

HB # 4168

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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1994



ENROLLED

HOUSE BILL No. 4168

(By Delegates Kessel, Brown, Smith,
Spencer, Sorak and Walters)



Passed March 12, 1994

In Effect 90 Days From Passage

ENROLLED
H. B. 4168

(By DELEGATES KESSEL, BROWN, SMITH, SPENCER, SORAH AND
WALTERS)

[Passed March 12, 1994; in effect ninety days from passage.]

AN ACT to amend chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article thirteen-a, relating to the authority of municipalities to create business improvement districts to foster economic growth and development and providing procedures therefor; legislative findings and declaration of purpose; definitions; providing authorization to municipalities to create business improvement districts; types of services that a municipality may provide to a business improvement district; the petition that initiates procedures to be used to organize, develop and designate a business improvement district; the appointment of a planning committee which issues a report; provision of notice and hearing; the creation of a business improvement district; certain uses of fees to be prohibited; the petition to appeal an ordinance creating a business improvement district; the establishment of a district board and its duties; the levy of service fees; the classification of properties within a business improvement district; the creation of a special business improvement district fund and its funding sources; the petition to include additional property in an existing business improvement district; the procedure used to abolish and dissolve a business improvement district.

Be it enacted by the Legislature of West Virginia:

That chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article thirteen-a, to read as follows:

ARTICLE 13A. BUSINESS IMPROVEMENT DISTRICTS.

§8-13A-1. Short title.

1 This article is known and may be cited as the
2 "Business Improvement District Act."

§8-13A-2. Legislative findings and declaration of purpose.

1 The Legislature finds that many business districts
2 within the municipalities of this state are economically
3 depressed. This adversely affects the economic and
4 general well-being of the citizens of those municipalities.
5 Establishment of business improvement districts within
6 municipalities of the state, in accordance with the
7 purpose and powers set forth in this article, will serve
8 a public purpose, promote the health, safety, prosperity,
9 security and general welfare of all citizens in the state.
10 It will also promote the vitality of commercial business
11 areas within municipalities, while serving as an
12 effective means for restoring and promoting commercial
13 and other business activity within the business improve-
14 ment districts created herein. This will be of special
15 benefit to the property within the boundaries of any
16 business improvement district created under this article
17 and will stimulate economic growth and job creation.

§8-13A-3. Definitions.

1 For purposes of this article, the term:
2 (a) "Commercial property" means the surface of any
3 taxable real property which is classified for ad valorem
4 real property tax purposes as Class IV. Excluded from
5 the meaning of such term is all real property owned or
6 used exclusively for state, county, municipal, literary,
7 educational, scientific, religious, benevolent or charita-
8 ble purposes, or real property owned or used by public
9 port authorities or wayport authorities;
10 (b) "District board" means a district board created

11 pursuant to section eleven of this article;

12 (c) "Property owner" or "owner" means the owner of
13 commercial property as shown by the transfer records
14 in the office of the county clerk of the county in which
15 the property is located. If an owner owns more than one
16 commercial property, that owner is counted as a
17 separate owner for each such commercial property
18 owned. If commercial property is owned by more than
19 one owner, the majority in ownership is treated as the
20 owner for the purpose of this article;

21 (d) "Services" means governmental functions, pro-
22 grams, activities, facility improvements and other
23 services which a district board is authorized to perform
24 or provide under section five of this article.

§8-13A-4. Authorization.

1 The governing body of any municipality may, in
2 accordance with the procedures and subject to the
3 limitations set forth in this article, establish one or more
4 business improvement districts within the municipality.
5 The municipality may provide for the administration
6 and financing of additional and extended services to
7 businesses within the districts and for the administra-
8 tion and financing of a continuing program of services
9 within the districts.

§8-13A-5. Services.

1 Any municipality which has established a business
2 improvement district under this article may provide or
3 cause to be provided such services as will restore or
4 promote the economic vitality of the district and the
5 general welfare of the municipality, including, but not
6 limited to, the following:

7 (a) Beautification of the district, by means such as
8 landscaping and construction and erection of fountains,
9 shelters, benches, sculptures, signs, lighting, decorations
10 and similar amenities;

11 (b) Provision of special or additional public services,
12 such as sanitation, security for persons and property and
13 the construction and maintenance of public facilities

- 14 including sidewalks and other public areas;
- 15 (c) Making principal or interest payments on bonds
16 issued by the municipality for public improvements
17 located within and designated to improve the economic
18 viability of the district;
- 19 (d) Providing financial support for public transporta-
20 tion and vehicle parking facilities open to the general
21 public;
- 22 (e) Constructing, operating and maintaining parking
23 facilities;
- 24 (f) Developing plans for the general architectural
25 design of public areas and developing plans and
26 programs for the future development of the district;
- 27 (g) Developing, promoting and supporting community
28 events and activities open to the general public;
- 29 (h) Providing the administrative costs for a district
30 management program; and
- 31 (i) Providing any other services which the municipal-
32 ity or district board is authorized to perform and which
33 the municipality does not also perform to the same
34 extent on a municipality-wide basis.

