



Relationships



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Results

# Handbook for Local Government Public Finance

West Virginia Regional Planning and  
Development Councils

*Capon Bridge, WV*

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# Agenda

- Constitutional Debt Limitations
- State Law Overview
  - Public Utilities State Law
  - Building Commission State Law
  - Regional Planning & Development State Law
- Tax Increment Financing
  - Property Tax Increment Financing District
  - Economic Opportunity Development District



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# CONSTITUTIONAL DEBT LIMITATIONS

Borrowing money: Why a “bond issue” and what is required?



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# Legal Foundation – WV Constitution

- Article 10, Section 8 of the W. Va. Constitution requires approval of “debt” by more than 60% of voters
  - This kind of “debt” is difficult to approve
  - School bonds require more than 50% of voter approval
- Our Supreme Court has determined that “debt” does not include certain types of obligations.



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# Types of Permitted Debt

- “Enterprise Fund” Obligations
  - Utility Systems; Parking Systems
- Lease-Purchase Bonds
  - Public Buildings; Equipment
- Special Fund Obligations
  - TIF Districts; Municipal Sales Tax



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# Types of Permitted Debt

- Statutory Authorization
  - Over thirty-five separate statutes authorize the issuance of bonds
  - Issuers include, but are not limited to:
    - Municipalities
    - Counties
    - Boards of Education
    - Public service districts
    - Building commissions
    - Airport authorities
    - State agencies

# Legal Proceedings

- Procedure is controlled by statute
  - Resolution/Order v. Ordinance
  - Municipal procedure may be further impacted by charter provisions
  - W. Va. Open Governmental Proceedings Act
    - Agenda
    - Notice
    - No secret meetings
    - Actions overturned



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# Permitted Debt – Pro Tip



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Remember: Political subdivisions cannot simply “get a loan from a bank”





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# LOCAL GOVERNMENT BONDS

An overview on key aspects of West Virginia local government statutes.



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# Public Utility State Laws

- WV Code 8-19 – Municipal Water
- WV Code 8-20 – Municipal Combined/Stormwater
- WV Code 16-13 – Municipal Sewer/Stormwater
- WV Code 16-13A – Public Service Districts
- WV Code 16-13D – Regional Utilities
- Special Acts of the Legislature
- Nonprofit Associations
- Homeowner Associations



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# State Law – Public Utility

- Municipal Water/Electric System
  - Created by Statute (W. Va. Code 8-19)
  - Water (Fairmont, Weirton, Elkins)
  - Electric (New Martinsville)
  - Board Optional
    - W. Va. Code 8-19-19 – oversight by committee of or board appointed by governing body
  - Separate Systems
  - Gross Revenue Pledge



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# State Law – Public Utility

- Municipal Combined Water, Sewer and/or Stormwater System
  - Created by statute (W. Va. Code 8-20)
    - Examples: MUB, PUB, CTUB, Wheeling, Martinsburg
  - Utility Board Optional
    - W. Va. Code 8-20-18 oversight of committee of or board appointed by governing body
    - Boards are governed by W. Va. Code 8-16
  - Water and Sewer Systems are “combined” for financing purposes
    - Separate for PSC accounting purposes
    - Stormwater
  - Gross Revenue Pledge



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# State Law – Public Utility

- Municipal Sewer/Stormwater
  - Created by statute (W. Va. Code 16-13)
    - Examples: Huntington, Charleston, Beckley, Princeton and Bluefield
  - Sanitary Sewer and Stormwater
  - Sanitary Board/Stormwater Board requirement
    - W. Va. Code 16-13-18 – must have a board
    - Mayor or City Manager is the Chair of the board
  - Separate or Combined Systems
  - Net Revenue Pledge



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# State Law – Public Utility

- Public Service Districts
  - Created by statute (W. Va. Code 16-13A)
  - Public corporation
  - Created by County Commission
  - Public Service District Board requirement
    - W. Va. Code 16-13A-3 – 3 to 5 members
    - Appointed by County Commission
  - Separate water, sewer and stormwater utilities (two exceptions)
  - Net Revenue Pledge



