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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.

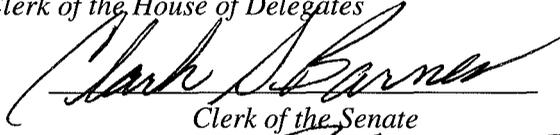

Chairman, House Committee


Chairman, Senate Committee

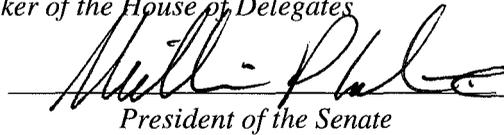
Originating in the House.

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 25th
day of May, 2015.


Governor

PRESENTED TO THE GOVERNOR

MAR 16 2015

Time 3:24 PM