**§8-13A-6. Petition to initiate the procedure for organiza-
tion, development and designation.**

- 1 (a) The organization, development and designation of
2 a business improvement district shall be initiated by a
3 petition filed in the office of the clerk of the governing
4 body of the municipality. The petition shall be signed
5 by not less than four owners who own commercial
6 property in the proposed business improvement district
7 having an assessed value as reflected on the county
8 assessor's land books of not less than fifty-one percent
9 of the value of all commercial property in the proposed
10 business improvement district.
- 11 (b) The petition shall set forth:
- 12 (1) The name of the proposed district, including a
13 descriptive name thereof and the words "business
14 improvement district";

15 (2) A general description of the boundaries and service
16 area of the proposed district;

17 (3) A general description of the additional or extended
18 services needed within the district; and

19 (4) A request for the organization of a business
20 improvement district.

**§8-13A-7. Appointment of planning committee, issuance
of report.**

1 (a) Upon receipt of a petition for the initiation of a
2 business improvement district, the governing body of
3 the municipality shall, within ninety days, appoint a
4 district planning committee consisting of seven
5 members. A majority of the members shall be owners
6 of commercial property situated within the proposed
7 district of the municipality. The committee shall study
8 and develop preliminary plans for the establishment and
9 operation of the proposed district and shall consult with
10 the appropriate officials and agencies of the municipal-
11 ity prior to completing such preliminary plans. Upon
12 completion of the study and development of preliminary
13 plans and, in no event, later than two hundred seventy-
14 five days after its establishment, the committee shall
15 submit to the governing body a written report which:

16 (1) Describes the boundaries of the proposed district
17 with sufficient specificity to enable the owner of any
18 commercial property in the municipality to determine
19 whether his or her property is located therein. The area
20 proposed for any district must be contiguous with and
21 situated fully within the boundaries of the municipality;

22 (2) A description of any additional or extended
23 services needed within the district;

24 (3) A description of the proposed method of financing
25 any planned improvements, including the maximum
26 rate of annual fees that may be imposed upon properties
27 within the proposed district and the manner in which
28 the rate will be imposed. The amount of annual fees may
29 be based upon gross leasable square footage, street
30 front-footage, total gross building or land square
31 footage, or any combination thereof, or on such basis as

32 can reasonably be determined based upon the value of
33 the improvements to the commercial property situated
34 in the district and upon whatever benefits exist relative
35 to the various owners of property situated therein. For
36 the purpose of levying fees, the committee shall make
37 a reasonable classification of all properties within the
38 proposed district;

39 (4) A recommendation concerning the feasibility and
40 desirability of the proposed business improvement
41 district and any alternative proposal, in the event the
42 committee's recommendation is not in accordance with
43 the original petition: *Provided*, That, in the event the
44 boundaries of the proposed business improvement
45 district recommended by the committee differs from the
46 boundaries contained in the original petition, the report
47 must also contain an additional petition signed by at
48 least four persons who own commercial property in the
49 proposed business improvement district recommended
50 by the committee. Such commercial property must have
51 an assessed value as reflected on the county assessor's
52 land books of not less than fifty-one percent of the value
53 of all commercial property in the proposed business
54 improvement district;

55 (5) Such other information as may be requested by the
56 governing body. The municipality may provide staff and
57 technical assistance to the committee.

§8-13A-8. Notice; hearing.

1 Upon receipt of the planning committee's report, the
2 governing body of the municipality shall set a time and
3 place for a public hearing regarding the creation of any
4 business improvement district. The notice of the public
5 hearing shall be published as a Class I-O legal adver-
6 tisement in compliance with article three, chapter fifty-
7 nine of this code at least twenty days prior to the
8 scheduled hearing. A copy of the notice shall be sent by
9 certified mail, return receipt requested, not less than
10 twenty days before the hearing, to all owners of
11 commercial property within the proposed district. If any
12 property is shown to be in the name of more than one
13 owner at the same mailing address, a single notice may

14 be mailed, addressed to all owners at that address. In
15 addition to the time and place of the hearing, the notice
16 must also state:

17 (a) The purpose of the hearing;

18 (b) The name of the proposed district;

19 (c) The purpose of the proposed district;

20 (d) The property proposed to be included in the
21 district; and

22 (e) The proposed method of financing any costs
23 involved, including the maximum rate of annual fees
24 that may be imposed upon any properties situated
25 within the proposed district.