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# State Law – Public Utility

- Regional Utilities
  - Created by statute (W. Va. Code 16-13D)
  - Limited to supply, storage, and treatment facilities, no distribution or collection facilities
  - Governing Body
    - W. Va. Code 16-3D-3 – not less than three members
    - Representative Membership
  - Separate water and wastewater
  - HB 3122 – Relating to the establishment and operation of regional water, wastewater and stormwater authorities
    - Adds Stormwater
    - Adds distribution / sewerage collection



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# State Law – Public Utility

- Special Acts of the Legislature
  - Created by a special bill passed by the Legislature
    - Examples: Hughes River Water Board, Moorefield/Hardy County Wastewater Authority
    - Hughes River Water Board created by SB 36 in 1996
    - Moorefield/Hardy County Wastewater Authority created by HB4309 in 2010
  - Public corporation
  - Board requirement
    - Membership varies based on the number of public entities
    - Private Company Representation
  - Separate water and wastewater utilities





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# State Law – Public Utility

- Nonprofit Associations
  - Created by statute (W. Va. Code Chapter 31E)
  - Board Controlled
    - Elected by Members or
    - Elected by Board
  - Controlled by Articles of Incorporation and By-Laws
  - Federal tax status?
  - No debt limitations

# State Law – Public Utility

- Homeowner Associations
  - Limited by statute (W. Va. Code Chapter 36B)
  - Members are exclusively owners of units
  - Units are portions of common interest property designated for separate ownership or occupancy
  - Created by recording a deed and must be organized before the first unit is conveyed



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# State Law – Public Utility

- Why does the specific statutory authority for each utility system matter?
  - Powers derived from statute
  - Statutes are DIFFERENT
    - Ownership of assets and supervision and control different
  - Different limits and restrictions
  - Bonds issued pursuant to each statute



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# State Law – Public Utility

- Who has control over and ownership of the assets of a municipal utility?
  - Control Depends on:
    - The statute (W. Va. Code 16-13 vs 8-19 and 8-20)
    - The City ordinances (Board vs No Board)
  - City Council retains:
    - Rate setting, ownership of assets, issuance of debt, approval of leases, appointment of board members, condemnation power



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# State Law – Public Utility

- Who has control over and ownership of the assets of a PSD?
  - Public Service Board oversees management of PSD
  - PSD owns assets
  - PSD has power of condemnation
  - County Commission appoints board members and controls service territory



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# Removal of PSD Board Member

- A PSD board member may be removed by petition to the circuit court due to:
  - Failure to attend board meetings,
  - Failure to pursue objectives of the PSD, or
  - Failure to perform any other duty.
- The petition may be filed by:
  - County Commission
  - PSC
  - 5% or more of customers of the PSD

# Removal of Municipal Utility Board Member

- Cales v. Town of Meadow Bridge
- Cales was member of Sanitary Board and appointed by Town Council
  - Cales was removed by the Town in a unanimous vote consistent with ordinances
  - Sued to be reinstated claiming he was a public officer as a member of sanitary board and entitled to additional protections
- Supreme Court held he was not a public officer and that his removal was appropriate.



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# BUILDING COMMISSION STATE LAW BASICS

An overview on key aspects of West Virginia Building Commissions.





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# Building Commission State Law

- WV Code 8-33 – Building Commissions
  - Establishes the process by which a building commission may be created
  - Powers and duties
  - Ability to issue bonds



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# Building Commission State Law

- Building Commissions:
  - Established by County Commissions by Order or Municipalities by Ordinance
  - Public corporations
  - Controlled by a 3-5 member board (appointed by County Commission or Municipality)
    - 5-year term following initial appointment
    - No more than 2/3 from the same political party
    - Not an office holder or employed by state, federal, or local government or political party
    - Must be residents of the county or city which appointed them



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# Building Commission State Law

- Transfer of property to County Commission
  - Any municipality or county is authorized to transfer property to a Commission in order to carry out its purpose
  - Both parties to agree on FMV of property being transferred



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# REGIONAL PLANNING AND DEVELOPMENT COUNCILS

An overview on key aspects of West Virginia Regional Councils.



