WEST VIRGINIA CODE CHAPTER 8 ARTICLE 13A

WV Legislature

§8-13A-1. Short title.

This article is known and may be cited as the "Business Improvement District Act."

WV Legislature

§8-13A-2. Legislative findings and declaration of purpose.

The Legislature finds that many business districts within the municipalities of this state are economically depressed. This adversely affects the economic and general well-being of the citizens of those municipalities. Establishment of business improvement districts within municipalities of the state, in accordance with the purpose and powers set forth in this article, will serve a public purpose, promote the health, safety, prosperity, security and general welfare of all citizens in the state. It will also promote the vitality of commercial business areas within municipalities, while serving as an effective means for restoring and promoting commercial and other business activity within the business improvement districts created herein. This will be of special benefit to the property within the boundaries of any business improvement district created under this article and will stimulate economic growth and job creation.

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§8-13A-3. Definitions.

For purposes of this article, the term:

(a) "Commercial property" means the surface of any taxable real property which is classified for ad valorem real property tax purposes as Class IV. Excluded from the meaning of such term is all real property owned or used exclusively for state, county, municipal, literary, educational, scientific, religious, benevolent or charitable purposes, or real property owned or used by public port authorities or wayport authorities;

(b) "District board" means a district board created pursuant to section eleven of this article;

(c) "Property owner" or "owner" means the owner of commercial property as shown by the transfer records in the office of the county clerk of the county in which the property is located. If an owner owns more than one commercial property, that owner is counted as a separate owner for each such commercial property owned. If commercial property is owned by more than one owner, the majority in ownership is treated as the owner for the purpose of this article;

(d) "Services" means governmental functions, programs, activities, facility improvements and other services which a district board is authorized to perform or provide under section five of this article.

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§8-13A-4. Authorization.

The governing body of any municipality may, in accordance with the procedures and subject to the limitations set forth in this article, establish one or more business improvement districts within the municipality. The municipality may provide for the administration and financing of additional and extended services to businesses within the districts and for the administration and financing of a continuing program of services within the districts.

WV Legislature

§8-13A-5. Services.

Any municipality which has established a business improvement district under this article may provide or cause to be provided such services as will restore or promote the economic vitality of the district and the general welfare of the municipality, including, but not limited to, the following:

(a) Beautification of the district, by means such as landscaping and construction and erection of fountains, shelters, benches, sculptures, signs, lighting, decorations and similar amenities;

(b) Provision of special or additional public services, such as sanitation, security for persons and property and the construction and maintenance of public facilities including sidewalks and other public areas;

(c) Making principal or interest payments on bonds issued by the municipality for public improvements located within and designated to improve the economic viability of the district;

(d) Providing financial support for public transportation and vehicle parking facilities open to the general public;

(e) Constructing, operating and maintaining parking facilities;

(f) Developing plans for the general architectural design of public areas and developing plans and programs for the future development of the district;

(g) Developing, promoting and supporting community events and activities open to the general public;

(h) Providing the administrative costs for a district management program; and

(i) Providing any other services which the municipality or district board is authorized to perform and which the municipality does not also perform to the same extent on a municipality-wide basis.

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§8-13A-6. Petition to initiate the procedure for organization, development and designation.

(a) The organization, development and designation of a business improvement district shall be initiated by a petition filed in the office of the clerk of the governing body of the municipality. The petition shall be signed by not less than four owners who own commercial property in the proposed business improvement district having an assessed value as reflected on the county assessor's landbooks of not less than fifty-one percent of the value of all commercial property in the proposed business improvement district.

(b) The petition shall set forth:

(1) The name of the proposed district, including a descriptive name thereof and the words "business improvement district";

(2) A general description of the boundaries and service area of the proposed district;

(3) A general description of the additional or extended services needed within the district; and

(4) A request for the organization of a business improvement district.

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§8-13A-7. Appointment of planning committee, issuance of report.