26 The hearing shall be held not later than sixty days
27 after receipt of the planning committee's report.

28 At the time and place set forth in the notice, the
29 governing body shall afford the opportunity to be heard
30 to any owner of real property situated in the proposed
31 district and any residents of the municipality.

**§8-13A-9. Creation of district; statement of prohibition on
use of fees.**

1 (a) If the governing body of the municipality, follow-
2 ing the public hearing, determines it advisable and in
3 the public interest to establish an improvement district,
4 it shall create the district by ordinance as provided for
5 in article eleven of this chapter: *Provided*, That the
6 governing body may not amend, alter or change in any
7 manner the boundaries of the improvement district as
8 recommended by the planning committee. In addition to
9 all other requirements, the ordinance shall contain the
10 following:

11 (1) The name of the district and a description of its
12 boundaries;

13 (2) A summary of any proposed services to be provided
14 within the district and a reasonable estimate of any
15 attendant cost;

16 (3) The maximum rate of any annual fees that may

17 be imposed upon the commercial properties and the
18 manner in which the rate will be imposed; and

19 (4) The district boardmembers' terms, their method of
20 appointment and a full description of their powers and
21 duties.

22 (b) The ordinance shall also state the general intention
23 of the municipality to increase services within the
24 business improvement district and that no fees collected
25 under the authority of the ordinance may be used to
26 reduce, replace or supplant existing funds or services.

§8-13A-10. Petition to repeal ordinance.

1 Within thirty days following passage of an ordinance
2 creating a business improvement district, the owners of
3 any real property situated in the district may file a
4 petition with the governing body of the municipality in
5 opposition to the continuation of the district. Upon a
6 finding that the petition was signed by owners of
7 commercial property situated in the proposed business
8 improvement district having an assessed value as
9 reflected on the county assessor's land books of not less
10 than fifty-one percent of the value of all commercial
11 property in the business improvement district, the
12 governing body shall repeal the ordinance which
13 established the district, thereby rescinding its creation
14 and development.

§8-13A-11. District board; duties.

1 (a) The governing body of any municipality that
2 intends to establish a business improvement district, in
3 accordance with this article, shall provide by ordinance
4 for the appointment of a district board to oversee the
5 operations of the improvement district. The board shall
6 be made up of at least seven members, the majority of
7 which shall be owners of commercial property situated
8 in the improvement district.

9 (b) The district board, in addition to the duties
10 prescribed by the ordinance creating the improvement
11 district, shall submit an annual report to the governing
12 body containing:

- 13 (1) An itemized statement of its receipts and disbur-
14 sements for the preceding fiscal year;
- 15 (2) A description of its activities for the preceding
16 fiscal year;
- 17 (3) A recommended program of services to be per-
18 formed or provided within the district for the coming
19 fiscal year; and
- 20 (4) A proposed budget to accomplish its objectives.
- 21 (c) Nothing in this article prohibits any member of the
22 district board from also serving on the board of
23 directors of a nonprofit corporation with which the
24 municipality may contract to provide specified services
25 within the district.
- 26 (d) No member of the district board may receive,
27 either directly or indirectly, compensation for service on
28 the board.

**§8-13A-12. Levy of service fees; classification of proper-
ties; factors to consider.**

- 1 (a) Upon receipt of a recommended program of
2 services and a proposed budget from the district board,
3 the governing body of the municipality may annually,
4 by ordinance, levy business improvement service fees
5 which may only be applicable to properties located
6 within the improvement district and only to the extent
7 necessary to fund the budget proposed by the district
8 board. All revenue from the fees shall be placed in a
9 special business improvement district fund and may
10 only be used to fund the services provided under this
11 article. Any surplus in the fund in a fiscal year shall
12 be applied to reduce the amount of service fees required
13 for the next fiscal year.
- 14 (b) The ordinance creating a business improvement
15 district may provide for the division of property within
16 the district into two or more zones or uses in the event
17 significant differences exist relative to the property and
18 the improvements. The ordinance may establish differ-
19 ent rates of assessment for each zone or use, or may
20 provide that the rate be a certain percentage of the

21 assessment levied in the zone or on the use, subject to
22 the highest rate of assessment.