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# Regional Planning and Development

- Pop Quiz!
  - Who may a regional council cooperate with on planning and development?
  - Municipalities and Counties are members of the regional council, what is the lowest percentage of municipal and county membership permitted?
  - Who else may serve as a member of the Regional Council?
  - What is the total maximum percentage of additional members on the Regional Council?
  - When were the regional councils created (year)?
  - Bonus: What bill created the Regional Planning and Development article?

# Regional Planning & Development - State Law

- WV Code 8-25 – Regional Planning and Development
  - Establishes the various regional councils across the state
  - Powers and duties
  - Membership requirements



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# Regional Planning and Development

- Regional Councils:
  - Charged with creating a plan or plans for the development of the region consistent with state development goals;
  - Coordinate with other units of government – local, state, and federal to secure financing for projects;
  - Assist and coordinate with municipalities and counties upon request;
  - Keep a pulse on regional concerns, such as industry, commerce, transportation, and housing;
  - Adopt bylaws or other rules and regulations.
- Authorized by W. Va. Code 8-25-8



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# Regional Planning and Development

- Pop Quiz Answers:
  - Who may a regional council cooperate with on planning and development?
    - planning agencies or development agencies within the region or within other regions, with the governing bodies and administrative officials of any municipality, county or any other political subdivision, including those in other states, or with any other entity, private or public (W. Va. Code 8-25-10)
  - Municipalities and Counties are members of the regional council, what is the lowest percentage of municipal and county membership permitted?
    - Not less than 51% (W. Va. Code 8-25-6(a))
  - Who else may serve as a member of the Regional Council?
    - Any additional member selected by the municipalities and counties. (W. Va. Code 8-25-6(b))





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# Regional Planning and Development

- Pop Quiz!
  - What is the total maximum percentage of additional members on the Regional Council?
    - Not greater than 49% (W. Va. Code 8-25-6(b))
  - When were the regional councils created (year)?
    - 1969
  - Bonus: What bill created W. Va. Code 8-25?
    - SB 2 in 1969



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# TAX INCREMENT FINANCING

An overview of the economic development tools available to counties and municipalities.

# Tax Increment Financing

- Two types of Tax Increment Financing (TIF):
  1. Property Tax Increment Financing Districts (TIF)
  2. Economic Opportunity Development Districts (EODD)



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# How does TIF Work?

- Definitions:

- Tax Increment

- The difference between the base assessed value of property (before development) and the current assessed value of property (after development).

- Base Assessed Value

- The taxable assessed value of all real and tangible personal property, excluding personal motor vehicles, located within a district as shown upon the landbooks and personal property books of the assessor on the first day of July of the calendar year preceding the effective date of the creation of the district.



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# How does TIF Work?

- Establish Base Assessed Value
  - Determined by County Assessor
  - Value of all real and personal property within a District
  - Personal motor vehicles excluded, and after 2014 the following are also excluded:
    - Personal trailers, personal boats, personal campers, personal motor homes, personal ATVs, and personal motorcycles.
  - Valuation date of July 1 of year prior to order creating the District



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# How does EODD Work?

- Benefits of EODD

- Captures tax increase to benefit local projects
- Broad statutory authorization as to permitted uses of funds
- Designed to fund project costs where other financing is not available

- Local Control

- Public policy protections:
  - “But for” Test
  - Requirement of \$75M in private investment over first 2 years
  - Competitive Bidding of Construction Contracts
  - West Virginia Jobs Act
  - Public hearing and notice requirements
  - Legislative and West Virginia Development Office Approval
  - All documents and information subject to FOIA