(a) Upon receipt of a petition for the initiation of a business improvement district, the governing body of the municipality shall, within ninety days, appoint a district planning committee consisting of seven members. A majority of the members shall be owners of commercial property situated within the proposed district of the municipality. The committee shall study and develop preliminary plans for the establishment and operation of the proposed district and shall consult with the appropriate officials and agencies of the municipality prior to completing such preliminary plans. Upon completion of the study and development of preliminary plans and, in no event, later than two hundred seventy-five days after its establishment, the committee shall submit to the governing body a written report which:

(1) Describes the boundaries of the proposed district with sufficient specificity to enable the owner of any commercial property in the municipality to determine whether his or her property is located therein. The area proposed for any district must be contiguous with and situated fully within the boundaries of the municipality;

(2) A description of any additional or extended services needed within the district;

(3) A description of the proposed method of financing any planned improvements, including the maximum rate of annual fees that may be imposed upon properties within the proposed district and the manner in which the rate will be imposed. The amount of annual fees may be based upon gross leasable square footage, street front-footage, total gross building or land square footage, or any combination thereof, or on such basis as can reasonably be determined based upon the value of the improvements to the commercial property situated in the district and upon whatever benefits exist relative to the various owners of property situated therein. For the purpose of levying fees, the committee shall make a reasonable classification of all properties within the proposed district;

(4) A recommendation concerning the feasibility and desirability of the proposed business improvement district and any alternative proposal, in the event the committee's recommendation is not in accordance with the original petition: Provided, That, in the event the boundaries of the proposed business improvement district recommended by the committee differs from the boundaries contained in the original petition, the report must also contain an additional petition signed by at least four persons who own commercial property in the proposed business improvement district recommended by the committee. Such commercial property must have an assessed value as reflected on the county assessor's land books of not less than fifty-one percent of the value of all commercial property in the proposed business improvement district;

(5) Such other information as may be requested by the governing body. The municipality may provide staff and technical assistance to the committee.

WV Legislature

§8-13A-8. Notice; hearing.

Upon receipt of the planning committee's report, the governing body of the municipality shall set a time and place for a public hearing regarding the creation of any business improvement district. The notice of the public hearing shall be published as a Class I-O legal advertisement in compliance with article three, chapter fifty-nine of this code at least twenty days prior to the scheduled hearing. A copy of the notice shall be sent by certified mail, return receipt requested, not less than twenty days before the hearing, to all owners of commercial property within the proposed district. If any property is shown to be in the name of more than one owner at the same mailing address, a single notice may be mailed, addressed to all owners at that address. In addition to the time and place of the hearing, the notice must also state:

(a) The purpose of the hearing;

(b) The name of the proposed district;

(c) The purpose of the proposed district;

(d) The property proposed to be included in the district; and

(e) The proposed method of financing any costs involved, including the maximum rate of annual fees that may be imposed upon any properties situated within the proposed district.

The hearing shall be held not later than sixty days after receipt of the planning committee's report.

At the time and place set forth in the notice, the governing body shall afford the opportunity to be heard to any owner of real property situated in the proposed district and any residents of the municipality.

WV Legislature

§8-13A-9. Creation of district; statement of prohibition on use of fees.

(a) If the governing body of the municipality, following the public hearing, determines it advisable and in the public interest to establish an improvement district, it shall create the district by ordinance as provided for in article eleven of this chapter: Provided, That the governing body may not amend, alter or change in any manner the boundaries of the improvement district as recommended by the planning committee. In addition to all other requirements, the ordinance shall contain the following:

(1) The name of the district and a description of its boundaries;

(2) A summary of any proposed services to be provided within the district and a reasonable estimate of any attendant cost;

(3) The maximum rate of any annual fees that may be imposed upon the commercial properties and the manner in which the rate will be imposed; and

(4) The district boardmembers' terms, their method of appointment and a full description of their powers and duties.

(b) The ordinance shall also state the general intention of the municipality to increase services within the business improvement district and that no fees collected under the authority of the ordinance may be used to reduce, replace or supplant existing funds or services.

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§8-13A-10. Petition to repeal ordinance.

Within thirty days following passage of an ordinance creating a business improvement district, the owners of any real property situated in the district may file a petition with the governing body of the municipality in opposition to the continuation of the district. Upon a finding that the petition was signed by owners of commercial property situated in the proposed business improvement district having an assessed value as reflected on the county assessor's land books of not less than fifty-one percent of the value of all commercial property in the business improvement district, the governing body shall repeal the ordinance which established the district, thereby rescinding its creation and development.

WV Legislature

§8-13A-11. District board; duties.

(a) The governing body of any municipality that intends to establish a business improvement district, in accordance with this article, shall provide by ordinance for the appointment of a district board to oversee the operations of the improvement district. The board shall be made up of at least seven members, the majority of which shall be owners of commercial property situated in the improvement district.

(b) The district board, in addition to the duties prescribed by the ordinance creating the improvement district, shall submit an annual report to the governing body containing:

(1) An itemized statement of its receipts and disbursements for the preceding fiscal year;

(2) A description of its activities for the preceding fiscal year;

(3) A recommended program of services to be performed or provided within the district for the coming fiscal year; and

(4) A proposed budget to accomplish its objectives.

