reading to Finance
2/25/2008	10-11	Committee substitute reported
2/25/2008	11	Unanimous consent
2/25/2008	11	Immediate consideration
2/25/2008		On 1st reading
2/25/2008	11	Read 1st time
2/26/2008		On 2nd reading
2/26/2008	76	Read 2nd time
2/27/2008		On 3rd reading
2/27/2008	46	Read 3rd time
2/27/2008	46	Passed Senate (Roll No. 9)
2/27/2008	47	Ordered to House
2/28/2008	958	Introduced in House
2/28/2008		To Finance
2/28/2008	958	To House Finance
2/29/2008	1032	With amendment, do pass
3/3/2008		From House Calendar, 1st reading, placed on Special Calendar
3/3/2008	1084	Read 1st time
3/4/2008		On 2nd reading, Special Calendar
3/4/2008	1142	Read 2nd time
3/4/2008	1142	Committee amendment adopted (Voice vote)
3/5/2008		On 3rd reading, Special Calendar

West Virginia Legislature Bill Status
Bill History Report First to Last

3/5/2008	1352	Read 3rd time
3/5/2008	1352	Passed House (Roll No. 284)
3/5/2008	1353	Communicated to Senate
3/6/2008	3-5	Senate concurred in House amendment and passed bill (Roll No. 2)
3/6/2008	5	Communicated to House
3/6/2008		Completed legislative action
3/6/2008	1561	House received Senate message
3/14/2008		To Governor 3/14/08
3/14/2008	17	To Governor 3/14/08 - Senate Journal
3/14/2008	2680	To Governor 3/14/08 - House Journal
3/20/2008		Approved by Governor 3/20/08
3/16/2008		Approved by Governor 3/20/08 - Senate Journal
3/16/2008	235	Approved by Governor 3/20/08 - House Journal
4/8/2008		Chapter 21, Acts, Regular Session, 2008

Number	TITLE OF SENATE BILLS	Introduced	Reported from Committee	Amended	Passed Senate	Passed House	OTHER PROCEEDINGS
80—	By Senator Hunter: Providing adjoining landowners notice of timbering operations.	25-26					26
81—	By Senator Hunter: Prohibiting nursing services' insurers from limiting definition of scope of practice for benefit determination purposes.	26					26
82—	By Senator Hunter: Allowing advanced nurse practitioners sign do-not-resuscitate orders.	26					26
83—	By Senator Hunter: Allowing advanced nurse practitioners sign death certificates.	26					26
84—	By Senator Chafin: Creating misdemeanor offense of interference with treatment of injured railroad employee.	26					27
85—	By Senator Chafin: Relating to information technology donations.	27					27
86—	By Senator Facemyer: Increasing maximum weight for six-axle tractor trailers.	27					27
87—	By Senator Facemyer: Creating Transition Program for Tobacco Farmers.	27					27
*88—	By Senators Oliverio and Unger: Creating brownfield economic development districts.	27	743, 860	1611	1081, 1612	1610	28, 743, 861, 1011, 1081, 1610-1612, 2877, 3096
89—	By Senator Love: Requiring medical means to preserve life of fetus aborted alive.	28					28
90—	By Senator Love: Exempting certain insurance agents from continuing education requirement.	28					28
91—	By Senators Prezioso, White, Stollings, Jenkins, Oliverio, Hunter, Unger, Foster and Green: Reducing ratio of school nurses to school children.	28					28
92—	By Senators Prezioso, Bowman and Unger: Relating to parental notification for unemancipated minor obtaining abortion.	29					29

Roll No. 9

2008]

JOURNAL OF THE SENATE

1081

On unfinished business, coming up in regular order, was reported by the Clerk and referred to the Committee on Pensions; and then to the Committee on Rules.

The Senate proceeded to the eighth order of business.

Eng. Com. Sub. for Senate Bill No. 88, Creating brownfield economic development districts.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Bailey, Barnes, Boley, Bowman, Caruth, Chafin, Deem, Edgell, Facemyer, Fanning, Foster, Green, Guills, Hall, Helmick, Hunter, Jenkins, Kessler, Love, McCabe, McKenzie, Minard, Oliverio, Plymale, Prezioso, Sprouse, Stollings, Sypolt, Unger, Wells, White, Yoder and Tomblin (Mr. President)—33.

The nays were: None.

Absent: Sharpe—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. No. 88) passed with its title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Eng. Com. Sub. for Senate Bill No. 235, Creating Office for Oral Health.

On third reading, coming up in regular order, was reported by the Clerk.

At the request of Senator Chafin, unanimous consent being granted, the bill was laid over one day, retaining its place on the calendar.

Ordered, That the Clerk of the House communicate to the Senate the action of the House of Delegates.

H. R. 30, Supporting the establishment of the History and Culture Institute of Mining in the State of West Virginia; coming up in regular order, as unfinished business, was reported by the Clerk and adopted.

THIRD READING

Com. Sub. for S. B. 13, Relating to Dental Practice Act generally; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 283**), and there were--yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Mahan.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 13) passed.

