

H. B. 2914

(By Delegates Hartman, Sponaugle, Campbell and Perry)

[Introduced February 24, 2015; referred to the

Committee on Finance.]

A BILL to amend and reenact §7-25-11 and §7-25-15 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 §7-25-11 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:

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

2 **§7-25-7a. Voluntary dissolution resort area district.**

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

5 (b) Within sixty days of the submission of a petition for the dissolution of a resort area
6 district, the board shall verify the total number of eligible petitioners to determine whether the
7 required percentage of petitioners has been obtained. If the board determines that the petition has
8 met the requirements of subsection (a) of this section, the board shall set a date for a special election
9 on the question of continuing or dissolving the resort area district. The board shall, using reasonable
10 efforts, cause a notice to be mailed to the owners of real property located within the resort area
11 district of a special election to determine continuance or dissolution of the resort area district. The
12 date set by the board for the special election required by this section may be no less than sixty nor
13 more than ninety days from the date the board mails the notice, in the form described in subsection
14 (c) of this section, to the owners of real property located within the district. The board shall make
15 a copy of the petition available for inspection by interested persons before the special election. If
16 the board determines that the petition has not met the requirements of subsection (a) of this section,
17 the petition shall be returned to the petitioners with a statement of the reason why the petition was
18 rejected.

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

21 (1) The purpose, location, date and time for the special election.

22 (2) A proxy, in the form described in subsection (d) of this section, which may be used by

1 owners of any class of property to grant proxies to any person to cast the owner's ballot at the special
2 election as if the owner were present in person. The proxy may be mailed or transmitted
3 electronically to the individual being granted the proxy.

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

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

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

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

12 (3) The location of the real property;

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

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

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

19

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

21

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

1 (e) At the special election, the board shall submit the question of continuing or dissolving
2 the resort area district to owners of qualified real property within the resort area district. For
3 purposes of this section, the term “qualified real property” shall include the following classes of real
4 property: Unimproved/developable; commercial business; resort operator; and residential improved.
5 Each owner of qualified real property shall be entitled to one undivided vote in the special election
6 for each parcel of qualified real property owned. The special election ballots shall have written or
7 printed on them the following:

8

9 // For Continuance of the (name of district) resort area district

10

11 // For Dissolution of the (name of district) resort area district

12

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

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

1 **§7-25-11. Election procedure for initial members of resort area board; subsequent elections;**
2 **elections and procedures to fill board vacancies.**

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

7 (b) Prior to the meeting required by this section, the petitioners for the creation of the resort
8 area district shall, using reasonable efforts, cause notice of the initial election meeting to be given
9 to all owners of real property, including owners of commercial business property, located within the
10 district. Such notice shall be mailed to each owner of real property included in the resort area district
11 as provided in subsection (h) of this section, posted in multiple, conspicuous public locations within
12 such district and published at least thirty days prior to the date of the meeting as a Class II legal
13 advertisement in compliance with the provisions of article three, chapter fifty-nine of this code and
14 the publication area for such publication shall be the resort area district. The notice shall provide,
15 at a minimum, the following information:

16 (1) The purpose of the meeting;

17 (2) Descriptions of the board positions;

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

21 (4) The location of the meeting; ~~and~~

22 (5) Electronic and physical addresses where nominations for board positions will be received

1 by petitioners for the creation of the resort area district; and

2 ~~(5)~~ (6) The date and time of the meeting.

3 ~~(c) At the meeting required by this section~~ Nominations shall be made for each board
4 position by persons eligible to vote for each board position. Nominations may be made at the
5 meeting required by this section, by mail or by electronic means. Nominations made by mail or by
6 electronic means must be received by the petitioners prior to the meeting to be valid. Persons
7 nominated for board positions shall meet the criteria provided for each board position as set forth
8 in subsection (b), section ten of this article. Nominations shall be made for each board position in
9 the following manner:

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

13 (2) Only representatives of the resort operator or resort operators may nominate persons for
14 the two board positions provided for representatives of the resort operator or resort operators located
15 within the resort area district;

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

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

22 (d) Following board member nominations, a vote shall be taken by written ballot for board

1 members to be elected, but owners of any class of property may grant proxies to any person to cast
2 the owner's ballot as if the owner were present in person. Voting shall occur in the following
3 manner:

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

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

11 (3) Only owners of commercial business property located within the resort area district may
12 vote for the board position provided for an owner of or a representative of owners of commercial
13 business property located within the resort area district. Each owner is entitled to one vote per unit
14 of commercial business property he or she owns; and

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

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

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

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

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

5 (f) Each board member shall be elected by a ~~majority~~ plurality of the votes cast for such board
6 position.

