WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2003

ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 2818

(By Delegates Doyle, Tabb and Manuel)

Passed March 8, 2003

In Effect Ninety Days from Passage
AN ACT to amend article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto two new sections, designated sections three-mm and three-nn, relating to authorizing the county commissions of growth counties, by adoption of an ordinance, to establish programs for the transfer of property rights upon approval by a majority of the legal votes cast at a county-wide election; providing for a county-wide election on an ordinance for a program for transfer of development rights; form of ballots or ballot labels; election procedure.

Be it enacted by the Legislature of West Virginia:

That article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto two new sections, designated sections three-mm and three-nn, all to read as follows:
ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-3mm. Transfer of development rights in growth counties.

(a) In addition to all other powers and duties now conferred by law upon county commissions, if a county has been designated as a growth county, as that term is defined in section three, article twenty, chapter seven of this code, those county commissions, upon approval by a majority of the legal votes cast at an election as provided in section three-nn of this article, are hereby authorized to, as part of a county-wide zoning ordinance, which has been in effect for a minimum of five years, establish a program for the transfer of development rights, in order to:

(1) Encourage the preservation of natural resources;

(2) Protect the scenic, recreational and agricultural qualities of open lands; and

(3) Facilitate orderly growth and development in the county.

(b) The program for the transfer of development rights may provide for:

(1) The voluntary transfer of the development rights permitted on any parcel of land to another parcel of land;

(2) Restricting or prohibiting further development of the parcel from which development rights; and

(3) Increasing the density or intensity of development of the parcel to which such rights are transferred.

(c) The program for the transfer of development rights shall:

(1) Designate a universal program for which development rights may be transferred from any parcel of land to any other parcel of land;
(2) Provide that any rights transferred under this section be for ten years; and

(3) Any rights purchased, but not used for development, revert to the original owner after ten years.

(d) The county commission may not set a price for any development rights that are proposed to be transferred or received.

(e) “Transferable development rights” means an interest in real property that constitutes the right to develop and use property under the zoning ordinance which is made severable from the parcel to which the interest is appurtenant and transferable to another parcel of land for development and use in accordance with the zoning ordinance. Transferable development rights may be transferred by deed from the owner of the parcel from which the development rights are derived and upon the transfer shall vest in the grantee and be freely alienable. The zoning ordinance may provide for the method of transfer of these rights and may provide for the granting of easements and reasonable regulations to effect and control transfers and assure compliance with the provisions of the ordinance.

§7-1-3nn. Election on ordinance for program for transfer of development rights; form of ballots or ballot labels; procedure.

(a) A county commission which has been designated as a growth county may submit a proposed ordinance to establish a program for the transfer of development rights pursuant to section three-mm of this article to the qualified voters residing within the county for approval or rejection at any regular primary or general election. Notice of the election shall be provided and the ballots shall be printed as set forth in subsection (b) of this section. The ordinance may be adopted if it is approved by a majority of the legal votes cast thereon in that county. If the ordinance is rejected, no election on the issue shall be held thereafter for a period of one hundred-four weeks.
(b) On the election ballots shall be printed the following:

Shall the County Commission of (name of county) be authorized to adopt an ordinance to establish a program for the transfer of development rights in accordance with Section three-ll, Article one, Chapter seven of the Code of West Virginia?

/ / Yes

/ / No

(c) If a majority of the legal votes cast upon the question be for the ordinance, the provisions of the ordinance become effective upon the date the results of the election are declared. If a majority of the legal votes cast upon the question be against the ordinance, the ordinance shall not take effect.

(d) Subject to the provisions of subsection (c) of this section, an election permitted by this section may be conducted at any regular primary or general election as the county commission in its order submitting the same to a vote may designate.

(e) Notice of an election pursuant to this section shall be given by publication of the order calling for a vote on the question as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code and the publication area for the publication shall be the county in which the election is to be conducted.

(f) Any election permitted by this section shall held at the voting precincts established for holding primary or general elections. All of the provisions of the general election laws of this state applicable to primary or general elections not inconsistent with the provisions of this section shall apply to voting and elections authorized by this section.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Greg Butcher
Chairman House Committee

Originating in the House.

In 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 is approved this the 27th day of March 2003

Governor