Ordered, That the Clerk of the House communicate to the Senate the action of the House of Delegates and request concurrence therein.

Com. Sub. for S. B. 88, Creating brownfield economic development districts; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 284**), and there were--yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Mahan.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 88) passed.

Ordered, That the Clerk of the House communicate to the Senate the action of the House of Delegates and request concurrence therein.

S. B. 217, Reducing compliance time for nonresident traffic violations on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 285**), and there were--yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

ABSENT AND NOT VOTING: Mahan.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 217) passed.

An amendment to the title of the bill, recommended by the Committee on the Judiciary, was reported by the Clerk and adopted, amending the title to read as follows:

S. B. 217 - "A Bill to amend and reenact §8-10-2a of the Code of West Virginia, 1931, as amended; to amend and reenact §17B-3-3a of said code; and to amend and reenact §50-3-2a of said code, all relating to resident and non-resident drivers' failure to pay costs, fines, forfeitures or penalties imposed upon conviction of a motor vehicle violation; and reducing the time period for nonresidents to pay costs, fines, forfeitures or penalties before the court sends notice to the Division of Motor Vehicles to suspend the nonresident offender's driver's privilege to drive in this state."

On page nine, section six, line twenty, after the word "practice" by inserting the words "to be completed and filed as an emergency rule no later than the first day of July, two thousand eight".

On motion of Senator Chafin, the Senate concurred in the House of Delegates amendment to the bill.

Engrossed Committee Substitute for Committee Substitute for Senate Bill No. 13, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Bailey, Barnes, Boley, Bowman, Caruth, Chafin, Deem, Edgell, Facemyer, Fanning, Foster, Green, Guills, Hall, Helmick, Hunter, Jenkins, Kessler, Love, McCabe, McKenzie, Minard, Oliverio, Plymale, Prezioso, Sprouse, Stollings, Sypolt, Unger, Wells, White, Yoder and Tomblin (Mr. President)—33.

The nays were: None.

Absent: Sharpe—1.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for Com. Sub. for S. B. No. 13) passed with its title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

A message from The Clerk of the House of Delegates announced the amendment by that body, passage as amended, and requested the concurrence of the Senate in the House of Delegates amendments, as to

Eng. Com. Sub. for Senate Bill No. 88, Creating brownfield economic development districts.

On motion of Senator Chafin, the message on the bill was taken up for immediate consideration.

The following House of Delegates amendments to the bill were reported by the Clerk:

On page three, section six-a, after line twenty-four, by adding a new subdivision, designated subdivision (5), to read as follows:

"(5) The applicant shall own or control the property within the district;"

And renumbering the remaining subdivisions;

On page three, section six-a, line twenty-seven, by striking out the word "Applicants" and inserting in lieu thereof the words "An applicant";

On page four, section six-a, line forty-six, by striking out the words "governing board" and inserting in lieu thereof the words "Regional Brownfield Assistance Centers";

On page four, section six-a, line forty-seven, after the word "in" by inserting the words "section seven,";

On page four, section six-a, line forty-eight, by striking out the word "three" and inserting in lieu thereof the word "eleven";

And,

On page five, section six-a, line fifty-nine, by striking out the word "July" and inserting in lieu thereof the word "October".

On motion of Senator Chafin, the Senate concurred in the House of Delegates amendments to the bill.

Engrossed Committee Substitute for Senate Bill No. 88, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Bailey, Barnes, Boley, Bowman, Caruth, Chafin, Deem, Edgell, Facenyer, Fanning, Foster, Green, Guills, Hall, Helmick, Hunter, Jenkins, Kessler, Love, McCabe, McKenzie, Minard, Oliverio, Plymale, Prezioso, Sprouse, Stollings, Sypolt, Unger, Wells, White, Yoder and Tomblin (Mr. President)—33.

The nays were: None.

Absent: Sharpe—1.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. No. 88) passed with its title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

A message from The Clerk of the House of Delegates announced the amendment by that body, passage as amended with its House of Delegates amended title, and requested the concurrence of the Senate in the House of Delegates amendments, as to

Eng. Senate Bill No. 217, Reducing compliance time for nonresident traffic violations.

On motion of Senator Chafin, the message on the bill was taken up for immediate consideration.

The following House of Delegates amendments to the bill were reported by the Clerk:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

That §8-10-2a of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §17B-3-3a of said code be amended and reenacted; and that §50-3-2a of said code be amended and reenacted, all to read as follows:

1 **Senate Bill No. 88**

2 (By Senators Oliverio and Unger)

3
4 [Introduced January 9, 2008; referred to the Committee on
5 Economic Development; and then to the Committee on Finance.]
6
7
8
910 A BILL to amend the Code of West Virginia, 1931, as amended, by
11 adding thereto a new section, designated §5B-2-6a, relating to
12 the creation of brownfield economic development districts.13 *Be it enacted by the Legislature of West Virginia:*14 That the Code of West Virginia, 1931, as amended, be amended
15 by adding thereto a new section, designated §5B-2-6a, to read as
16 follows:17 **ARTICLE 2. WEST VIRGINIA DEVELOPMENT OFFICE.**18 **§5B-2-6a. Brownfield economic development districts; applications;**
19 **fees; rules.**20 Any property owner of a tract of land that is a brownfield or
21 voluntary remediated site pursuant to article twenty-two, chapter
22 twenty-two of this code may, if such site and surrounding area were
23 involved in the extraction and processing of coal, limestone or
24 other natural resource, apply to the development office to become

1 a brownfield economic development district.

