WEST VIRGINIA CODE CHAPTER 7 ARTICLE 25

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§7-25-1. Short Title.

This article shall be known and cited as the "Resort Area District Act".

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§7-25-2. Findings.

The Legislature finds that:

(a) West Virginia's resorts and other recreational areas have an important role in the economy of the local areas surrounding their locations.

(b) West Virginia's resorts and other recreational areas are often located in unincorporated areas and, as a consequence, such areas have less funding available to provide infrastructure and essential services within such areas.

(c) West Virginia's resorts and other recreational areas derive the major portion of their economic well-being from businesses catering to the recreational and personal needs of persons traveling to or through the area.

(d) Better infrastructure and provision of essential services to West Virginia's resorts and other recreational areas are likely to increase visits to such areas, which will result in greater economic development and job creation in such areas.

(e) The state and the public will benefit from granting West Virginia's resorts and recreational areas the ability to have a governing body to provide for the infrastructure and essential services within common areas; which common areas are separate from the profit-making operations of the resorts or recreational areas.

(f) This article is necessary for the public health, safety and welfare and economic development of West Virginia's resorts and other recreational areas.

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§7-25-3. Definitions.

For purposes of this article:

(a) “Assessment” means the fee, including interest, paid by an owner of real property located within a resort area district to pay for the cost of a project or projects constructed upon, or benefitting, or protecting such property and administrative expenses thereto, and to pay for the cost of service, which fees are in addition to all taxes and other fees levied on the property.

(b) “Assessment bonds” means special obligation bonds or notes issued by a resort area district which are payable from the proceeds of assessments.

(c) “Board” means a resort area board created pursuant to this article.

(d) “Code” means the Code of West Virginia, 1931, as amended by the Legislature.

(e) “Commercial business property owner” means a person owning nonresidential, real property in the district used for business or commerce.

(f) “Cost” means the cost of any or all of the following:

(1) Providing services within a resort area district;

(2) Construction, reconstruction, renovation, and acquisition of all lands, structures, real or personal property, rights, rights-of-way, franchises, easements, and interests acquired or to be acquired by a resort area district;

(3) All machinery and equipment, including machinery and equipment needed to provide, expand, or enhance services to a resort area district;

(4) Financing charges and interest prior to and during construction and, if deemed advisable by a resort area district, for a limited period after completion of construction;

(5) Interest and reserves for principal and interest, including costs of bond insurance and any other type of financial guarantee;

(6) Costs of issuance in connection with the issuance of assessment bonds or resort service fee bonds;

(7) The design of extensions, enlargements, additions, and improvements to the facilities of a resort area district;

(8) Architectural, engineering, financial, and legal services;

(9) Plans, specifications, studies, surveys, and estimates of costs and revenues;

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(10) Administrative expenses necessary or incident to any project or service; and

(11) Other expenses as may be necessary or incident to the provision of services or the construction, acquisition, and financing of a project.

(g) "Governing body" means the county commission of a county.

(h) "Governmental agency" means the state government or any agency, department, division, or unit thereof; counties; municipalities; any watershed enhancement districts; soil conservation districts; sanitary districts; public service districts; drainage districts; school districts; urban renewal authorities; or regional governmental authorities established pursuant to this code.

(i) "Landowner" or "owner of real property" means the person or persons holding an interest in the record fee title to one or more parcels of real property, including residential, improved real property, and unimproved, developable real property, or of units within a multiunit property, including condominiums and townhouses, within a resort area district or a proposed resort area district: *Provided*, That the holder or holders of a deed of trust shall not be considered a landowner or owner of real property.

(j) "Parcel" shall mean:

(1) A lot or parcel of real property as set forth on a plat covering such real property, or in the event no plat exists, as set forth on the tax maps of a county; or

(2) A unit within a multiunit property as defined in §36B-1-103 of this code.

(k) "Person" means an individual, firm, partnership, corporation, limited liability company, voluntary association, or any other type of entity.

(l) "Primary resort operator" means any person owning and operating the primary outdoor recreational facility in a resort area that generates the greatest amount of revenue annually, and offering outdoor recreational services such as skiing, golfing, or boating to the general public.

(m) "Project" means the design, construction, reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement, equipping, maintenance, repair (including replacements), and start-up operation of public buildings, culverts, streets, bridges (including approaches, causeways, viaducts, underpasses and connecting roadways), motor vehicle parking facilities (including parking lots, buildings, ramps, curb-line parking, meters, and other facilities deemed necessary, appropriate, useful, convenient, or incidental to the regulation, control, and parking of motor vehicles), public transportation, public recreation centers, public recreation parks, bicycle paths and trails, hiking paths and trails, landscaping, swimming pools, tennis courts, golf courses, skating rinks, equine facilities, motor vehicle competition and recreational facilities, flood protection or relief projects, or the grading, regrading, paving, repaving, surfacing, resurfacing, curbing, recurbing,

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widening, lighting, or otherwise improving any street, avenue, road, highway, alley, or way, or the building or renewing of sidewalks and flood protection; and the term shall mean and include any project as a whole, and all integral parts thereof, including all necessary, appropriate, useful, convenient, or incidental appurtenances and equipment in connection with any one or more of the above: *Provided*, That a project shall not include a facility or service that benefits only the resort operator, or which the resort operator charges a fee or obtains revenue, or that constitutes part of any facility or service provided by the resort operator, such as a ski lift or ski slope.

(n) "Purchase price" means the measure subject to the resort service fee authorized to be imposed by this article and has the same meaning as sales price. For purposes of this article, the purchase price of a good or service shall not include the taxes levied under §11-15-1 *et seq*. or §11-15A-1 *et seq*. of this code or any other provision of law.

(o) "Ranger" means a resort area ranger.

(p) "Resort area" means an area that:

(1) Is an unincorporated area with a contiguous geographic boundary within one county that has been defined by the process set forth in this article;

(2) Has a permanent population of less than 2,000 people, according to the most recent federal census;

(3) Derives the major portion of its economic well-being from businesses catering to the recreational and personal needs of persons traveling to or through the area;

(4) Is a destination location containing each of the following:

(i) Residential, improved real property;

(ii) One or more resort operators;

(iii) Commercial business properties such as retail stores, restaurants, and hotels or other lodging accommodations; and

(iv) Unimproved real property which remains developable;

(5) Does not include real property primarily used for manufacturing, milling, converting, producing, processing or fabricating materials, generating electricity, or the extraction or processing of minerals.

(q) "Resort area district" or "district" means a resort area district created pursuant to this article.

(r) "Resort operator" means any person owning and operating the primary outdoor

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recreational facilities in a resort area and offering outdoor recreational services such as skiing, golfing or boating to the general public.

(s) “Resort service fee” means the fee imposed on the purchase price of goods and services sold within a resort area district by any of the following establishments:

(1) Hotels, motels, campgrounds, lodges, and other lodging or camping facilities;

(2) Restaurants, fast-food stores, and other food service establishments selling prepared foods;

(3) Taverns, bars, nightclubs, lounges, and other public establishments that serve beer, wine, liquor, or other alcoholic beverages by the drink;

(4) Retail establishments;

(5) Entertainment facilities, including, but not limited to, theaters, amphitheaters, halls, and stadiums; and

(6) Recreational facilities and activities, including, but not limited to, ski resorts, golf courses, water sports, rafting, canoeing, kayaking, rock climbing, and zip lines.

(t) “Resort service fee bonds” means special obligation bonds or notes issued by a resort area district which are payable from the proceeds of resort service fees.

