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SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 1992



# ENROLLED

*Com. Sub. For*

HOUSE BILL No. *4188*

(By Delegate *3 Vest and Manuel*)



Passed *March 7* 1992

In Effect *Ninety Days From* Passage

**ENROLLED**  
COMMITTEE SUBSTITUTE  
FOR  
**H. B. 4188**  
(By DELEGATES VEST AND MANUEL)

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[Passed March 7, 1992; in effect ninety days from passage.]

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AN ACT to amend chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twelve-a, relating to authorizing the formation of maintenance associations outside of incorporated areas; authorizing maintenance associations outside of incorporated areas to assess and collect fees.

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

That chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article twelve-a, to read as follows:

**ARTICLE 12A. MAINTENANCE ASSOCIATIONS.**

**§7-12A-1. Definitions.**

1     In this article, unless a different meaning plainly is  
2     required:

3     (1) "Maintenance association" means an association  
4     established pursuant to the requirements of this article.

5     (2) "Maintenance association member" means any  
6     person, owning residential property that fronts on either

7 side of a road which is designated by a maintenance  
8 association document.

9 (3) "Maintenance association documents" means  
10 documents approved by the county commission as  
11 meeting the requirements of this article and filed with  
12 the clerk of the county commission.

**§7-12A-2. Purpose of the maintenance association.**

1 Maintenance associations may be established in any  
2 county outside an incorporated area to protect the  
3 health, safety and welfare of persons and the general  
4 public located within the designated maintenance  
5 association area. The maintenance association shall be  
6 created with the objective of establishing and maintain-  
7 ing improvements for the area designated in the  
8 petition, which may include construction and maintain-  
9 ing shared streets, drainage facilities, sidewalks, water  
10 and sewer systems, signs and other improvements  
11 necessary for the protection of health, safety and welfare  
12 of the general public.

**§7-12A-3. Petition to establish maintenance association.**

1 (a) A petition in writing may be made to the county  
2 commission, that duly verifies that persons owning sixty  
3 percent of the frontage of the lots on both sides of any  
4 orphan road or subdivision road in any unincorporated  
5 area request the approval of the formation of a main-  
6 tenance association. The petition shall be accompanied  
7 by the proposed maintenance association's recordable  
8 documents that establish the association.

9 (b) Upon the filing of such petition and the proposed  
10 maintenance association documents, the county commis-  
11 sion shall fix a time and place for hearing protests and  
12 shall require the petitioners to post notice of such  
13 hearing in at least two conspicuous places on the public  
14 road, orphan road or subdivision road of the area  
15 affected, and to give notice thereof by publication of  
16 such notice as a Class I legal advertisement in com-  
17 pliance with the provisions of article three, chapter fifty-  
18 nine of this code. The publication area for such  
19 publication shall be the county in which the mainte-

20 nance association shall be located. The hearing shall be  
21 held not less than ten nor more than thirty days after  
22 the filing of such petition.

23 (c) At the time and place set for hearing protests, the  
24 county commission may examine witnesses and consider  
25 other evidence to show that:

26 (1) Said petition was filed in good faith;

27 (2) The signatures on the petition are genuine;

28 (3) The maintenance association document addresses  
29 the maintenance association purpose; and

30 (4) The proposed maintenance association will result  
31 in special benefits to all owners of residential property  
32 abutting on said orphan road or subdivision road.

33 The commission shall within ten days thereafter enter  
34 a formal order stating its decision.

35 (d) Any owner of residential property abutting upon  
36 said orphan road or subdivision road aggrieved by such  
37 order shall have the right to review the order on the  
38 record made before the county commission by filing a  
39 petition with the clerk of the circuit court within ten  
40 days after the entry of such order. The owner shall give  
41 bond in an amount to be fixed by the circuit court  
42 sufficient to pay costs or expenses incurred by the court  
43 and the maintenance association upon appeal if the  
44 order of the county commission is affirmed. The circuit  
45 court shall proceed to review the matter as in other  
46 appeals from the county commission.

**§7-12A-4. Contents of maintenance association document;  
approval of recording of maintenance asso-  
ciation documents.**

1 (a) The maintenance association document shall  
2 include language for:

3 (1) Conduct of business;

4 (2) Fee structure;

5 (3) Enforcement; and

6 (4) Voting requirements: *Provided*, That each affected

7 property owner shall be accorded one vote per property.

8 (b) After a maintenance association has been ap-  
9 proved by the county commission, a certified copy of the  
10 approved maintenance association documents shall be  
11 filed with the clerk of the county commission.

**§7-12A-5. Powers of maintenance associations.**

1 A maintenance association formed pursuant to this  
2 article may have power and authority to:

3 (a) Assess fees for essential services, and

4 (b) Institute suits for the collection of such fees,  
5 attorneys fees and court costs.

**§7-12A-6. Assessment and collection of fees; notice.**

1 (a) A maintenance association which furnishes essen-  
2 tial services, including but not limited to, construction  
3 and maintenance of shared streets, drainage facilities,  
4 sidewalks, water and sewer systems, signs and other  
5 improvements necessary for the health, safety and  
6 welfare of the general public, may have authority to  
7 impose reasonable fees and charges on persons owning  
8 lots abutting the frontage of both sides of roads listed  
9 in the maintenance association document.

10 (b) Any new fee or fee increase assessed under this  
11 section shall not be collectable unless notice of the  
12 proposed fee or increase is sent by certified mail to each  
13 person owning property listed in the maintenance  
14 association document. If thirty percent of the members,  
15 by signed petition, protest the assessment to the  
16 association within fifteen days of the mailing, the fee  
17 shall not become effective until it is ratified by sixty  
18 percent of the members.

19 (c) All fees assessed under this section are declared to  
20 be debts owing to the maintenance association for which  
21 the debtor shall be personally liable. The maintenance  
22 association, or an individual designated to act for it, may  
23 enforce this liability by appropriate civil action in a  
24 court of competent jurisdiction. After being reduced to  
25 judgment and filed with the clerk of the county  
26 commission, such liability shall be a lien on property

27 owned by the maintenance association member and  
28 designated in the maintenance association document.

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The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*James Pece*

Chairman Senate Committee

*Ernest C. Moore*

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

*Russell E. Adams*

Clerk of the Senate

*Donald G. Kopf*

Clerk of the House of Delegates

*Kurt Boudette*

President of the Senate

*Robert C. Cell*

Speaker of the House of Delegates

The within is approved this the 31<sup>st</sup> day of March 1992.

*Yaston Caperton*

Governor

PRESENTED TO THE

GOVERNOR

Date 3/25/92

Time 11:40am