2 (1) Applicants for a brownfield economic development district
3 must demonstrate that the district when designated will create
4 significant economic development activity;

5 (2) Applicants shall submit a development plan that provides
6 specific details on proposed financial investment, direct and
7 indirect jobs to be created, and the viability of the district;

8 (3) Brownfield economic development districts:

9 (A) May not contain single family housing;

10 (B) Shall provide all the infrastructure within the district
11 without cost to the state, county, public service district or local
12 municipal government;

13 (4) Applicants shall demonstrate that were it not for this
14 designation the contemplated development would not be possible and
15 that the development is in the best interest of the state;

16 (5) All costs for the application process shall be borne by
17 the applicant;

18 (6) Applicants shall demonstrate that the applicant has
19 attempted to work in good faith with local officials in regard to
20 land use issues;

21 (7) Brownfield economic development districts are not subject
22 to the provisions of chapter eight-a of this code;

23 (8) Prior to granting a designation of brownfield economic
24 development district, the applicant shall provide documentation

1 that the applicant has met all the requirements set for in article
2 twenty-two, chapter twenty-two of this code to be designated as a
3 brownfield site or voluntary remediated site and is in compliance
4 with the remediation plan;

5 (9) The development office shall propose rules for legislative
6 approval in accordance with the provisions of article three,
7 chapter twenty-nine-a of this code to implement this section and
8 such rules shall include, but not be limited to, the application
9 and timeline process, notice provisions, additional application
10 consideration criteria and application fees sufficient to cover the
11 costs of the consideration of an application. The development
12 office shall promulgate emergency rules pursuant to the provisions
13 of section fifteen, article three, chapter twenty-nine-a of this
14 code by the first day of July, two thousand eight, to facilitate
15 the initial implementation of this section.

16 (10) Nothing may be construed by this section to exempt
17 brownfield economic districts from environmental regulation that
18 would pertain to the development; and

19 (11) The decision of the development office in regard to an
20 application is final.

NOTE: The purpose of this bill is to create brownfield economic development districts in areas involved in the extraction and processing of coal, limestone or other natural resources and that are currently designated as brownfield or voluntary remediated sites by the state.

2008R1020

This section is new; therefore, strike-throughs and underscoring have been omitted.

1 COMMITTEE SUBSTITUTE

2 FOR

3 Senate Bill No. 88

4 (By Senators Oliverio and Unger)

5
6 [Originating in the Committee on Finance;
7 reported February 25, 2008.]
8
9

10 A BILL to amend the Code of West Virginia, 1931, as amended, by
11 adding thereto a new section, designated §5B-2-6a, relating to
12 the creation of brownfield economic development districts;
13 providing eligibility criteria; exempting brownfield economic
14 development districts from land-use planning provisions; and
15 requiring the development office to promulgate emergency rules
16 by the first day of July, two thousand eight, to implement
17 this new section.

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

19 That the Code of West Virginia, 1931, as amended, be amended
20 by adding thereto a new section, designated §5B-2-6a, to read as
21 follows:

22 **ARTICLE 2. WEST VIRGINIA DEVELOPMENT OFFICE.**

23 **§5B-2-6a. Brownfield economic development districts; applications;**
24 **fees; rules.**

1 (a) Any property owner of a tract of land that is a brownfield
2 or voluntary remediated site pursuant to article twenty-two,
3 chapter twenty-two of this code may, if the site and surrounding
4 area were involved in the extraction and processing of coal,
5 limestone or other natural resources, apply to the development
6 office to become a brownfield economic development district.

7 (1) Applicants for a brownfield economic development district
8 must demonstrate that the district when designated will create
9 significant economic development activity;

10 (2) Applicants shall submit a development plan that provides
11 specific details on proposed financial investment, direct and
12 indirect jobs to be created and the viability of the district;

13 (3) Brownfield economic development districts:

14 (A) May not contain single-family housing;

15 (B) Shall provide all the infrastructure within the district
16 without cost to the state, county, public service district or local
17 municipal government;

18 (4) Applicants shall demonstrate that were it not for this
19 designation, the contemplated development would not be possible and
20 that the development is in the best interest of the state;

21 (5) All costs for the application process shall be borne by
22 the applicant;

23 (6) Applicants shall demonstrate that the applicant has
24 attempted to work in good faith with local officials in regard to

1 land-use issues;

2 (7) Brownfield economic development districts are not subject
3 to the provisions of chapter eight-a of this code;

4 (8) Prior to granting a designation of brownfield economic
5 development district, the applicant shall provide documentation
6 that the applicant has met all the requirements set forth in
7 article twenty-two, chapter twenty-two of this code to be
8 designated as a brownfield site or voluntary remediated site and is
9 in compliance with the remediation plan;

10 (9) Nothing may be construed by this section to exempt
11 brownfield economic districts from environmental regulation that
12 would pertain to the development;

13 (10) The decision of the development office in regard to an
14 application is final; and

15 (11) Once designated, the district shall work in conjunction
16 with the governing board of Marshall University and West Virginia
17 University as specified in article three, chapter eighteen-b of
18 this code.

