

ENROLLED

H. B. 2914

(By Delegates Hartman, Sponaugle, Campbell and Perry)

[Passed March 11, 2015; in effect ninety days from passage.]

10 AN ACT to amend and reenact §7-25-6, §7-25-11 and §7-25-15 the Code of West Virginia, 1931,
11 as amended; and to amend said code by adding thereto two new sections, designated
12 §7-25-7a and §7-25-27, all relating generally to resort area districts; providing for voluntary
13 dissolution of a resort area district; establishing a procedure for a dissolution; permitting
14 nominations for resort area board members be made by mail or electronic means; permitting
15 property owners to make nominations; providing for election of board members by plurality
16 vote instead of by a majority vote; limiting the amount of assessments that may be levied
17 against a parcel of real property; establishing a procedure for assessments proposed by a
18 board on its own initiative; and providing for the effect of 2015 amendments.

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

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

1 **ARTICLE 25. RESORT AREA DISTRICTS.**

2 **§7-25-6. Notice to property owners before creation or expansion of resort area district; form**
3 **of notice; affidavit of publication.**

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

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

17 (c) At least sixty days prior to the date of the meeting the notice required by this section shall,
18 using reasonable efforts, be mailed to each owner of real property to be included in the proposed
19 resort area district as provided in subsection (g) of this section, posted in multiple, conspicuous
20 public locations within the proposed district and published as a Class II legal advertisement in
21 compliance with the provisions of article three, chapter fifty-nine of this code and the publication
22 area for the publication shall be the county in which the proposed resort area district is located. The

1 notice shall be in the form of, or substantially in the form of, the following notice:

2

3 “NOTICE TO ALL PERSONS OWNING PROPERTY LOCATED WITHIN
4 (here describe the boundaries of the proposed resort area district) IN THE COUNTY OF
5 (name of county):

6

7 A petition has been presented to the county commission of the County of (name
8 of county) requesting establishment of a resort area district and authorization of a resort service fee
9 under article twenty-five, chapter seven of the code of West Virginia, 1931, as amended, to
10 (describe potential projects and/or services to be provided) in the county of
11 (name of county) as the county commission may deem proper. A copy of the petition is available
12 in the office of the clerk of the county commission of the County of (name of county)
13 for review by the public during regular office hours.

14

15 The petition to create a resort area district will be considered by the county commission at
16 a public meeting to be held on the day of,, at ... m. at
17 Any owner of real property whose property may be affected by
18 the creation of the above-described resort area district, and any owner of real property whose
19 property is not located within said resort area district but wishes his or her property to be included,
20 will be given an opportunity, under oath, to protest or be heard at said meeting or any adjournment
21 thereof:

22 (name of clerk)

1 (d) An affidavit of publication of the notice made by newspaper publisher, or a person
2 authorized to do so on behalf of the publisher, and a copy of the notice shall be made part of the
3 minutes of the governing body and spread on its records of the meeting described in the notice. The
4 service of the notice upon all persons owning any interest in any real property located within the
5 proposed resort area district shall conclusively be determined to have been given upon completion
6 of mailing as provided in subsection (g) of this section and the newspaper publication.

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

9 (f) After the public meeting and before the governing body may adopt an order creating a
10 resort area district, the governing body shall, using reasonable efforts, mail a true copy of the
11 proposed order creating the resort area district to the owners of real property in the proposed district
12 as provided in subsection (g) of this section and shall post copies of the proposed order in multiple,
13 conspicuous public locations within the proposed district. Unless waived in writing, any petitioning
14 owner of real property has thirty days from mailing of the proposed order in which to withdraw his
15 or her signature from the petition in writing prior to the vote of the governing body on the order. If
16 any signatures on the petition are withdrawn, the governing body may adopt the proposed order only
17 upon certification by the petitioners that the petition otherwise continues to meet the requirements
18 of this article. If all petitioning owners of real property waive the right to withdraw their signatures
19 from the petition, then the governing body may immediately adopt the order.