23 (c) The amount of the business improvement service
24 fee shall be in addition to any municipality-wide license
25 fees or any other tax, fee or charge levied for the general
26 benefit and use of the municipality.

27 (d) Each assessment is a lien on the commercial
28 property that is assessed, second only to any state,
29 federal or county taxes levied on that property.

§8-13A-13. Special business improvement district fund.

1 Any municipality that has established a business
2 improvement district shall establish a special business
3 improvement district fund for each district created
4 within such municipality. Revenue derived from any
5 special assessment fees, gifts, grants, appropriations
6 from the municipality or other sources shall be paid into
7 the fund. Moneys in another municipal fund or funds
8 may be advanced to the special fund only if reimbur-
9 sement is made to such other fund or funds prior to the
10 end of the fiscal year.

§8-13A-14. Modification of included area; notice; hearing.

1 (a) The ordinance creating a business improvement
2 district may be amended to include additional property
3 if a petition is filed with the governing body requesting
4 such inclusion. Such petition must be signed by the
5 owners of the commercial property that is being
6 proposed for inclusion in the improvement district. Such
7 property must have an assessed value, as reflected on
8 the assessor's land books, of not less than fifty-one
9 percent of the value of all the property proposed for
10 inclusion.

11 (b) Upon receipt of the petition, the governing body
12 shall refer the petition to the appropriate district board
13 for which the amendment is sought. The board shall
14 review the petition and, within sixty days, file a report
15 with the governing body recommending either accep-
16 tance of the proposed inclusion or rejection of the
17 petition. Additional property may not be included unless
18 it is contiguous with the existing district and situated

19 within the boundaries of the municipality.

20 (c) Upon receipt of the recommendation from the
21 district board, the governing body shall designate a time
22 and place for a public hearing upon the petition to
23 include additional property. The notice shall meet the
24 requirements set forth in section eight of this article.

25 (d) At the time and place set forth in the notice, the
26 governing body shall afford the opportunity to be heard
27 to any owners of real property either currently included
28 in or proposed to be added to the existing improvement
29 district and to any other residents of the municipality.
30 The hearing shall be held within sixty days after the
31 governing body's receipt of the district board's
32 recommendation.

33 (e) All additional property included in a district shall
34 be subject to all fees whether currently existing or
35 thereafter levied.

**§8-13A-15. Abolishment and dissolution of district; notice;
hearing.**

1 (a) A district may be abolished by the governing body
2 of the municipality following a public hearing upon the
3 proposed abolishment. Notice of such hearing must be
4 provided by first class mail to all property owners
5 within the district and shall be published as a Class I-
6 O legal advertisement in compliance with article three,
7 chapter fifty-nine of this code at least twenty days prior
8 to the public hearing. Upon the abolishment of any
9 improvement district, any funds or other assets,
10 contractual rights or obligations, claims against holders
11 of indebtedness or other financial benefits, liabilities or
12 obligations existing after full payment has been made
13 on all existing contracts, bonds, notes or other obliga-
14 tions of the district, shall be transferred to the munic-
15 ipality. Any funds or other assets so transferred shall
16 be used for the benefit of the area included in the
17 improvement district being abolished.

18 (b) Notwithstanding any other provision of this article,
19 no business improvement district may exist for a period
20 exceeding ten years unless reinstated pursuant to the

21 provisions of this article. Reinstatement requires
22 compliance with all requirements and procedures set
23 forth herein for the initial development and establish-
24 ment of a district. No district may issue notes or bonds
25 for funding district projects or improvements that
26 exceed a repayment schedule of ten years. Upon the
27 dissolution of any business improvement district, any
28 funds or other assets, contractual rights or obligations,
29 claims against holders of indebtedness, or other finan-
30 cial benefits, liabilities or obligations existing after full
31 payment has been made on all contracts, bonds, notes
32 or other obligations of the district, shall be transferred
33 to the municipality. Any funds or other assets so
34 transferred shall be used for the benefit of the area
35 included in the improvement district being dissolved.

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

[Handwritten Signature]

Chairman Senate Committee

[Handwritten Signature]

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

[Handwritten Signature]

Clerk of the Senate

[Handwritten Signature]

Clerk of the House of Delegates

[Handwritten Signature]

President of the Senate

[Handwritten Signature]

Speaker of the House of Delegates

The within *is approved* this the *30th*
day of *March*, 1994.

[Handwritten Signature]

Governor

PRESENTED TO THE

GOVERNOR

Date

3/28/94

Time

9:27 am