19 (b) The development office shall propose rules for legislative
20 approval in accordance with the provisions of article three,
21 chapter twenty-nine-a of this code to implement this section and
22 the rules shall include, but not be limited to, the application and
23 time line process, notice provisions, additional application
24 consideration criteria and application fees sufficient to cover the

1 costs of the consideration of an application. The development
2 office shall promulgate emergency rules pursuant to the provisions
3 of section fifteen, article three, chapter twenty-nine-a of this
4 code by the first day of July, two thousand eight, to facilitate
5 the initial implementation of this section.

Adopted by House 3-4-08

SB88 HFIN AM

1 The Committee on Finance moves to amend the bill on page
2 three, section six-a, following line twenty-four, by adding a new
3 subdivision to read as follows:

4 “(5) The applicant shall own or control the property within
5 the district.”, and relettering the remaining subdivisions
6 accordingly;

7 On page three, section six-a, line twenty-seven, after“(6)” by
8 striking out the word “Applicants” and inserting in lieu thereof
9 the words “An applicant”;

10 On page four, section six-a, line forty-six, following the
11 words “conjunction with the”, by striking out the words “governing
12 board of” and inserting in lieu thereof the words “Regional
13 Brownfield Assistance Centers”;

14 On page four, section six-a, line forty-seven, following the
15 words “as specified in” by inserting the words “section seven”
16 followed by a comma;

17 On page four, section six-a, line forty-eight, following the
18 word “article”, by striking out the word “three” and inserting in
19 lieu thereof the word “eleven”; and

20 On page five, section six-a, line fifty-nine, following the
21 words “first day of” by striking out the word “July” and inserting
22 in lieu thereof the word “October”.

CHAPTER 21

(Com. Sub. for S.B. 88 - By Senators Oliverio and Unger)

[Passed March 6, 2008; in effect ninety days from passage.]
[Approved by the Governor on March 20, 2008.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5B-2-6a, relating to the creation of brownfield economic development districts; providing eligibility criteria; exempting brownfield economic development districts from land-use planning provisions; and requiring the development office to promulgate emergency rules by the first day of July, two thousand eight, to implement this new section.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §5B-2-6a, to read as follows:

ARTICLE 2. WEST VIRGINIA DEVELOPMENT OFFICE.

§5B-2-6a. Brownfield economic development districts; applications; fees; rules.

- 1 (a) Any property owner of a tract of land that is a
- 2 brownfield or voluntary remediated site pursuant to article
- 3 twenty-two, chapter twenty-two of this code may, if the site
- 4 and surrounding area were involved in the extraction and
- 5 processing of coal, limestone or other natural resources,

6 apply to the development office to become a brownfield
7 economic development district.

8 (1) Applicants for a brownfield economic development
9 district must demonstrate that the district when designated
10 will create significant economic development activity;

11 (2) Applicants shall submit a development plan that
12 provides specific details on proposed financial investment,
13 direct and indirect jobs to be created and the viability of the
14 district;

15 (3) Brownfield economic development districts:

16 (A) May not contain single-family housing;

17 (B) Shall provide all the infrastructure within the district
18 without cost to the state, county, public service district or
19 local municipal government;

20 (4) Applicants shall demonstrate that were it not for this
21 designation, the contemplated development would not be
22 possible and that the development is in the best interest of the
23 state;

24 (5) The applicant shall own or control the property within
25 the district;

26 (6) All costs for the application process shall be borne by
27 the applicant;

28 (7) An applicant shall demonstrate that the applicant has
29 attempted to work in good faith with local officials in regard
30 to land-use issues;

31 (8) Brownfield economic development districts are not
32 subject to the provisions of chapter eight-a of this code;

1 ENROLLED

2 COMMITTEE SUBSTITUTE

3 FOR

4 Senate Bill No. 88

5 (SENATORS OLIVERIO AND UNGER, *original sponsors*)

6
7 [Passed March 6, 2008; in effect ninety days from passage.]
8
9

10 AN ACT to amend the Code of West Virginia, 1931, as amended, by
11 adding thereto a new section, designated §5B-2-6a, relating to
12 the creation of brownfield economic development districts;
13 providing eligibility criteria; exempting brownfield economic
14 development districts from land-use planning provisions; and
15 requiring the development office to promulgate emergency rules
16 by the first day of July, two thousand eight, to implement
17 this new section.