(c) Nothing in this article prohibits any member of the district board from also serving on the board of directors of a nonprofit corporation with which the municipality may contract to provide specified services within the district.

(d) No member of the district board may receive, either directly or indirectly, compensation for service on the board.

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§8-13A-12. Levy of service fees; classification of properties; factors to consider.

(a) Upon receipt of a recommended program of services and a proposed budget from the district board, the governing body of the municipality may annually, by ordinance, levy business improvement service fees which may only be applicable to properties located within the improvement district and only to the extent necessary to fund the budget proposed by the district board. All revenue from the fees shall be placed in a special business improvement district fund and may only be used to fund the services provided under this article.

(b) The ordinance creating a business improvement district may provide for the division of property within the district into two or more zones or uses in the event significant differences exist relative to the property and the improvements. The ordinance may establish different rates of assessment for each zone or use, or may provide that the rate be a certain percentage of the assessment levied in the zone or on the use, subject to the highest rate of assessment.

(c) The amount of the business improvement service fee shall be in addition to any municipality-wide license fees or any other tax, fee or charge levied for the general benefit and use of the municipality.

(d) Each assessment is a lien on the commercial property that is assessed, second only to any state, federal or county taxes levied on that property.

WV Legislature

§8-13A-13. Special business improvement district fund.

Any municipality that has established a business improvement district shall establish a special business improvement district fund for each district created within such municipality. Revenue derived from any special assessment fees, gifts, grants, appropriations from the municipality or other sources shall be paid into the fund. Moneys in another municipal fund or funds may be advanced to the special fund only if reimbursement is made to such other fund or funds prior to the end of the fiscal year.

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§8-13A-14. Modification of included area; notice; hearing.

(a) The ordinance creating a business improvement district may be amended to include additional property if a petition is filed with the governing body requesting such inclusion. Such petition must be signed by the owners of the commercial property that is being proposed for inclusion in the improvement district. Such property must have an assessed value, as reflected on the assessor's land books, of not less than fifty-one percent of the value of all the property proposed for inclusion.

(b) Upon receipt of the petition, the governing body shall refer the petition to the appropriate district board for which the amendment is sought. The board shall review the petition and, within sixty days, file a report with the governing body recommending either acceptance of the proposed inclusion or rejection of the petition. Additional property may not be included unless it is contiguous with the existing district and situated within the boundaries of the municipality.

(c) Upon receipt of the recommendation from the district board, the governing body shall designate a time and place for a public hearing upon the petition to include additional property. The notice shall meet the requirements set forth in section eight of this article.

(d) At the time and place set forth in the notice, the governing body shall afford the opportunity to be heard to any owners of real property either currently included in or proposed to be added to the existing improvement district and to any other residents of the municipality. The hearing shall be held within sixty days after the governing body's receipt of the district board's recommendation.

(e) All additional property included in a district shall be subject to all fees whether currently existing or thereafter levied.

WV Legislature

§8-13A-15. Abolishment and dissolution of district; notice; hearing.

(a) A district may be abolished by the governing body of the municipality following a public hearing upon the proposed abolishment. Notice of such hearing must be provided by first class mail to all property owners within the district and shall be published as a Class I-O legal advertisement in compliance with article three, chapter fifty-nine of this code at least twenty days prior to the public hearing. Upon the abolishment of any improvement district, any funds or other assets, contractual rights or obligations, claims against holders of indebtedness or other financial benefits, liabilities or obligations existing after full payment has been made on all existing contracts, bonds, notes or other obligations of the district, shall be transferred to the municipality. Any funds or other assets so transferred shall be used for the benefit of the area included in the improvement district being abolished.

(b) Notwithstanding any other provision of this article, no business improvement district may exist for a period exceeding ten years unless reinstated pursuant to the provisions of this article. Reinstatement requires compliance with all requirements and procedures set forth herein for the initial development and establishment of a district. No district may issue notes or bonds for funding district projects or improvements that exceed a repayment schedule of ten years. Upon the dissolution of any business improvement district, any funds or other assets, contractual rights or obligations, claims against holders of indebtedness, or other financial benefits, liabilities or obligations existing after full payment has been made on all contracts, bonds, notes or other obligations of the district, shall be transferred to the municipality. Any funds or other assets so transferred shall be used for the benefit of the area included in the improvement district being dissolved.

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