(u) “Service” includes, but is not limited to, snow removal; operation and maintenance of public transportation; maintenance, upgrade, and beautification of public common areas; maintenance and repair of roads and sidewalks; providing for the collection and disposal of garbage and other refuse matter; recycling; operation, upgrade, and maintenance of any projects or improvements; and any other public service authorized by this article, including fire protection and public safety. For purposes of this article, a common area shall not include any facility that benefits only the resort operator, or for which the resort operator charges a fee or obtains revenue, or which constitutes part of any facility or service provided by the resort operator, such as a ski lift or ski slope, golf course, or tennis facility.

(v) “Service assessment” means the fee imposed on owners of real property for the cost of service.

(w) “Sheriff” means the sheriff of the county in which a resort area district is located.

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§7-25-4. Power and authority of county commissions to create and establish resort area districts.

(a) Every county is hereby empowered and authorized, in addition to any other rights, powers and authority conferred upon it elsewhere in this code, to create, modify, reject or expand resort area districts within that county in the manner hereinafter set forth and to assist in the provision of services and development, construction, acquisition, extension or improvement of a project or projects located within a resort area district.

(b) Unless agreed to by each affected municipality, the power and authority hereby conferred on a county shall not extend into territory within the boundaries of any municipality: Provided, That notwithstanding any provision in this code to the contrary, the power and authority hereby conferred on counties may extend within the territory of a public service district created under section two, article thirteen-a, chapter sixteen of this code.

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§7-25-5. Petition for creation or expansion of resort area district; petition requirements.

(a) The owners of at least 61 percent of the real property, determined by acreage, located within the boundaries of the resort area described in the petition, by metes and bounds or otherwise in a manner sufficient to describe the area, may petition a governing body to create or expand a resort area district.

(b) The petition for the creation of a resort area district shall include, where applicable, the following:

(1) The proposed name and proposed boundaries of such district and a list of the names and addresses of all owners of real property within the proposed district;

(2) A description of proposed projects and services to be provided within the district;

(3) A map showing the proposed resort area to be included in the resort area district;

(4) A list of estimated project and service costs;

(5) A feasibility or consultant study concerning the formation of the proposed district and the funds to be generated by the implementation of a resort service fee and indicating that the proposed resort service fee will provide sufficient revenue for proposed services and projects;

(6) The proposed rate or rates, not to exceed five percent of the purchase price, of the resort service fee and the proposed classes of goods and services to which each rate shall apply;

(7) The proposed effective date of the resort service fee;

(8) A certification from the Tax Commissioner of the amount of consumers sales and service taxes collected from businesses located in the proposed district during the most recent 12 calendar month period for which such data is available that precedes the calendar quarter during which the petition will be submitted to the governing body;

(9) A development schedule; and

(10) A statement of the benefits that can be expected from the creation of the district.

(c) Within 60 days of the submission of a petition for the creation of a resort area district, the governing body shall by order determine the completeness of the petition. If the governing body determines that the petition is complete, it shall set a date for the public meeting required under §7-25-6 of this code and shall cause the petition to be filed with the clerk of the governing body and be made available for inspection by interested persons before the meeting. If the governing body determines that such petition is not complete, the petition shall be returned to the petitioners with a statement of additional information

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required for such petition to be complete.

(d) The owners of at least 61 percent of the real property, determined by acreage, located within the boundaries of an area with at least one common boundary with the resort area, as described in the petition, by metes and bounds or otherwise in a manner sufficient to describe the area, may petition the resort area board to expand a resort area district.

(e) The petition for the expansion of a resort area district shall include, where applicable, the following:

(1) A list of the names and addresses of all owners of real property within the proposed expansion of the resort area district;

(2) A map showing the proposed resort area to be included in the resort area district;

(3) A statement of the benefits that can be expected from the expansion of the district; and

(4) Verification that the owners of at least 61 percent of the real property owners in the proposed expansion area approve becoming part of the existing district.

(f) The resort area board will receive the petition and determine if the petition is complete and verified. When the petition is complete and verified, the resort area board shall adopt a resolution calling for a vote of the qualified voters of the resort area district to be taken upon the proposed expansion on a date and at a time and place to be stated in the resolution. Concurrently, the resort area board shall call for a vote of all the qualified voters of the proposed expansion area to be taken on the same date, time, and place.

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§7-25-6. Notice to property owners before creation or expansion of resort area district; form of notice; affidavit of publication; election.

(a) Before the adoption of an order creating a resort area district, the governing body shall cause notice to be given to the owners of real property located within the proposed resort area district that the order will be considered for adoption at a public meeting of the governing body at a date, time, and place named in the notice and that all persons at that meeting, or any adjournment of the meeting, shall be given an opportunity to protest or be heard concerning the adoption or rejection of the order. At or after the meeting the governing body may amend, revise, or otherwise modify the information in the petition for formation or expansion of a resort area district as it may consider appropriate after considering any comments received at the meeting.

(b) A resort area district may not be created by a governing body if, at the public meeting required by this section, written protest is filed by at least 25 percent of the owners of real property proposed to be included within the district. In the event of a protest, the petition for the creation of the resort area district may not be resubmitted to the governing body for a period of at least one year from the date of the original submission.

(c) At least 60 days prior to the date of the meeting, the notice required by this section shall, using reasonable efforts, be mailed to each owner of real property to be included in the proposed resort area district as provided in subsection (g) of this section, posted in multiple, conspicuous, public locations within the proposed district and published as a Class II legal advertisement in compliance with the provisions of §59-3-1 *et seq*. of this code, and the publication area for the publication shall be the county in which the proposed resort area district is located. The notice shall be in the form of, or substantially in the form of, the following notice:

"NOTICE TO ALL PERSONS OWNING PROPERTY LOCATED WITHIN _____ (here describe the boundaries of the proposed resort area district) IN THE COUNTY OF _____ (name of county):

A petition has been presented to the county commission of the County of _____ (name of county) requesting establishment of a resort area district and authorization of a resort service fee under §7-25-1 *et seq*. of the code of West Virginia, 1931, as amended, to _____ (describe potential projects and/or services to be provided) in the county of _____ (name of county) as the county commission may deem proper. A copy of the petition is available in the office of the clerk of the county commission of the County of _____ (name of county) for review by the public during regular office hours.

The petition to create a resort area district will be considered by the county commission at a public meeting to be held on the __ day of _____, _____, at __.m. at _____. Any owner of real property whose property may be affected by the creation of the above-described resort area district, and any owner of real property whose property is not located within said resort area district but wishes his or her property to be included, will be given an

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opportunity, under oath, to protest or be heard at said meeting or any adjournment thereof:

_____ (name of clerk)

(d) An affidavit of publication of the notice made by newspaper publisher, or a person authorized to do so on behalf of the publisher, and a copy of the notice shall be made part of the minutes of the governing body and spread on its records of the meeting described in the notice. The service of the notice upon all persons owning any interest in any real property located within the proposed resort area district shall conclusively be determined to have been given upon completion of mailing as provided in subsection (g) of this section and the newspaper publication.

(e) The petitioners shall bear the expense of publication of the notice, the meeting, and the mailing of the proposed order, as requested by subsection (f) of this section.