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

19 That the Code of West Virginia, 1931, as amended, be amended
20 by adding thereto a new section, designated §5B-2-6a, to read as
21 follows:

22 **ARTICLE 2. WEST VIRGINIA DEVELOPMENT OFFICE.**

23 **§5B-2-6a. Brownfield economic development districts; applications;**
24 **fees; rules.**

1 (a) Any property owner of a tract of land that is a brownfield
2 or voluntary remediated site pursuant to article twenty-two,
3 chapter twenty-two of this code may, if the site and surrounding
4 area were involved in the extraction and processing of coal,
5 limestone or other natural resources, apply to the development
6 office to become a brownfield economic development district.

7 (1) Applicants for a brownfield economic development district
8 must demonstrate that the district when designated will create
9 significant economic development activity;

10 (2) Applicants shall submit a development plan that provides
11 specific details on proposed financial investment, direct and
12 indirect jobs to be created and the viability of the district;

13 (3) Brownfield economic development districts:

14 (A) May not contain single-family housing;

15 (B) Shall provide all the infrastructure within the district
16 without cost to the state, county, public service district or local
17 municipal government;

18 (4) Applicants shall demonstrate that were it not for this
19 designation, the contemplated development would not be possible and
20 that the development is in the best interest of the state;

21 (5) The applicant shall own or control the property within the
22 district;

23 (6) All costs for the application process shall be borne by
24 the applicant;

1 (7) An applicant shall demonstrate that the applicant has
2 attempted to work in good faith with local officials in regard to
3 land-use issues;

4 (8) Brownfield economic development districts are not subject
5 to the provisions of chapter eight-a of this code;

6 (9) Prior to granting a designation of brownfield economic
7 development district, the applicant shall provide documentation
8 that the applicant has met all the requirements set forth in
9 article twenty-two, chapter twenty-two of this code to be
10 designated as a brownfield site or voluntary remediated site and is
11 in compliance with the remediation plan;

12 (10) Nothing may be construed by this section to exempt
13 brownfield economic districts from environmental regulation that
14 would pertain to the development;

15 (11) The decision of the development office in regard to an
16 application is final; and

17 (12) Once designated, the district shall work in conjunction
18 with the regional brownfield assistance centers of Marshall
19 University and West Virginia University as specified in section
20 seven, article eleven, chapter eighteen-b of this code.

21 (b) The development office shall propose rules for legislative
22 approval in accordance with the provisions of article three,
23 chapter twenty-nine-a of this code to implement this section and
24 the rules shall include, but not be limited to, the application and

1 time line process, notice provisions, additional application
2 consideration criteria and application fees sufficient to cover the
3 costs of the consideration of an application. The development
4 office shall promulgate emergency rules pursuant to the provisions
5 of section fifteen, article three, chapter twenty-nine-a of this
6 code by the first day of October, two thousand eight, to facilitate
7 the initial implementation of this section.



WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

Senator Joseph Minard, Cochair
Delegate Bonnie Brown, Cochair
Debra A. Graham, Chief Counsel
Felisha N. Sutherland, Administrative Assistant

Rita A. Pauley, Associate Counsel
Brian Skinner, Associate Counsel
Charles Roskovensky, Associate Counsel
Jay Lazell, Associate Counsel

MEMORANDUM

Date: August 26, 2010
From: Debra A. Graham, Chief Counsel *DAG*
To: Delegate John Doyle
Subject: Brownfield Economic Development Districts

Per our discussion last week, I am sending you this memo regarding W.Va. Code §5B-2-6a, Brownfield Economic Development Districts. I agree with you that the language in subsection (a), subdivisions 7 and 8 may be interpreted in more than one way.

Initially, I interpreted the statute as saying that applicants for Brownfield Economic Development Districts are not subject to Chapter 8A of the Code relating to land use planning as all of the other provisions of statute relate to applicants. But, as you pointed out, while subdivision (7) refers to the applicant, subdivision (8) refers to Brownfield Economic Development Districts not being subject to land use planning.

I cannot determine whether or not it was the Legislature's intent to distinguish between an applicant and a district or just inconsistency in drafting. Therefore, looking at the plain language of the statute, the Districts, once established are not subject to land use planning. There is no exemption for applicants from land use planning.



WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

Senator Joseph Minard, Cochair
Delegate Bonnie Brown, Cochair
Debra A. Graham, Chief Counsel
Felisha N. Sutherland, Administrative Assistant

Rita A. Pauley, Associate Counsel
Brian Skinner, Associate Counsel
Charles Roskovensky, Associate Counsel
Jay Lazell, Associate Counsel

MEMORANDUM

Date: July 22, 2010
From: Debra A. Graham, Chief Counsel
To: Delegate John Doyle
Subject: Brownfield Economic Development Districts

I have reviewed WV Code §5B-2-6a, in conjunction with the Development Office's rule, Brownfield Economic Development Districts, 145CSR11, to determine whether or not the rule exceeds the scope of its statutory authority. WV Code §5B-2-6a, provides, in part, as follows:

...(b) The development office shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to **implement this section** and the rules shall include, but not be limited to, the application and time line process, notice provisions, additional application consideration criteria and application fees sufficient to cover the costs of the consideration of an application...

