

FILED

2015 MAR 25 P 3: 25

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**  
FIRST REGULAR SESSION, 2015



**ENROLLED**

**House Bill No. 2914**

(By Delegate(s) Hartman, Sponaugle,  
Campbell and Perry)



Passed March 11, 2015

In effect ninety days from passage.

HB 2914

**E N R O L L E D**

**H. B. 2914**

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(BY DELEGATE(S) HARTMAN, SPONAUGLE,  
CAMPBELL AND PERRY)

[Passed March 11, 2015;  
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AN ACT to amend and reenact §7-25-6, §7-25-11 and §7-25-15 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto two new sections, designated §7-25-7a and §7-25-27, all relating generally to resort area districts; providing for voluntary dissolution of a resort area district; establishing a procedure for a dissolution; permitting nominations for resort area board members be made by mail or electronic means; permitting property owners to make nominations; providing for election of board members by plurality vote instead of by a majority vote; limiting the amount of assessments that may be levied against a parcel of real property; establishing a procedure for assessments proposed by a board on its own initiative; and providing for the effect of 2015 amendments.

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

That §7-25-6, §7-25-11 and §7-25-15 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto two new sections, designated §7-25-7a and §7-25-27, all to read as follows:

**ARTICLE 25. RESORT AREA DISTRICTS.**

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

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

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

22           (c) At least sixty days prior to the date of the meeting the  
23 notice required by this section shall, using reasonable efforts, be  
24 mailed to each owner of real property to be included in the  
25 proposed resort area district as provided in subsection (g) of this  
26 section, posted in multiple, conspicuous public locations within  
27 the proposed district and published as a Class II legal  
28 advertisement in compliance with the provisions of article three,

29 chapter fifty-nine of this code and the publication area for the  
30 publication shall be the county in which the proposed resort area  
31 district is located. The notice shall be in the form of, or  
32 substantially in the form of, the following notice:

33 “NOTICE TO ALL PERSONS OWNING PROPERTY  
34 LOCATED WITHIN ..... (here describe the  
35 boundaries of the proposed resort area district) IN THE  
36 COUNTY OF ..... (name of county):

37 A petition has been presented to the county commission of  
38 the County of ..... (name of county) requesting  
39 establishment of a resort area district and authorization of a  
40 resort service fee under article twenty-five, chapter seven of the  
41 code of West Virginia, 1931, as amended, to .....  
42 (describe potential projects and/or services to be provided) in the  
43 county of ..... (name of county) as the county  
44 commission may deem proper. A copy of the petition is available  
45 in the office of the clerk of the county commission of the County  
46 of ..... (name of county) for review by the public  
47 during regular office hours.

48 The petition to create a resort area district will be considered  
49 by the county commission at a public meeting to be held on the  
50 ..... day of ....., ....., at ... m. at  
51 ..... Any owner of real property  
52 whose property may be affected by the creation of the  
53 above-described resort area district, and any owner of real  
54 property whose property is not located within said resort area  
55 district but wishes his or her property to be included, will be  
56 given an opportunity, under oath, to protest or be heard at said  
57 meeting or any adjournment thereof:

58 ..... (name of clerk)

59 (d) An affidavit of publication of the notice made by  
60 newspaper publisher, or a person authorized to do so on behalf

61 of the publisher, and a copy of the notice shall be made part of  
62 the minutes of the governing body and spread on its records of  
63 the meeting described in the notice. The service of the notice  
64 upon all persons owning any interest in any real property located  
65 within the proposed resort area district shall conclusively be  
66 determined to have been given upon completion of mailing as  
67 provided in subsection (g) of this section and the newspaper  
68 publication.

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

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

90 (g) For purposes of the mailing of each notice to owners of  
91 real property required by this section, reasonable efforts shall be  
92 made to mail the notice to all owners of real property proposed  
93 to be included within the resort area district using the real

94 property tax records and land books of the county in which the  
95 proposed district is located and any lists maintained by a resort  
96 operator or homeowners association within the proposed district.  
97 The notice shall be also mailed to each president of a  
98 homeowners association, if any, located within a proposed  
99 district which has registered with a resort operator to receive the  
100 information. Immaterial defects in the mailing of the notices  
101 shall not affect the validity of the notices: *Provided*, That in the  
102 case of any resort area district to be voted upon after the  
103 effective date of this amendment adopted during the 2015  
104 regular session of the Legislature, any notice shall be mailed to  
105 the property owner's primary place of abode by certified mail,  
106 return receipt requested.

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

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

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

18 The date set by the board for the special election required by  
19 this section may be no less than sixty nor more than ninety days

20 from the date the board mails the notice, in the form described  
21 in subsection (c) of this section, to the owners of real property  
22 located within the district. The board shall make a copy of the  
23 petition available for inspection by interested persons before the  
24 special election. If the board determines that the petition has not  
25 met the requirements of subsection (a) of this section, the  
26 petition shall be returned to the petitioners with a statement of  
27 the reason why the petition was rejected.

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

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

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

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

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

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

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

51 (3) The location of the real property;

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

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

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

60 // For Continuance of the \_\_\_\_\_ (name of district) resort  
61 area district.

