WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1994

ENROLLED

HOUSE BILL No. H168

(By Delegates Kessel, Brown, Smith, Spencer, and Walters)

Passed March 12, 1994

In Effect 90 Days From Passage
ENROLLED

H. B. 4168

(By Delegates Kessel, Brown, Smith, Spencer, Sorah and Walters)

[Passed March 12, 1994; in effect ninety days from passage.]

AN ACT to amend chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article thirteen-a, relating to the authority of municipalities to create business improvement districts to foster economic growth and development and providing procedures therefor; legislative findings and declaration of purpose; definitions; providing authorization to municipalities to create business improvement districts; types of services that a municipality may provide to a business improvement district; the petition that initiates procedures to be used to organize, develop and designate a business improvement district; the appointment of a planning committee which issues a report; provision of notice and hearing; the creation of a business improvement district; certain uses of fees to be prohibited; the petition to appeal an ordinance creating a business improvement district; the establishment of a district board and its duties; the levy of service fees; the classification of properties within a business improvement district; the creation of a special business improvement district fund and its funding sources; the petition to include additional property in an existing business improvement district; the procedure used to abolish and dissolve a business improvement district.

Be it enacted by the Legislature of West Virginia:
ARTICLE 13A. BUSINESS IMPROVEMENT DISTRICTS.


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

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

(a) 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.


(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.


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.


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.

§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 land books 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”;

(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.


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-0 legal adver-
sisement 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.


(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.

§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.

§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.

§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. Any surplus in the fund in a fiscal year shall be applied to reduce the amount of service fees required for the next fiscal year.

(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.


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 reimburse-
ment is made to such other fund or funds prior to the
end of the fiscal year.

§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 accep-
tance 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
(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.

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

Chairman Senate Committee

Ernest E. Moore
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within approved this the 30th day of March, 1994.

Governor