The authority set forth is fairly broad in nature with the Development Office being giving the authority to implement the section. In reviewing the rule, the only provisions I thought might be borderline are those dealing with revocation of the designation of a district as a Brownfield Economic District and those dealing with the vesting of property rights. However, based on the broad authority given to the Development Office to promulgate rules, it is my opinion that these provisions are within the scope of the statutory authority.

It should be noted that the rule was authorized by the Legislature and as such, has the force and effect of law. This makes any issue regarding the scope of authority moot.

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ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: West Virginia Development Office
Subject: Brownfield Economic Development Districts, 145CSR11
Counsel: Rita A. Pauley

PERTINENT DATES

Filed for public comment: July 1, 2008
Public comment period ended: July 31, 2008
Filed following public comment period: August 15, 2008
Filed LRMRC: August 15, 2008
Filed as emergency: N/A

Fiscal Impact:

ABSTRACT

This rule is new. The following is a synopsis of the proposed rule.

Section 1 is the standard general section, setting forth the scope, authority, filing date and effective date of the proposed rule.

Section 2 is the definition section.

Section 3 sets forth the minimum information necessary to apply for the establishment of a brownfield economic development district. This includes things such as the applicant's contact information and financial capabilities, site description of the proposed brownfield economic district; information sufficient to clearly and concisely identify the real estate, documents establishing that the applicant owns land as of the date of the application, time line for completion of the project, a traffic study, copy of the economic development concept project plan including breakdown of project costs, certification from any utility the project will tie into that the project's applicable infrastructure is adequate and acceptable to the utility, copy of the voluntary remediation agreement with DEP, facts and documents demonstrating that the creation of a brownfield economic development district will create a significant economic development including number of jobs to be created and that the project is in the best interest of the State and that a good faith effort was made to work with local land use officials in regard to land use issues.

Section 4 establishes the application fee of \$2,500. The fee is to be paid at the time the application is made. the applicant must pay any extraordinary costs that may be incurred in processing the application. If the application is withdrawn prior to processing the fee will be returned, however, once processing has begun no part of the fee will be refunded. If additional information is requested it must be received within 60 days. If the information is received after 60 days it will be considered a new application.

Section 6 establishes acceptable methods for delivery of any documents or payments to the Development Office. The date the document or payment is postmarked either by the US Postal Service or other designated delivery service is the day of delivery. If an act must be performed on a Saturday, Sunday or legal holiday it may be preformed on the next day that is not a Saturday, Sunday or legal holiday.

Section 7 specifies the content of the public notice the Development Office must publish in the State Register. The notice must be filed within 14 days of receipt of an application for establishment of a brownfield economic development district. Notice of the Director's establishment of a brownfield economic development district or rejection of an application must also be filed in the State Register within 14 days of issuance.

Section 8 sets forth the criterion for determining whether to grant or deny an application for establishment of a brownfield economic development district. There are several criteria and multiple considerations for each one. When determining if the proposed district will create significant economic development consideration will be given to whether the cost of the project, excluding the land cost, will be greater than ten million dollars; the type, number and quality of jobs to be created in the district; whether the jobs are new or relocated within the State; estimated payroll; and whether the project will support, enhance and diversify existing businesses.

When determining whether the project is in the best interest of the State consideration will be given to the extent to which the new jobs will be quality, high wage and benefit jobs; the extent to which the district will stimulate and support the growth of new or existing business in the county and the State; the extent to which the district will compete with or compliment existing business in the county; extent to which the project will improve the opportunities in the area for establishing or expanding other businesses in the county; the extent to which the project will assist in creation of other employment opportunities; and the extent to which the project will help to diversify the local economy.

The applicant bears the burden of proving by clear and convincing evidence that establishing a brownfield economic development district is consistent with all of the requirements of WVC §5B-2-6a.

Section 9 explains the applicant's requirements after a district is established. After the economic development plan and plat for the brownfield economic development district have been completed they must be submitted to the Director for approval. If the plan and plat are in substantial compliance with the concept plan submitted with the application the Director will approve the plan and plat for recording in the office of the appropriate county clerk. Within 36 months after the district was established the project engineer or architect must certify to the Director that the project remains in substantial compliance with the concept plan. This certification must be made every 18 months until the project is 80% or more completed. The designation as a brownfield economic development district will automatically be revoked for failure to comply with the reporting requirements for more than 30 days.

If an applicant or his or her successor wants to materially change or deviate from the concept plan or the completion time-line, an application for approval must be made to the Director at least 30 days before entering into any contract or combination of contracts that would result in such change. Failure to obtain the Director's prior approval will result in the automatic revocation of the district's designation.