(f) After the public meeting and before the governing body may adopt an order creating a resort area district, the governing body shall, using reasonable efforts, mail a true copy of the proposed order creating the resort area district to the owners of real property in the proposed district as provided in subsection (g) of this section and shall post copies of the proposed order in multiple, conspicuous, public locations within the proposed district. Unless waived in writing, any petitioning owner of real property has 30 days from mailing of the proposed order in which to withdraw his or her signature from the petition in writing prior to the vote of the governing body on the order. If any signatures on the petition are withdrawn, the governing body may adopt the proposed order only upon certification by the petitioners that the petition otherwise continues to meet the requirements of this article. If all petitioning owners of real property waive the right to withdraw their signatures from the petition, then the governing body may immediately adopt the order.

(g) For purposes of the mailing of each notice to owners of real property required by this section, reasonable efforts shall be made to mail the notice to all owners of real property proposed to be included within the resort area district using the real property tax records and land books of the county in which the proposed district is located and any lists maintained by a resort operator or homeowners association within the proposed district. The notice shall be also mailed to each president of a homeowners association, if any, located within a proposed district which has registered with a resort operator to receive the information. Immaterial defects in the mailing of the notices shall not affect the validity of the notices: *Provided*, That in the case of any resort area district to be voted upon after the effective date of this amendment adopted during the 2015 regular session of the Legislature, any notice shall be mailed to the property owner’s primary place of abode by certified mail, return receipt requested.

(h) Upon verification of a petition to expand the district, the resort area board shall set a date, time, and place for a vote of the qualified voters of the resort area district to be taken upon the proposed expansion.

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(1) At least 60 days prior to the vote, the notice required by this section shall, using reasonable efforts, be mailed to each owner of real property in the resort area district and to each owner in the proposed resort area district expansion, posted in multiple, conspicuous, public locations within the proposed district, and published as a Class II legal advertisement in compliance with the provisions of §59-3-1 *et seq*. of this code, and the publication area for the publication shall be the county in which the resort area district is located. For the purpose of notice of proposed expansion, "reasonable efforts" means mailing to the owner or owners of real property in the resort area district, using the address of record at the resort area district office, as of 90 days prior to notice. The notice shall be in the form of, or substantially in the form of, the following notice:

"NOTICE TO ALL PERSONS OWNING PROPERTY LOCATED WITHIN _____ (here describe the boundaries of the existing resort area district) IN THE COUNTY OF _____ (name of county) and TO THE OWNERS OF PROPERTY IN THE PROPOSED EXPANSION AREA (here describe the boundaries of the proposed expansion to the existing resort area district) IN THE COUNTY OF _____ (name of county):

A verified petition has been presented to the resort area district (name of county) requesting expansion of a resort area district to _____ (describe boundaries of expansion area) in the county of _____ (name of county). A copy of the petition is available in the office of the resort area district of the County of _____ (name of county) for review by the public during regular office hours.

The vote to approve or disapprove the expansion of the resort area district will be held on the following date (insert date), at the following time (insert time) and at the following location (insert location).

_____ (name of resort area board chairperson)"

(2) All owners of real property in the existing resort area district and proposed expansion shall be eligible to vote.

(3) The owners of each parcel or unit of real property are entitled to one vote, irrespective of the number of owners of the parcel or unit.

(4) The ballots shall have written or printed on them the words:

"/ / For Expansion

/ / Against Expansion"

(5) Electronic submission of ballots is permitted in accordance with procedures in the bylaws of the resort area district. If electronic submission is used, the notice will include the electronic information for transmission.

(6) A simple majority of all legal votes cast in favor of expansion will result in expansion of

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the resort area district.

(7) A copy of the boundaries of the resort area district as expanded shall be published on the resort area district's website and provided upon request.

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§7-25-7. Creation of resort area district; resort area district to be a public corporation.

(a) Each resort area district shall be created by adoption of an order by the governing body.

(b) From and after the date of the adoption of the order creating a resort area district, it shall thereafter be a public corporation, but without any power to levy or collect ad valorem taxes.

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§7-25-7a. Voluntary dissolution resort area district.

(a) The owners of twenty-five percent or more of the real property in a resort area district may petition the board to dissolve that resort area district.

(b) Within sixty days of the submission of a petition for the dissolution of a resort area district, the board shall verify the total number of eligible petitioners to determine whether the required percentage of petitioners has been obtained. If the board determines that the petition has met the requirements of subsection (a) of this section, the board shall set a date for a special election on the question of continuing or dissolving the resort area district. The board shall, using reasonable efforts, cause a notice to be mailed by certified mail, return receipt requested, to each owner of real property located within the resort area district's of a special election to determine continuance or dissolution of the resort area district: Provided, That any notice shall be mailed to the property owner's primary place of abode by certified mail, return receipt requested.

The date set by the board for the special election required by this section may be no less than sixty nor more than ninety days from the date the board mails the notice, in the form described in subsection (c) of this section, to the owners of real property located within the district. The board shall make a copy of the petition available for inspection by interested persons before the special election. If the board determines that the petition has not met the requirements of subsection (a) of this section, the petition shall be returned to the petitioners with a statement of the reason why the petition was rejected.

(c) The notice mailed to real property owners regarding the special election to determine the continuance or dissolution of the resort area district shall contain the following:

(1) The purpose, location, date and time for the special election;

(2) A proxy, in the form described in subsection (d) of this section, which may be used by owners of any class of property to grant proxies to any person to cast the owner's ballot at the special election as if the owner were present in person. The proxy may be mailed or transmitted electronically to the individual being granted the proxy; and

(3) A copy of a ballot described in subsection (e) of this section. The ballot may be used to vote for continuance or dissolution of the resort area district at the special election.

(d) The proxy form required to be included with the notice of special election mailed to real property owners, as provided in subsection (c) of this section, shall contain the following information:

(1) That the proxy is for the special election to consider the continuance or dissolution of the resort area district as covered by the notice required by subsection (b) of this section;

(2) The name of the owner having the voting right for a parcel of real property;

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(3) The location of the real property;

(4) The name of the individual being given the proxy to vote for the owner unable to attend the special election;

(5) The date and signature of real property owner authorizing the proxy; and

(6) A statement that the named individual being extended the voting proxy is restricted to placing a vote for the named owner as indicated by the owner's check mark in one of the following two voting choices:

/ / For Continuance of the _____ (name of district) resort area district.

/ / For Dissolution of the _____ (name of district) resort area district.

(e) At the special election, the board shall submit the question of continuing or dissolving the resort area district to owners of qualified real property within the resort area district. For purposes of this section, the term "qualified real property" includes the following classes of real property: Unimproved/developable; commercial business; resort operator; and residential improved. Each owner of qualified real property is entitled to one undivided vote in the special election for each parcel of qualified real property owned. The special election ballots shall have written or printed on them the following:

/ / For Continuance of the _____ (name of district) resort area district

/ / For Dissolution of the _____ (name of district) resort area district

If a simple majority of the votes is cast for dissolution, then the board shall request that the governing body dissolve the resort area district. Following the receipt of a request, the resort area district shall be dissolved by the governing body by operation of law. However, all debts or other obligations outstanding against the resort area district must be settled in full prior to the dissolution. If a simple majority of the votes is cast for continuance, the resort area district shall continue in existence until dissolved at some later date under this section. However, another election may not be held within two years of the last election.

(f) An election under this section shall be held, and conducted and the result determined, certified, returned and canvassed in the same manner and by the same persons as an election for resort area district board members pursuant to section eleven of this article.

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§7-25-8. Powers of resort area district.