62 // For Dissolution of the \_\_\_\_\_ (name of district) resort  
63 area district.

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

74 // For Continuance of the \_\_\_\_\_ (name of district) resort  
75 area district.

76 // For Dissolution of the \_\_\_\_\_ (name of district) resort  
77 area district.

78 If a simple majority of the votes is cast for dissolution, then  
79 the board shall request that the governing body dissolve the

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

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

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

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

7 (b) Prior to the meeting required by this section, the  
8 petitioners for the creation of the resort area district shall, using  
9 reasonable efforts, cause notice of the initial election meeting to  
10 be given to all owners of real property, including owners of  
11 commercial business property, located within the district. The  
12 notice shall be mailed to each owner of real property included in  
13 the resort area district as provided in subsection (h) of this  
14 section, posted in multiple, conspicuous public locations within  
15 the district and published at least thirty days prior to the date of

16 the meeting as a Class II legal advertisement in compliance with  
17 the provisions of article three, chapter fifty-nine of this code and  
18 the publication area for the publication is the resort area district.  
19 The notice shall provide, at a minimum, the following  
20 information:

21 (1) The purpose of the meeting;

22 (2) Descriptions of the board positions;

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

27 (4) The location of the meeting;

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

31 (6) The date and time of the meeting.

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

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

46       (2) Only representatives of the resort operator or resort  
47 operators may nominate persons for the two board positions  
48 provided for representatives of the resort operator or resort  
49 operators located within the resort area district;

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

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

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

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

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

75       (3) Only owners of commercial business property located  
76 within the resort area district may vote for the board position

77 provided for an owner of or a representative of owners of  
78 commercial business property located within the resort area  
79 district. Each owner is entitled to one vote per unit of  
80 commercial business property he or she owns; and

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

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

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

92 (2) Fractional voting shall not be permitted; and

93 (3) The vote pertaining to a parcel or unit shall be cast in  
94 accordance with the direction of the person or persons holding  
95 the majority interest in the parcel or unit, and in the event there  
96 is no majority, the vote shall be forfeited.

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

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

102 (h) For purposes of the mailing of notice to owners of real  
103 property required by this section, reasonable efforts shall be  
104 made to mail such notice to all owners of real property included  
105 within such resort area district using the real property tax records

106 and land books of the county in which such district is located and  
107 any lists maintained by a resort operator or homeowners  
108 association within such district. Such notice shall be also mailed  
109 to each president of a homeowners association, if any, located  
110 within a district which has registered with a resort operator to  
111 receive such information. Immaterial defects in the mailing of  
112 such notices shall not affect the validity of such notice.

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

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

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

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

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

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

41 (f) An assessment may not be authorized by the board if at  
42 the public meeting required by this section written protest is filed  
43 by at least twenty-five percent of the owners of the real property  
44 within the district to be benefitted by the proposed project and  
45 subject to the assessment. However, before an assessment  
46 proposed by the board on its own initiative as provided in  
47 subsection (c) of this section is authorized by the board, the  
48 proposal must also receive the favorable vote of a majority of the  
49 votes cast at the meeting for the proposal by the owners of real  
50 property in the district that will be subject to the assessment.  
51 Voting at the meeting shall be in person or by proxy at the  
52 meeting or by mailed ballot or electronic means received prior  
53 to the meeting. The voting rules set forth in subsection (e),

54 section eleven of this article apply to all voting on assessments.  
55 In the event of such protest, the proposed assessment in the same  
56 form may not be reconsidered by a board for a period of at least  
57 one year from the date of the public meeting.

58 (g) At least thirty days prior to the date of the public  
59 meeting, the notice required by this section shall, using  
60 reasonable efforts, be mailed to the owners of real property to be  
61 assessed for a proposed project as provided in subsection (k) of  
62 this section, posted in multiple, conspicuous public locations  
63 within the district and published as a Class II legal advertisement  
64 in compliance with the provisions of article three, chapter  
65 fifty-nine of this code. The publication area for the publication  
66 is the resort area district.

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

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

82 (j) A board shall make available to the owners of real  
83 property within the district a list of all owners of real property  
84 within the district for the purposes of enabling the owners of real

85 property to solicit support for a petition proposing or a protest  
86 against an assessment.

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

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

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

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

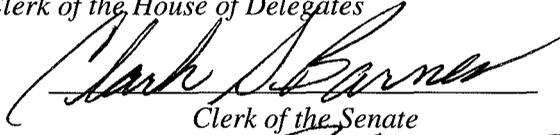
  
Chairman, House Committee

  
Chairman, Senate Committee

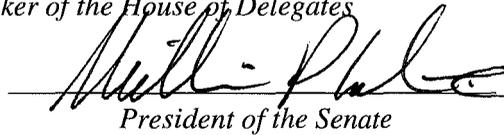
Originating in the House.

In effect ninety days from passage.

  
Clerk of the House of Delegates

  
Clerk of the Senate

  
Speaker of the House of Delegates

  
President of the Senate

The within is approved this the 25<sup>th</sup>  
day of May, 2015.

  
Governor

PRESENTED TO THE GOVERNOR

MAR 16 2015

Time 3:24 PM