Whenever the district designation is revoked under this section, the Director will promptly notify the applicant or any successor in writing of the revocation. A copy of the letter will also be sent to the local governing body of the local jurisdiction in which the district was located.

Section 10 Vested property rights; termination states that a vested property right to undertake and complete the concept economic development project plan is created for the applicant and any successor when the brownfield economic development district is established. Failure to abide by the terms and conditions of this rule or a material failure to complete the economic development project concept plan will result in termination of the project, loss of the district's designation and forfeiture of the property right previously created.

The vesting period to complete the economic development concept plan is 3 years. This 3 year period is extend every time the certifications required by section 9 are filed with the Director. Vesting becomes permanent after 80% or more of the buildings in the project concept plan have been completed.

Revocation of the district's designation under this rule or expiration of the vesting period before completion of the concept

plan does not effect the portion of the plan was completed. Neither event will affect any construction work in progress unless it is inconsistent with the concept plan or any approved changes to the plan.

Section 11 provides that the orders of the Director are final.

AUTHORITY

Statutory authority: W.Va. Code, §5B-2-6A(b), which provides, in pertinent part, as follows:

§5B-2-6a. Brownfield economic development districts; applications; fees; rules.

(A) May not contain single-family housing;

(b) The development office shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement this section and the rules shall include, but not be limited to, the application and time line process, notice provisions, additional application consideration criteria and application fees sufficient to cover the costs of the consideration of an application. The development office shall promulgate emergency rules pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of this code by the first day of October, two thousand eight, to facilitate the initial implementation of this section...

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISION OF THE CODE?

Yes.

VIII. OTHER.

Counsel has suggested technical modifications.

Tuesday, February 10, 2009

9:00 a.m. to 11:00 a.m.

Legislative Rule-Making
Review Committee
(Code §29A-3-10)

Earl Ray Tomblin
ex officio nonvoting member

Richard Thompson
ex officio nonvoting member

Senate

Minard, Chairman	
Fanning, Vice Chair	Absent
Prezioso	Absent
Unger	
Boley	
Facemyer	Absent

House

Brown, Chairman
Poling, Vice Chair
Miley
Talbott
Overington
Sobonya

The meeting was called to order by Senator Minard, Chairman.

Delegate Brown moved that the minutes of the January 12, 2009, meeting be approved. The motion was adopted.

Jay Lazell, Associate Counsel, explained his abstract on the rule proposed by the **Office of the Department of Environmental Protection on Air Quality, Control and Reduction of Nitrogen Oxides from Non-Electric Generating Units as a Means of Mitigate Transport of Ozone Precursors, 45CSR1.**

Delegate Brown moved that the proposed rule be approved. The motion was adopted.

Mr. Lazell, reviewed his abstract on the rule proposed by the **Office of the Department of Environmental Protection on Air Quality, Nox Budget Trading Program as a Means of Control and Reduction of Nitrogen Oxides from Electric Generating Units, 45CSR26.**

Delegate Brown moved that the proposed rule be approved. The motion was adopted.

Rita Pauley, Associate Counsel, explained her abstract on the rule proposed by the **West Virginia Development Office, Brownfield Economic Development Districts, 145CSR11,** stated that the Office has agreed to technical modifications, and responded to questions from the committee.

Delegate Brown moved that the proposed rule be approved as modified. The motion was adopted.

Brian Skinner, Associate Counsel, reviewed his abstract on the rule proposed by the **West Virginia State Fire Commission, Standards for the Certification and Continuing Education of Municipal, County, and other Public Building Code Officials, Building Code Inspectors and Plans Examiners, 87CSR7**, stated that the Commission has agreed to technical modifications and responded to questions from the committee.

Anthony Carrico, Deputy State Fire Marshall, responded to questions from the committee.

Delegate Brown moved that the proposed rule be approved as modified. The motion was adopted.

Mr. Skinner, Associate Counsel, explained his abstract on the rule proposed by the **West Virginia State Fire Marshall, Supervision of Fire Protection Work, 130CSR3**, stated that the Marshall has agreed to technical modifications and responded to questions.

Delegate Brown moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Pauley, Associate Counsel, reviewed her abstract on the rule proposed by the **Governor's Committee on Crime, Delinquency and Correction, Law Enforcement Training Standards, 149CSR2**, stated that the Committee has agreed to technical modifications and answered questions from the committee.

Delegate Brown moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Pauley addressed the committee again about subpoena powers and whether or not to draft a bill specifically stating those powers.

Ms. Pauley, Associate Counsel, explained her abstract on the rule proposed by the **West Virginia Division of Highways, Use of State Road Rights of Way and Adjacent Areas, 157CSR6**, and stated that the Division has agreed to technical modifications.

Paul Mattox, Commissioner of Highways, addressed the committee, showed an example of what a memorial sign would look like, and answered questions from the committee.

Ms. Pauley then responded to questions from the committee.