Each resort area district may:

(a) Have and use a corporate seal, and alter the same;

(b) Sue and be sued, and be a party to suits, actions and proceedings;

(c) Purchase insurance;

(d) Enter into agreements, contracts or other transactions with any person or governmental agency necessary or incident to the provision of services or the development, planning, construction, acquisition or improvement of a project or for the operation, maintenance or disposition of a project or for any other services required by a project, or to carry out any purposes of the district;

(e) Establish a bank account or accounts in its name;

(f) Design, plan, finance, develop, construct, acquire, extend, improve and complete a project or projects;

(g) Upon following the procedures set forth in this article, assess the cost of all or any portion of a project on real property located within the resort area district;

(h) Accept from any public or private source appropriations, grants, gifts, bequests, devises, loans, contributions and any other benefits available for use in furtherance of district purposes, and to use or dispose of the same to carry out district purposes;

(i) Expend funds to pay the costs of providing services within the district and to acquire, or construct part of a project on property located within or outside of a district, and for any work undertaken thereon, as may be necessary or incident to the completion of a project;

(j) Enter into agreements with the county within which the resort area district is located to plan, develop, construct, acquire or improve a project jointly;

(k) Borrow money and incur indebtedness and other obligations and evidence the same by certificates, notes or debentures: Provided, That such indebtedness shall not exceed the annual budget for the Resort area district without the approval of the property owners at a meeting called for such purpose, a majority of those voting shall constitute approval. Voting may be in person, by mailed ballot, by proxy or by electronic means;

(l) Raise funds by the issuance and sale of assessment bonds and resort service fee bonds: Provided, That the source and sales of bonds shall be approved at a meeting of the property owners called for such purpose. A majority of those voting shall constitute approval. Voting at such meeting may done be in person, by mailed ballot, by proxy or by electronic means;

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(m) Annually, on or before June 7, certify to the sheriff of the county in which the property is located the assessments granted against all property in the district for inclusion in the tax ticket;

(n) Charge interest and levy fines and penalties on unpaid assessments;

(o) Create and enforce liens for unpaid assessments;

(p) Adopt bylaws not inconsistent with law;

(q) Implement, administer and collect a resort service fee for the purpose of providing funds for the provision of services and to design, plan, finance, develop, construct, acquire, extend, improve and complete a project or projects within a resort area district;

(r) Acquire, own or hold, in its corporate name, real or personal property, including easements and rights-of-way, by purchase, lease, gift or otherwise, within or without a resort area district for district purposes, as well as obtain options for the acquisition of real property;

(s) Provide services necessary to protect the health and welfare of residents in a resort area district and the value of property therein and to enter into agreements with any governmental agency, public or private agency, institution or person for the furnishing of such services;

(t) Provide for fire protection service;

(u) Provide for the public safety, including the appointment of resort area rangers;

(v) Provide for public recreation by means of parks, including, but not limited to, playgrounds, golf courses, swimming pools, skating rinks or recreation buildings;

(w) Provide for the opening, widening, extending, straightening and surfacing in whole, or in part of, any street and snow removal or clearance for the same or other roads or streets;

(x) Provide for the construction and improvement of street lights, bridges, culverts, curbs, gutters, drains and works incidental to any street improvement; and

(y) Do any and all other things necessary to carry out the purposes of this article and not in violation of the Constitution of this state as may be necessary or incident to the provision of services or the construction and completion of a project.

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§7-25-9. Official name of resort area districts.

The official name of a resort area district created under the provisions of this article may contain the name of the resort area or county in which it is located.

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§7-25-10. Resort area boards.

(a) The powers of each resort area district shall be vested in and exercised by a resort area board which shall be composed of seven members, the composition of which shall be as set forth in subsection (b) of this section. Board members need not be residents of the district or landowners, except where specifically required otherwise. For purposes of this section, "residential, improved real property" includes, but is not limited to, condominium units, townhouses, and single-family residences.

(b) The composition of a resort area board shall be as follows:

(1) Three board members at the time of nomination and as of the day of their election shall be owners of or representatives of owners of residential, improved real property located within the resort area district;

(2) Two board members shall be representatives of the primary resort operator located within the resort area district;

(3) One board member at the time of nomination and as of the day of their election shall be an owner or a representative of commercial business property owners located within the resort area district; however, for purposes of this subdivision, owners of residential, improved real property who rent their property are excluded; and

(4) One board member at the time of nomination and as of the day of their election shall be an owner or a representative of owners of unimproved, developable real property located within the resort area district.

(c) For purposes of this section, if a parcel of real property is owned by one or more entities (such as a corporation, limited liability companies, or other entity), then the following are also eligible to serve on the board as an owner with respect to such parcel: (1) Any person having an ultimate beneficial interest in the parcel, whether directly or indirectly, and regardless of the number of intermediate ownership entities; and (2) any person designated at the outset of the election as authorized, by an owning entity, to serve on the board as an owner for that particular parcel. Nothing in this provision, however, creates any additional voting rights to the owners of a single parcel of real property, and each parcel of real property shall be entitled to only one vote, regardless of the number of owners participating in ownership of the parcel. Furthermore, nothing in this provision authorizes the owners of real property of one type (such as the primary resort operator, owners of residential improved real estate, or owners of unimproved, developable real estate) to vote regarding a board position reserved to another ownership category.

(d) The board members shall be elected for terms of four years each and thereafter until their respective successors have been elected and have been qualified, except, that of the board members elected at the initial election meeting, two shall serve for a term of two years, two shall serve for a term of three years, and three shall serve for a term of four

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years. At the first meeting of the board, the board members shall determine by lot which of them shall serve the terms less than four years. Each succeeding term is four years. Board members may be reelected for any number of terms. In the event a board member who is required to own real property within the district to be eligible for such board position no longer owns real property within the district, such member may serve out the remainder of his or her term.

(e) Only owners of real property, including commercial business property owners, located within the district shall be eligible to vote in elections for board members.

(f) Elections for board members shall be held in accordance with bylaws adopted by the board, but the provisions of §7-25-11 of this code shall govern the initial election of board members. Voting shall be in person, by mailed ballot, by proxy, or by electronic means. The voting restrictions set forth in §7-25-11(d) and §7-25-11(e) of this code shall apply to all board elections and may not be altered.

(g) Before entering upon the performance of his or her duties, each member shall take and subscribe to the oath required by section five, article IV of the West Virginia Constitution.

(h) In the event that a board vacancy arises before the scheduled end of a board member's term, vacancies on the board shall be filled for the remainder of the unexpired term of the member whose office shall be vacant and such appointment, pursuant to the procedures set forth in subsection (r) of this section. Any board member may be removed by the board in case of incompetency, neglect of duty, gross immorality, or malfeasance in office, upon a unanimous vote of the remaining six board members. A vote of four board members is sufficient to schedule and conduct an election to fill an unexpired board member's term. Any other action of the board taken while one or more board positions are vacant must be unanimously approved by a board which is comprised of at least five active serving board members.

(i) The board shall organize within 30 days following the first election of board members and annually thereafter at its first meeting after January 1 of each year by selecting one of its members to serve as chairman, one to serve as treasurer, and one to serve as secretary. The secretary, or his or her designee, shall keep a record of all proceedings of the board which shall be available for inspection as other public records and the treasurer, or his or her designee, shall maintain records of all financial matters relating to the resort area district, which shall also be made available for inspection as other public records. The secretary and treasurer shall perform such other duties pertaining to the affairs of the resort area district as shall be prescribed by the board.

(j) The initial board shall adopt bylaws for the district: *Provided*, That the adoption of such bylaws and any subsequent amendments thereto shall require approval by six-sevenths of the board.

(k) The members of the board, and the chairman, secretary, and treasurer thereof, shall

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make available, at all reasonable times and upon reasonable notice, all its books and records pertaining to the resort area district's operation, finances, and affairs for inspection and audit. The board shall meet at least semiannually.