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

9 (h) For purposes of the mailing of notice to owners of real property required by this section,
10 reasonable efforts shall be made to mail such notice to all owners of real property included within
11 such resort area district using the real property tax records and land books of the county in which
12 such district is located and any lists maintained by a resort operator or homeowners association
13 within such district. Such notice shall be also mailed to each president of a homeowners association,
14 if any, located within a district which has registered with a resort operator to receive such
15 information. Immaterial defects in the mailing of such notices shall not affect the validity of such
16 notice.

17 **§7-25-15. Authorization to implement assessments for projects; procedures for implementing**
18 **assessments; by-laws to provide additional procedures for implementation of**
19 **assessments; notice to property owners before implementation of assessments**
20 **for projects; voting on assessments; affidavit of publication.**

21 (a) An assessment for a project within a resort area district shall be authorized by the
22 adoption of a resolution by the board. The aggregate limit of assessments that may be levied against

1 a parcel of real property within the district is five percent of the appraised value of the real property,
2 including improvements, as shown in the property tax records and land books of the county in which
3 the property is located. A resolution authorizing an assessment shall only be adopted after following
4 the procedures set forth in this section.

5 (b) The bylaws of a district:

6 ~~(1) Shall~~ shall provide the procedures not addressed in this section for the implementation
7 of an assessment to pay the costs of a project: *Provided*, That such procedures must be consistent
8 with constitutional standards and all other laws and regulations of this state.

9 ~~(2) May provide for the maximum amount of assessments which may be levied against a~~
10 ~~parcel of real property within the district.~~

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

15 (d) Upon following the procedures provided in this section and a resort area district's bylaws
16 for the implementation of an assessment to pay the costs of a project, the board may, after giving
17 notice to all real property owners, ~~and~~ holding a public meeting as and a vote on the project if
18 required by this section, adopt a resolution authorizing such assessment to pay the costs of a project
19 upon approval by six sevenths of the board.

20 (e) Before the adoption of a resolution authorizing an assessment to pay the costs of a project,
21 the board shall cause notice to be given to the owners of real property located within the resort area
22 district that such resolution will be considered for adoption at a public meeting of the board at a date,

1 time and place named in the notice and that all persons at that meeting, or any adjournment thereof,
2 shall be given an opportunity to protest or be heard concerning the adoption or rejection of the
3 resolution. If, as provided in subsection (f) of this section, a favorable vote of the property owners
4 is required before the board authorizes the assessment, the notice of meeting shall also contain
5 information required to enable the owners of real property within the district that will be subject to
6 the assessment to vote on the assessment by mail or electronic means.

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

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

1 shall be the resort area district.

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

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

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

15 (k) For purposes of the mailing of each notice to owners of real property required by this
16 section, reasonable efforts shall be made to mail such notice to all owners of real property required
17 to receive notice under this section using the real property tax records and land books of the county
18 in which such district is located and any lists maintained by a resort operator or homeowners
19 association within such district. Such notice shall be also mailed to each president of a homeowners
20 association, if any, located within a district which has registered with a resort operator to receive
21 such information. Immaterial defects in the mailing of such notices shall not affect the validity of
22 such notices.

1 **§7-25-27. Effect of the 2015 amendments.**

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

NOTE: The purpose of this bill is to provide for voluntary dissolution of resort area district. The bill establishes a procedure for a dissolution. The bill permits nominations for resort area board members be made by mail or electronic means. The bill permits property owners to make nominations. The bill provides for election of board members by plurality vote instead of by a majority vote. The bill limits the amount of assessments that may be levied against a parcel of real property. The bill establishes a procedure for assessments proposed by a board on its own initiative. The bill provides for the effect of 2015 amendments.

§7-25-7a and §7-25-27 are new; therefore, they have been completely underscored.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.