20 (g) For purposes of the mailing of each notice to owners of real property required by this
21 section, reasonable efforts shall be made to mail the notice to all owners of real property proposed
22 to be included within the resort area district using the real property tax records and land books of the

1 county in which the proposed district is located and any lists maintained by a resort operator or
2 homeowners association within the proposed district. The notice shall be also mailed to each
3 president of a homeowners association, if any, located within a proposed district which has registered
4 with a resort operator to receive the information. Immaterial defects in the mailing of the notices
5 shall not affect the validity of the notices: *Provided*, That in the case of any resort area district to
6 be voted upon after the effective date of this amendment adopted during the 2015 regular session of
7 the Legislature, any notice shall be mailed to the property owner's primary place of abode by certified
8 mail, return receipt requested.

9 **§7-25-7a. Voluntary dissolution resort area district.**

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

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

21 The date set by the board for the special election required by this section may be no less than sixty
22 nor more than ninety days from the date the board mails the notice, in the form described in

1 subsection (c) of this section, to the owners of real property located within the district. The board
2 shall make a copy of the petition available for inspection by interested persons before the special
3 election. If the board determines that the petition has not met the requirements of subsection (a) of
4 this section, the petition shall be returned to the petitioners with a statement of the reason why the
5 petition was rejected.

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

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

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

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

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

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

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

21 (3) The location of the real property;

22 (4) The name of the individual being given the proxy to vote for the owner unable to attend

1 the special election;

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

3 (6) A statement that the named individual being extended the voting proxy is restricted to
4 placing a vote for the named owner as indicated by the owner’s check mark in one of the following
5 two voting choices:

6
7 // For Continuance of the _____ (name of district) resort area district.

8
9 // For Dissolution of the _____ (name of district) resort area district.

10

11 (e) At the special election, the board shall submit the question of continuing or dissolving
12 the resort area district to owners of qualified real property within the resort area district. For
13 purposes of this section, the term “qualified real property” includes the following classes of real
14 property: Unimproved/developable; commercial business; resort operator; and residential improved.
15 Each owner of qualified real property is entitled to one undivided vote in the special election for each
16 parcel of qualified real property owned. The special election ballots shall have written or printed on
17 them the following:

18

19 // For Continuance of the _____ (name of district) resort area district

20

21 // For Dissolution of the _____ (name of district) resort area district

22

1 If a simple majority of the votes is cast for dissolution, then the board shall request that the
2 governing body dissolve the resort area district. Following the receipt of a request, the resort area
3 district shall be dissolved by the governing body by operation of law. However, all debts or other
4 obligations outstanding against the resort area district must be settled in full prior to the dissolution.
5 If a simple majority of the votes is cast for continuance, the resort area district shall continue in
6 existence until dissolved at some later date under this section. However, another election may not
7 be held within two years of the last election.

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

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

13 (a) Within ninety days of the adoption of the order creating the resort area district, a public
14 meeting shall be held at which elections for the initial members of the board shall be held. the
15 meeting shall be held at a location within the district not less than twenty days after the publication
16 of the notice required by subsection (b) of this section.

17 (b) Prior to the meeting required by this section, the petitioners for the creation of the resort
18 area district shall, using reasonable efforts, cause notice of the initial election meeting to be given
19 to all owners of real property, including owners of commercial business property, located within the
20 district. the notice shall be mailed to each owner of real property included in the resort area district
21 as provided in subsection (h) of this section, posted in multiple, conspicuous public locations within
22 the district and published at least thirty days prior to the date of the meeting as a Class II legal

1 advertisement in compliance with the provisions of article three, chapter fifty-nine of this code and
2 the publication area for the publication is the resort area district. The notice shall provide, at a
3 minimum, the following information:

4 (1) The purpose of the meeting;

5 (2) Descriptions of the board positions;

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

9 (4) The location of the meeting;

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

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

13 (c) Nominations shall be made for each board position by persons eligible to vote for each
14 board position. Nominations may be made at the meeting required by this section, by mail or by
15 electronic means. Nominations made by mail or by electronic means must be received by the
16 petitioners prior to the meeting to be valid. Persons nominated for board positions shall meet the
17 criteria provided for each board position as set forth in subsection (b), section ten of this article.
18 Nominations shall be made for each board position in the following manner:

19 (1) Only owners of residential, improved real property located within the resort area district
20 may nominate persons for the three board positions provided for owners of or representatives of
21 owners of residential, improved real property located within the resort area district;

22 (2) Only representatives of the resort operator or resort operators may nominate persons for

1 the two board positions provided for representatives of the resort operator or resort operators located
2 within the resort area district;

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

6 (4) Only owners of unimproved, developable real property located within the resort area
7 district may nominate persons for the board position provided for an owner of or a representative of
8 owners of unimproved, developable real property located within the resort area district.