(l) A majority of the members of the board constitutes a quorum and meetings shall be held at the call of the chairman. Board members may vote either in person, by telephone, or by electronic means.

(m) Staff, office facilities, and costs of operation of the board may be provided by the county which created the resort area district or by contract, and said costs of operations shall be funded from resort service fees collected within the district or any other source.

(n) The chairman shall preside at all meetings of the board and shall vote as any other members of the board, but if he or she should be absent from any meeting, the remaining members may select a temporary chairman, and if the member selected as chairman resigns as chairman or ceases for any reason to be a member of the board, the board shall select one of its members to serve as chairman until the next annual organizational meeting.

(o) The board shall, by resolution, determine its own rules of procedure, fix the time and place of its meetings, and the manner in which special meeting may be called. The members of the board shall not be personally liable or responsible for any obligations of the resort area district or the board but are answerable only for willful misconduct in the performance of their duties.

(p) The members of the board may serve with reasonable compensation as the board of directors may fix, except where prohibited by law, and shall receive reimbursement for actual and necessary expenses incurred in connection with the performance of their duties.

(q) Every board member who handles public funds or property, and every other officer or employee of a resort area district of whom it shall be required, shall, unless otherwise provided by law, give bond, with good security, to be approved by the board, and in such penalty as such board, conditioned upon the faithful discharge of the duties of his or her office or employment and the faithful accounting for and paying over, as required by law, of any funds or property coming into his or her possession.

(r) Vacancies on the board shall be filled by a special election within 120 days of the vacancy unless the vacancy occurs within the last 365 days of the board member's term. The special election shall be on a date specified by the board, which shall not be less than 45 days sooner than publication of notice of the election. If the vacancy occurs within the last 365 days of the board member's term, the board shall appoint a replacement who meets the qualifications for the vacant seat. Recommendations for the replacement shall be made by the type of ownership category for the seat vacated. The new board member shall serve out the remainder of the unexpired term and may stand for subsequent election as long as he or she is eligible for the seat. The publication process for an election to fill a vacancy shall be the same as set forth in §7-25-11(c), §7-25-11(d), and §7-25-11(e) of this code, and only those

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owners eligible to vote for the board member whose departure from office caused the vacancy shall be eligible to vote to replace the member. Without limiting the foregoing, and by way of example, only owners of improved residential property may vote to fill a vacancy created by the departure from office of a board member elected by that class of owner. Notwithstanding the provisions of this subsection, a vacancy in the office of the board as to a board member elected or appointed as a resort primary operator representative, may be filled by direct appointment of the primary resort operator, rather than by election.

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§7-25-11. Election procedure for initial members of resort area board; subsequent elections; elections and procedures to fill board vacancies.

(a) Within ninety days of the adoption of the order creating the resort area district, a public meeting shall be held at which elections for the initial members of the board shall be held. the meeting shall be held at a location within the district not less than twenty days after the publication of the notice required by subsection (b) of this section.

(b) Prior to the meeting required by this section, the petitioners for the creation of the resort area district shall, using reasonable efforts, cause notice of the initial election meeting to be given to all owners of real property, including owners of commercial business property, located within the district. the notice shall be mailed to each owner of real property included in the resort area district as provided in subsection (h) of this section, posted in multiple, conspicuous public locations within the district and published at least thirty days prior to the date of the meeting as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code and the publication area for the publication is the resort area district. The notice shall provide, at a minimum, the following information:

(1) The purpose of the meeting;

(2) Descriptions of the board positions;

(3) A statement that only owners of real property, including owners of commercial business property, located within the district are eligible to make nominations for board positions or vote in the election;

(4) The location of the meeting;

(5) Electronic and physical addresses where nominations for board positions will be received by petitioners for the creation of the resort area district; and

(6) The date and time of the meeting.

(c) Nominations shall be made for each board position by persons eligible to vote for each board position. Nominations may be made at the meeting required by this section, by mail or by electronic means. Nominations made by mail or by electronic means must be received by the petitioners prior to the meeting to be valid. Persons nominated for board positions shall meet the criteria provided for each board position as set forth in subsection (b), section ten of this article. Nominations shall be made for each board position in the following manner:

(1) Only owners of residential, improved real property located within the resort area district may nominate persons for the three board positions provided for owners of or representatives of owners of residential, improved real property located within the resort area district;

(2) Only representatives of the resort operator or resort operators may nominate persons for

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the two board positions provided for representatives of the resort operator or resort operators located within the resort area district;

(3) Only owners of commercial business property located within the resort area district may nominate persons for the board position provided for an owner of or a representative of owners of commercial business property located within the resort area district; and

(4) Only owners of unimproved, developable real property located within the resort area district may nominate persons for the board position provided for an owner of or a representative of owners of unimproved, developable real property located within the resort area district.

(d) Following board member nominations, a vote shall be taken by written ballot for board members to be elected, but owners of any class of property may grant proxies to any person to cast the owner's ballot as if the owner were present in person. Voting shall occur in the following manner:

(1) Only owners of residential, improved real property located within the resort area district may vote for the three board positions provided for owners of or representatives of owners of residential, improved real property located within the resort area district. Each owner is entitled to one vote per unit or parcel of residential, improved real property he or she owns;

(2) Only a representative of each resort operator may vote for the two board positions provided for representatives of the resort operator or resort operators located within the resort area district;

(3) Only owners of commercial business property located within the resort area district may vote for the board position provided for an owner of or a representative of owners of commercial business property located within the resort area district. Each owner is entitled to one vote per unit of commercial business property he or she owns; and

(4) Only owners of unimproved, developable real property located within the resort area may vote for the board position provided for an owner of or a representative of owners of unimproved, developable real property located within the resort area district. Each owner is entitled to one vote per parcel of unimproved, developable real property that he or she owns.

(e) For purposes of voting in the initial election and in all subsequent elections for board members:

(1) The owners of each parcel or unit of real property are entitled one vote, irrespective of the number of owners of the parcel or unity;

(2) Fractional voting shall not be permitted; and

(3) The vote pertaining to a parcel or unit shall be cast in accordance with the direction of the person or persons holding the majority interest in the parcel or unit, and in the event

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there is no majority, the vote shall be forfeited.

(f) Each board member shall be elected by a plurality of the votes cast for such board position.

(g) The petitioners for the creation of the resort area district shall be responsible for the costs of the initial election and meeting required by this section.

(h) For purposes of the mailing of notice to owners of real property required by this section, reasonable efforts shall be made to mail such notice to all owners of real property included within such resort area district using the real property tax records and land books of the county in which such district is located and any lists maintained by a resort operator or homeowners association within such district. Such notice shall be also mailed to each president of a homeowners association, if any, located within a district which has registered with a resort operator to receive such information. Immaterial defects in the mailing of such notices shall not affect the validity of such notice.

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§7-25-12. Resort area districts authorized to levy resort service fee; procedure for implementation and cessation of resort service fee; abstract and notice of implementing resolution; rate of resort service fee; permissible uses; limitations on imposition.

(a) Resort area districts are hereby authorized to impose a resort service fee within such district by following the procedures set forth in this section.

(b) No resort service fee shall be implemented within a resort area district without approval by six sevenths of the board. If six sevenths of the board has approved the implementation of a resort service fee, the board shall adopt a resolution specifying the following:

(1) The rate or rates of the resort service fee and the classes of goods and services to which each rate shall apply;

(2) The services and projects authorized to be funded from the proceeds of the resort service fee; and

(3) The effective date of the resort service fee: Provided, That the resort service fee shall not take effect less than ninety days following the adoption of the resolution.