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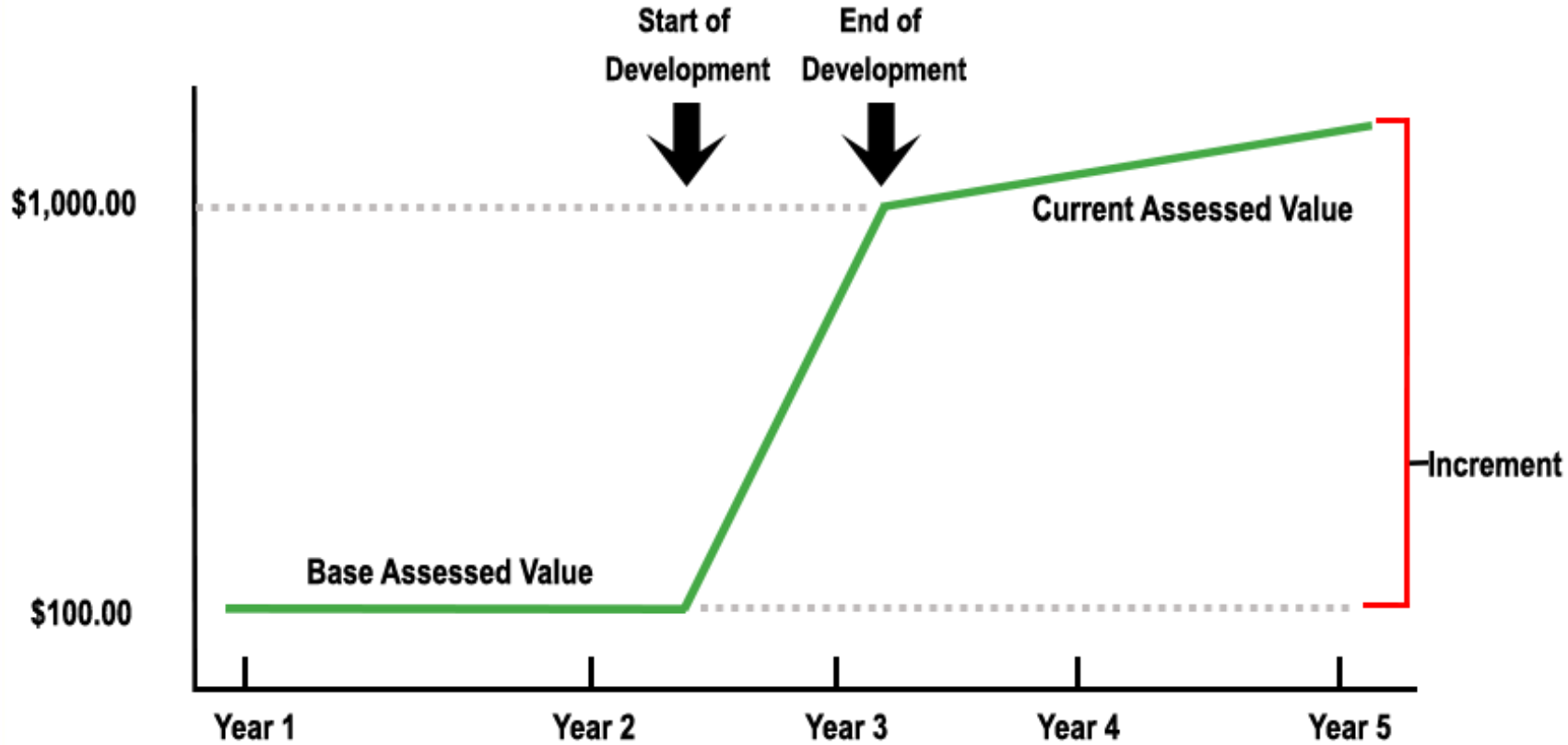


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# How does TIF Work?



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# Common Characteristics of Successful TIF Projects

- Experienced developer, development team, and financing team
- Developer or developers with sufficient capital to make necessary private investments
- Ability of developer to attract investments by other parties
- Diversity of property taxpayer base
- Proximity to significant infrastructure already in place and/or a significant engine to drive future private investment (other successful developments, major employers, residential areas, college or university)



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# Questions?