Delegate Brown moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Pauley, Associate Counsel, reviewed her abstract on the rule proposed by the **West Virginia Division of Highways, Transportation of Hazardous Wastes Upon the Roads and Highways, 157CSR7**.

Delegate Brown moved that the proposed rule be approved. The motion was adopted.

Ms. Pauley, Associate Counsel, explained her abstract on the rule proposed by the **West Virginia Insurance Commission, Coordination of Health Benefits, 114CSR28**, stated that the Commission has agreed to technical modifications, and responded to questions.

Delegate Brown moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Pauley, Associate Counsel, reviewed her abstract on the rule proposed by the **West Virginia Insurance Commission, Long-Term Care Insurance, 114CSR32**, stated that the Commission has agreed to technical modifications and answered questions from the committee.

Tim Murphy, Associate Counsel for the West Virginia Insurance Commission, responded to questions.

Delegate Brown moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Pauley, Associate Counsel, explained her abstract on the rule proposed by the **West Virginia Insurance Commission, Actuarial Opinion and Memorandum Rule, 114CSR41**, stated that the Commission has agreed to technical modifications and responded to questions from the committee.

Delegate Brown moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Pauley, Associate Counsel, reviewed her abstract on the rule proposed by the **West Virginia Insurance Commission, Viatical Settlements, 114CSR80**, stated that the Commission has agreed to technical modifications and responded to questions from the committee.

Tim Murphy, Associate Counsel for the West Virginia Insurance Commission, answered questions from the committee.

Delegate Brown moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Pauley, Associate Counsel, explained her abstract on the rule proposed by the **West Virginia Insurance Commission, Discount Medical Plan Organizations and Discount Prescription Drug Plan Organizations, 114CSR83**, and stated that the Commission has agreed to technical modifications.

Delegate Brown moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Pauley, Associate Counsel, explained her abstract on the rule proposed by the **West Virginia Insurance Commission, Professional Employer Organizations, 114CSR85**, and stated that the Commission has agreed to technical modifications.

Tim Murphy, Associate Counsel for the West Virginia Insurance Commission, addressed the committee and responded to questions.

Delegate Brown moved that the proposed rule be approved as modified. The motion was adopted.

Mr. Lazell, Associate Counsel, explained his abstract on the rule proposed by the **Department of Environmental Protection Mining and Reclamation Division**, West Virginia Surface Mining Reclamation Rule, **38CSR2**, stated that the Department has agreed to technical modifications and responded to questions from the committee.

Delegate Miley moved that the proposed rule be approved as modified. The motion was adopted.

Senator Minard moved that the **WV/NPDES Rules for Coal Mining Facilities, 47CSR30**, from the Department of Environmental Protection be moved up on the agenda to right after item o, **West Virginia Surface Mining Reclamation Rule, 38CSR2**.

Mr. Lazell, Associate Counsel, reviewed his abstract on the rule proposed by the **Department of Environmental Protection Water Resources Division, WV/NPDES Rules for Coal Mining Facilities, 47CSR30**, stated that the Department has agreed to technical modifications and answered questions from the committee.

Delegate Poling moved that the rule be approved as modified. The motion was adopted.

Ms. Pauley, Associate Counsel, reviewed her abstract on the rule proposed by the **West Virginia Board of Pharmacy, Board of Pharmacy Rules Regarding Licensure and the Practice of Pharmacy, 15CSR1**, and stated that the Board has agreed to technical modifications.

Senator Minard moved that the proposed rule be approved as modified.

Ms. Pauley answered questions from the committee.

The motion was adopted.

Ms. Pauley, Associate Counsel, explained her abstract on the rule proposed by the **West Virginia Board of Pharmacy, Board of Pharmacy Rules Regarding Immunizations Administered by Pharmacists, 15CSR12**, and stated that the Board has agreed to technical modifications.

Senator Minard moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Pauley, Associate Counsel, reviewed her abstract on the rule proposed by the **West Virginia Board of Pharmacy, Regulation of Charitable Clinic Pharmacies, 15CSR13**, and stated that the Board has agreed to technical modifications.

David Potters, Executive Director and General Counsel of the West Virginia Board of Pharmacy, addressed the committee and responded to questions.

Delegate Brown moved that the proposed rule be approved as modified.

Delegate Brown then proposed an amendment to the rule, **15CSR13 LRMRC AM#1, Pauley 7815**.

David Potters addressed the committee again stating that he was in opposition to the amendment and responded to questions.

Delegate Sobonya addressed the committee also in opposition to the amendment.

Jeff Graham, CEO of Beckley Healthrite, addressed the committee in reference to the proposed amendment.

Ms. Pauley then answered questions from the committee.

Delegate Brown took a vote on the amendment and it was rejected by the committee.

Delegate Brown then moved that the proposed rule be approved as modified. The motion was adopted.

Senator Minard moved to direct staff to prepare a final report and bills of authorization for introduction into the Senate and House of Delegates. The motion was adopted.

Senator Minard moved to adjourn the meeting. The motion was adopted.