(c) A board may repeal the resolution authorizing implementation of a resort service fee upon approval by six sevenths of the board: Provided, That such resolution may not be repealed if a district has outstanding resort service fee bonds and the terms of such bonds restrict the repeal of such resolution.

(d) After the adoption of a resolution regarding implementation of a resort service fee, an abstract of such resolution, determined by the board to contain sufficient information as to give notice of the contents of such resolution, and notice that such resolution has been adopted shall be posted in multiple, conspicuous public locations within such district and published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code and the publication area for such publication shall be the resort area district.

(e) The rate of a resort service fee shall not exceed five percent of the purchase price of the goods or services upon which the resort service fee is levied: Provided, That a district may impose the resort service fee at a rate less than five percent.

(f) A resort area district may levy a resort service fee at different rates upon different classes of goods and services.

(g) The proceeds generated by a resort service fee shall solely be used for:

(1) Paying all or a portion of the costs of providing a service or services within the district; or

(2) Paying all or a portion of the costs of a project or projects, including payment of debt

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service on resort service fee bonds;

(3) However, a minimum of twenty-five percent of all service fees shall be placed in a reserve account and shall not be used except in compliance with the bylaws.

(h) A resort service fee shall not be imposed upon goods and services sold for resale.

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§7-25-13. Resort service fee administration.

(a) Not less than thirty days prior to the date that the resort service fee becomes effective, the board shall adopt an administrative resolution governing the collection and reporting of the resort service fee. This administrative resolution may be amended at any time as may be necessary to effectively administer the resort service fee.

(b) The administrative resolution shall specify:

(1) The time that the resort service fees collected by businesses are to be remitted to the district;

(2) The office, officer or employee of the district responsible for collecting and accounting for the resort service fee receipts;

(3) The office, officer or employee of the district responsible for enforcing collection of resort service fees and the methods and procedures to be used in enforcing the collection of resort service fees due; and

(4) The penalties for failure to report resort service fees due, failure to remit resort service fees due and violation of the administrative resolution.

(c) The administrative resolution may include:

(1) Further clarification and specificity in the categories of goods and services that are subject to the resort service fee consistent with subdivision (q), section three of this article; and

(2) Other administrative details necessary for the efficient and effective administration of the resort service fee.

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§7-25-14. Implementation and provision of services within resort area district; adoption of annual budget.

(a) Upon the creation of a resort area district and organization of its board, a resort area district may provide for the provision of services by the adoption of a resolution.

(b) A resolution providing for the provision of services shall set forth:

(1) The services to be offered;

(2) The sources of funding for such services; and

(3) All other information necessary for the administration of providing such services.

(c) A resolution providing for the provision of services may be amended from time to time, as deemed necessary by the board.

(d) Services to be offered by a resort area district shall not be inconsistent with those permitted under the bylaws of the district or this article and shall not include a service for which the resort operator charges a fee or obtains revenue, such as operation or maintenance of a ski slope or ski lift.

(e) The board shall adopt an annual budget for the district each year. Such budget shall require approval by six sevenths of the board to be adopted. Funds of the resort area district may not be expended on any service or project in excess of the amounts specified in the budget, and no material expenditures may occur on services or projects not authorized by the budget, except upon approval of at least six sevenths of the board.

(f) In setting the budget or any amendment to it, and in approving any anticipated obligation, undertaking and related expenditure of any funds received from any resort service fee or from any assessment, the Board shall be empowered to condition the an expenditure or undertaking, in whole or part, upon the receipt of grants, loans or contribution of funds by or from other sources or parties, including the resort operator, any commercial interests, and any governmental entity, In the event that any such conditions established by the Board are not met, the expenditure and any related conditionally approved undertaking shall not be required.

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§7-25-15. Authorization to implement assessments for projects or services; procedures for implementing assessments; by-laws to provide additional procedures for implementation of assessments; notice to property owners before implementation of assessments for projects or services; voting on assessments; affidavit of publication.

(a) An assessment for a project within a resort area district shall be authorized by the adoption of a resolution by the board. The annual aggregate limit of assessments that may be levied against a parcel of real property within the district is five percent of the appraised value of the real property, including improvements, as shown in the property tax records and land books of the county in which the property is located. A resolution authorizing an assessment shall only be adopted after following the procedures set forth in this section.

(b) A service assessment within a resort area district shall be authorized by the adoption of a resolution by the board.

(c) The bylaws of a district shall provide the procedures not addressed in this section for the implementation of an assessment to pay the costs of a project or service: *Provided*, That the procedures must be consistent with constitutional standards and all other laws and rules of this state.

(d) Fifty-one percent or more of the owners of real property to be benefitted by a project or service may petition the board to implement an assessment to pay the costs of the project or service. A board may on its own initiative propose an assessment to pay the costs of a project or service upon approval by six sevenths of the board.

(e) Upon following the procedures provided in this section and a resort area district's bylaws for the implementation of an assessment to pay the costs of a project or service, the board may, after giving notice to all real property owners, holding a public meeting and a vote on the project or service if required by this section, adopt a resolution authorizing the assessment to pay the costs of a project or service upon approval by six sevenths of the board.

(f) Before the adoption of a resolution authorizing an assessment to pay the costs of a project or service, the board shall cause notice to be given to the owners of real property located within the resort area district that the resolution will be considered for adoption at a public meeting of the board at a date, time, and place named in the notice and that all persons at that meeting, or any adjournment thereof, shall be given an opportunity to protest or be heard concerning the adoption or rejection of the resolution. If, as provided in subsection (g) of this section, a favorable vote of the property owners is required before the board authorizes the assessment, the notice of meeting shall also contain information required to enable the owners of real property within the district that will be subject to the assessment to vote on the assessment by mail or electronic means.

(g) An assessment may not be authorized by the board if at the public meeting required by

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this section written protest is filed by at least 25 percent of the owners of the real property within the district to be benefitted by the proposed project or service and subject to the assessment. However, before an assessment proposed by the board on its own initiative as provided in subsection (d) of this section is authorized by the board, the proposal must also receive the favorable vote of a majority of the votes cast at the meeting for the proposal by the owners of real property in the district that will be subject to the assessment. Voting at the meeting shall be in person or by proxy at the meeting, or by mailed ballot or electronic means received prior to the meeting. The voting rules set forth in §7-25-11(e) of this code apply to all voting on assessments. In the event of such protest, the proposed assessment in the same form may not be reconsidered by a board for a period of at least one year from the date of the public meeting.

(h) At least 30 days prior to the date of the public meeting, the notice required by this section shall, using reasonable efforts, be mailed to the owners of real property to be assessed for a proposed project as provided in subsection (l) of this section, posted in multiple, conspicuous, public locations within the district and published as a Class II legal advertisement in compliance with the provisions of §59-3-1 *et seq*. of this code. The publication area for the publication is the resort area district.

(i) An affidavit of publication of the notice made by newspaper publisher, or a person authorized to do so on behalf of the publisher, and a copy of the notice shall be made part of the minutes of the board and spread on its records of the meeting described in the notice. The service of the notice upon all persons owning any interest in any real property located within the resort area district shall conclusively be determined to have been given upon completion of mailing as provided in subsection (l) of this section and the newspaper publication.

(j) After the public meeting and before the board may adopt a resolution authorizing implementation of assessments, the board shall, using reasonable efforts, mail a true copy of the proposed resolution authorizing implementation of an assessment to the owners of real property in the resort area district as provided in subsection (l) of this section.