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

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

17 (2) Only a representative of each resort operator may vote for the two board positions
18 provided for representatives of the resort operator or resort operators located within the resort area
19 district;

20 (3) Only owners of commercial business property located within the resort area district may
21 vote for the board position provided for an owner of or a representative of owners of commercial
22 business property located within the resort area district. Each owner is entitled to one vote per unit

1 of commercial business property he or she owns; and

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

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

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

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

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

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

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

18 (h) For purposes of the mailing of notice to owners of real property required by this section,
19 reasonable efforts shall be made to mail such notice to all owners of real property included within
20 such resort area district using the real property tax records and land books of the county in which
21 such district is located and any lists maintained by a resort operator or homeowners association
22 within such district. Such notice shall be also mailed to each president of a homeowners association,

1 if any, located within a district which has registered with a resort operator to receive such
2 information. Immaterial defects in the mailing of such notices shall not affect the validity of such
3 notice.

4 **§7-25-15. Authorization to implement assessments for projects; procedures for implementing**
5 **assessments; by-laws to provide additional procedures for implementation of**
6 **assessments; notice to property owners before implementation of assessments**
7 **for projects; voting on assessments; affidavit of publication.**

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

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

17

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

22 (d) Upon following the procedures provided in this section and a resort area district's bylaws

1 for the implementation of an assessment to pay the costs of a project, the board may, after giving
2 notice to all real property owners, holding a public meeting and a vote on the project if required by
3 this section, adopt a resolution authorizing the assessment to pay the costs of a project upon approval
4 by six sevenths of the board.

5 (e) Before the adoption of a resolution authorizing an assessment to pay the costs of a project,
6 the board shall cause notice to be given to the owners of real property located within the resort area
7 district that the resolution will be considered for adoption at a public meeting of the board at a date,
8 time and place named in the notice and that all persons at that meeting, or any adjournment thereof,
9 shall be given an opportunity to protest or be heard concerning the adoption or rejection of the
10 resolution. If, as provided in subsection (f) of this section, a favorable vote of the property owners
11 is required before the board authorizes the assessment, the notice of meeting shall also contain
12 information required to enable the owners of real property within the district that will be subject to
13 the assessment to vote on the assessment by mail or electronic means.

14 (f) An assessment may not be authorized by the board if at the public meeting required by
15 this section written protest is filed by at least twenty-five percent of the owners of the real property
16 within the district to be benefitted by the proposed project and subject to the assessment. However,
17 before an assessment proposed by the board on its own initiative as provided in subsection (c) of this
18 section is authorized by the board, the proposal must also receive the favorable vote of a majority
19 of the votes cast at the meeting for the proposal by the owners of real property in the district that will
20 be subject to the assessment. Voting at the meeting shall be in person or by proxy at the meeting or
21 by mailed ballot or electronic means received prior to the meeting. The voting rules set forth in
22 subsection (e), section eleven of this article apply to all voting on assessments. In the event of such

1 protest, the proposed assessment in the same form may not be reconsidered by a board for a period
2 of at least one year from the date of the public meeting.

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

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

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

19 (j) A board shall make available to the owners of real property within the district a list of all
20 owners of real property within the district for the purposes of enabling the owners of real property
21 to solicit support for a petition proposing or a protest against an assessment.

22 (k) For purposes of the mailing of each notice to owners of real property required by this

1 section, reasonable efforts shall be made to mail the notice to all owners of real property required
2 to receive notice under this section using the real property tax records and land books of the county
3 in which the district is located and any lists maintained by a resort operator or homeowners
4 association within the district. The notice shall be also mailed to each president of a homeowners
5 association, if any, located within a district which has registered with a resort operator to receive the
6 information. Immaterial defects in the mailing of the notices shall not affect the validity of the
7 notices.

8 **§7-25-27. Effect of the 2015 amendments.**

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