(k) A board shall make available to the owners of real property within the district a list of all owners of real property within the district for the purposes of enabling the owners of real property to solicit support for a petition proposing or a protest against an assessment.

(l) For purposes of the mailing of each notice to owners of real property required by this section, reasonable efforts shall be made to mail the notice to all owners of real property required to receive notice under this section using the real property tax records and land books of the county in which the district is located and any lists maintained by a resort operator or homeowners association within the district. The notice shall be also mailed to each president of a homeowners association, if any, located within a district which has registered with a resort operator to receive the information. Immaterial defects in the mailing of the notices shall not affect the validity of the notices.

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§7-25-16. Provisions for construction of a project.

(a) Prior to beginning construction on a project, the board shall provide by resolution for the construction of the project and shall also provide in the same or subsequent resolutions for the supervision of such work by a professional engineer, governmental agency or any other person designated by the board. The board may provide for the construction of the project by one of the two following methods or any combination thereof:

(1) If there exists a governmental agency with the experience, knowledge and authority to construct the project, the board may elect to enter in a contract with such agency for the construction of all, or a part of, the project or for any other service necessary or incident to the construction of the project, in which case such governmental agency shall be responsible for entering into contracts, subject to the board's approval, with such other persons as may be necessary or incident to the construction of the project; or

(2) The board may elect to enter into one or more contracts with such contractors and other persons as may be necessary or incident to the construction of the project, in which case it shall solicit competitive bids. All contracts for work on any project, the expense of which will exceed $50,000, shall be awarded to the lowest qualified responsible bidder who shall furnish a sufficient performance and payment bond. The board may reject any and all bids and if it rejects all bids, notices shall be published as original required before any other bids may be received. The board may let portions of the work necessary to complete a project under different contracts.

(b) The resolution described in subsection (a) of this section shall also provide for payment of the cost of the project.

(c) Prior to the construction of the project, the board shall obtain such permits and licenses required by law for the construction and operation of the project.

(d) No project shall be undertaken by a district that includes a ski slope or ski lift.

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§7-25-17. Notice to property owners of assessments; correcting and laying assessments; report on project completion.

(a) Prior to the issuance of assessment bonds or the levying of any assessments, the board shall cause a report to be prepared describing each lot or parcel of land located within the resort area district to be assessed for the project and setting forth the total cost of the project based on the contract with the governmental agency, the accepted bid or bids, or a cost estimate certified by a professional engineer, and all other costs incurred prior to the commencement of construction and the future administrative costs, and the respective amounts chargeable upon each lot or parcel of land and the proper amount to be assessed against the respective lots or parcels of land with a description of the lots and parcels of land as to ownership and location. If two or more different kinds of projects are involved, the report shall set forth the portion of the assessment attributable to each respective project. The board shall thereupon give notice as specified below to the owners of real property to be assessed that on or after a date specified in the notice an assessment will be deemed granted against the property. The notice shall state that the owner of assessed property, or other interested party, may on said date appear before the board to move the revision or correction of the proposed assessment and shall show the total cost of the project, whether the assessments will pay for all, or a part of, the total cost of the project and the lots or parcels of property to be assessed and the respective amounts to be assessed against such lots or parcels, with a description of the respective lots and parcels of land as to ownership and location. The notice shall be mailed, using reasonable efforts, to the owners of real property to be assessed for a proposed project as provided in subsection (c) of this section, posted in multiple, conspicuous public locations within such district and published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication is the resort area district. On or after the date so advertised, the board may revise, amend, correct and verify the report and proceed by resolution to establish the assessments as corrected and verified and shall certify the same to the governing body which created the district.

(b) Upon completion of a project, the board shall prepare a final report certifying the completion of the project and showing the total cost of the project and whether the cost is greater or less than the cost originally estimated. If the total cost of the project is greater or less than the cost shown in the report prepared prior to construction, the board may revise the assessment charged on each lot or parcel of property pursuant to subsection (a) of this section to reflect the total cost of the project as completed, and in doing so shall, in the case of an assessment increase only, follow the same procedure with regard to notice and providing each owner of assessed property the right to appear before the board to move for the revision or correction of such proposed reassessment as required for the original assessment. If the assessment is decreased, the board shall, by resolution and written notice to the sheriff of the county in which the resort area district is located, cause the next installment or installments or assessments then due and payable by each affected property owner to be reduced pro rata, and shall provide written notice to such property owners of the amount of such decrease by the deposit of such notice in the United States mail, postage

prepaid.

(c) For purposes of the mailing of each notice to owners of real property required by this section, reasonable efforts shall be made to mail such notice to all owners of real property required to receive notice under this section using the real property tax records and land books of the county in which such district is located and any lists maintained by a resort operator or homeowners association within such district. Such notice shall be also mailed to each president of a homeowners association, if any, located within a district which has registered with a resort operator to receive such information. Immaterial defects in the mailing of such notices shall not affect the validity of such notices.

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§7-25-18. Exemption of public property from assessments.

No lots or parcels of land owned or controlled by the United States, this state, any municipality, county, county board of education, resort area district or other public body shall be subject to any assessments under this article.

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§7-25-19. Assessment bonds and resort service fee bonds; sinking fund for assessment bonds and resort service fee bonds; tax exemption.

(a) For constructing and acquiring any project authorized by this article the board of any such district is hereby authorized to borrow money, from time to time, and in evidence thereof issue the bonds of such district, payable from the proceeds of the assessments or resort service fees granted under this article. Such bonds shall be issued in one or more series, may bear such date or dates, may mature at such time or times not exceeding thirty years from their respective dates, shall be fully registered as to principal and interest in the name of the bondholder with a certificate of authentication, may bear interest at such rate or rates not exceeding eighteen percent per annum, may be payable at such times, may be executed in such manner, may be payable at such place or places, may be subject to such terms of redemption with or without premium, may be declared or become due before maturity date thereof, may be authenticated in any manner, and upon compliance of such conditions, may contain such terms and covenants as provided in the resolution or resolutions of the board. All such bonds shall be, and shall be treated as, negotiable instruments for all purposes. Bonds bearing the signatures of officers and offices on the dates of the signing thereof shall be valid and binding for all purposes notwithstanding that before the delivery thereof any or all such persons whose signatures appear thereon shall have ceased to be such officers. Notwithstanding the requirements or provisions of any other law, any such bonds may be negotiated or sold in such manner at such time or times and at such price or prices as is found by the board to be most advantageous. Any resolution or resolutions providing for the issuance of such bonds may contain covenants and restrictions upon the issuance of additional bonds thereafter as may be deemed necessary or advisable for the assurance of the payment of the bonds thereby authorized.

(b) At or before the time of issuance of any bonds under this article, the board shall by resolution provide for the creation of a sinking fund and for payments into such fund from the assessments or resort service fees granted under this article in such amount as may be sufficient to pay the accruing interest and retire the bonds at or before the time each will respectively become due and to establish or maintain reserves therefor. All sums which are or should be, in accordance with such provisions, paid into such sinking fund shall be used solely for the payment of interest and for the retirement of such bonds at or prior to maturity as may be provided or required by such resolution.

(c) The property, including leased property, of the resort area district and bonds and any income or interest thereon issued by the resort area district are exempt from taxation by the state of West Virginia and other taxing bodies of the state.

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§7-25-20. Indebtedness of resort area district.

No constitutional or statutory limitation with respect to the nature or amount of or rate of interest on indebtedness which may be incurred by municipalities, counties or other public or governmental bodies shall apply to the indebtedness of a resort area district. No indebtedness of any nature of a resort area district shall constitute an indebtedness of any county creating and establishing such district or a charge against any property of said counties but shall be paid solely from the resort service fee or assessments which the resort area district is authorized to impose on the owners of the property within the district by this article. No indebtedness or obligation incurred by a resort area district shall give any right against any member of the governing body or any member of the board of a resort area district.

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§7-25-21. Payment of assessments to sheriff; report to resort area district; collection of delinquent assessments.

(a) The assessments authorized to be imposed pursuant to this article will not be considered to be ad valorem taxes or the equivalent of ad valorem taxes under any provision of this code: Provided, That for the exclusive purposes of collection of the assessments authorized to be imposed under this article and enforcement of the assessment liens created by section twenty-two of this article, the provisions of chapter eleven-a of this code shall apply as if the assessments were taxes as that term is defined in section one, article one of that chapter: Provided, That any property subject to assessments may not be sold to satisfy such lien.

(b) The sheriff shall promptly deposit all assessments upon receipt thereof in a segregated account established by the sheriff for such purpose and shall maintain a record of the assessments so received. Each month, the sheriff shall pay all moneys collected for the resort area district into the district treasury or, if the sheriff consents, to a trustee for the benefit of bondholders if assessment bonds are issued by the resort area district.

(c) Payments to the resort area district shall be made in the time set forth in section fifteen, article one, chapter eleven-a of this code and the sheriff shall be entitled to take a commission for collection of the assessments on behalf of the resort area district, as provided in section seventeen of said article.

(d) For each tax year, the sheriff will prepare and deliver to the board of each resort area district located in the county, a statement setting forth the aggregate amount of assessments received for such district and the name of any property owner who failed to pay the assessments due and payable for the period in question. The report shall be due on or before August 1, of the following year.

(e) The sheriff is authorized to collect delinquent assessments and enforce the liens created in section twenty-two of this article as if those assessments were delinquent real property taxes and the taxes are tax liens using the enforcement tools provided in articles two and three, chapter eleven-a of this code.

WV Legislature

§7-25-22. Liens; recording notice of liens; priority; release of lien; notice to future property owners.

(a) With the exception of property exempt from assessment pursuant to §7-25-18 of this code, there shall be a lien on all real property located within the resort area district for the assessments imposed by §7-25-17 of this code, which shall attach to those parcels made subject to the assessment on the date specified in the notice to property owners. A notice of the liens of the assessments referring to the assessing resolution and setting forth a list of the property assessed, described respectively as to amounts of assessment, ownership, and location of the property, shall be certified, by the chair and secretary of the board, to the clerk of the county commission of the county in which the project is located. The county clerk shall record the notice of the lien in the appropriate trust deed book or other appropriate county lien book and index the lien in the name of each owner of real property assessed. From the date of an assessment, the trustee, for the benefit of bondholders if assessment bonds are issued by the resort area district, and/or the district has the lien and is entitled to enforce the lien in its, his, her, or their name to the extent of the amount, including principal and interest and any penalty due for any failure to pay an installment when due, of the assessments and against the property to which the assessment applies, as to any assessment not paid as and when due. The trustee or the district, as an alternative to the enforcement provision set forth in §7-25-21 of this code, are granted all legal remedies necessary to collect the assessment. The assessments are and constitute liens for the benefit of the resort area district or the trustee, for the benefit of bondholders if assessment bonds are issued by the resort area district, upon the respective lots and parcels of land assessed and have priority over all other liens except: (1) Any liens for land taxes due the state, county, and municipality; (2) any liens for preexisting special assessments provided under this code; and (3) any liens by a lien creditor, including, without limitation, any lien creditor secured by a deed of trust lien, with respect to any of the lots or parcels of land with a lien properly recorded with the Clerk of the County Commission of the county in which the lots or parcels of land are located prior to the time that the notice of the assessment lien is recorded. If any assessment is revised in accordance with this article, the lien created by this section extends to the revised assessment and has the same priority as the priority of the lien created upon the laying of the original assessment. The assessments and interest thereon shall be paid by the owners of the property assessed as and when the installments are due. Following the payment in full of any assessment bonds including any interest thereon, the chair and secretary of the board shall execute a release of all liens and shall certify the release to the county clerk for recondition.

(b) Following the grant of any assessment on property as provided in this article, the seller of the property shall provide reasonable disclosure to the buyer in the real estate contract that an assessment has been granted on the property, the amount of the assessment, and the duration of the assessment.

WVLegislature

§7-25-23. Resort Area Rangers.

(a) A board is hereby authorized to appoint bona fide residents of this state to act as resort area rangers within its respective resort area district upon any premises which are part of said district, subject to the conditions and restrictions imposed by this section.

(b) Before performing the duties of ranger, each appointed person shall qualify for the position of ranger in the same manner as is required of county officers by the taking and filing of an oath of office as required by section three, article one, chapter six of this code and by posting an official bond as required by section one, article two, chapter six of this code. To facilitate the performance of the duties of a ranger, a ranger may carry a firearm or other dangerous weapon while the ranger is on duty.

(c) It is the duty of any person appointed and qualified as a ranger hereunder to preserve law and order on any premises which are part of a resort area district. For this purpose, the ranger shall be considered to be a law-enforcement officer in accordance with the provisions of section one, article twenty-nine, chapter thirty of this code and, as to offenses committed within those areas, have and may exercise all the powers and authority and are subject to all the requirements and responsibilities of a law-enforcement officer. The assignment of rangers to the duties authorized by this section may not supersede in any way the authority or duty of other peace officers to preserve law and order on those premises.

(d) The salary of all rangers shall be paid by the board. The board shall furnish each ranger with an official uniform to be worn while on duty and shall furnish and require each ranger while on duty to wear a shield with an appropriate inscription and to carry credentials certifying the person's identity and authority as a ranger.

(e) The board at its pleasure may revoke the authority of any ranger. The chairman of the board shall report the termination of employment of a ranger by filing a notice to that effect in the office of the clerk of the county in which the ranger's oath of office was filed and in the case of a ranger licensed to carry a firearm or other dangerous weapon, by notifying the clerk of the circuit court of the county in which the license for the firearm or other dangerous weapon was granted.

WV Legislature

§7-25-24. Annual audit; books and records.

Each resort area district shall cause an audit of its books and accounts to be made at least once each fiscal year by anindependentcertified public accountants, and the cost thereof may be defrayed as an administrative cost. All books and records of the resort area district shall be available for inspection by any property owner during reasonable business hours.

WV Legislature

§7-25-25. Notice of transfer of change in ownership of property within resort area district.

After the resort area district has been formed and organized, as a part of any bylaws, the district's board shall promulgate rules and regulations as a part of its bylaws which require timely notice to the District whenever ownership of property within the District has changed, along with any change in address for any notices required by this article. If a new property owner within the District fails to notify the district board of change in the property's ownership, any notice provided by the District to the previous property owner's last known address shall be deemed sufficient.

WV Legislature

§7-25-26. Liberal construction.

This article being necessary for the public health, safety and welfare and economic development, it shall be liberally construed to effectuate the purpose hereof.

WV Legislature

§7-25-27. Effect of the 2015 amendments.

It is the intent of the Legislature that the amendments to this article passed during the 2015 regular session of the Legislature does not cause any petition for the creation of a resort area district that is currently before the governing body of the county in which the proposed resort area district is located to be voided and that those petitions may be modified to meet the current requirements of this article, put to a public meeting, and incorporated into the petition.

WV Legislature