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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2003



# ENROLLED

COMMITTEE SUBSTITUTE  
FOR

**House Bill No. 2818**

(By Delegates Doyle, Tabb and Manuel)



Passed March 8, 2003

In Effect Ninety Days from Passage

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

COMMITTEE SUBSTITUTE

FOR

## **H. B. 2818**

(BY DELEGATES DOYLE, TABB AND MANUEL)

[Passed March 8, 2003; in effect ninety days from passage.]

AN ACT to amend article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto two new sections, designated sections three-mm and three-nn, relating to authorizing the county commissions of growth counties, by adoption of an ordinance, to establish programs for the transfer of property rights upon approval by a majority of the legal votes cast at a county-wide election; providing for a county-wide election on an ordinance for a program for transfer of development rights; form of ballots or ballot labels; election procedure.

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

That article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto two new sections, designated sections three-mm and three-nn, all to read as follows:

**ARTICLE 1. COUNTY COMMISSIONS GENERALLY.**

**§7-1-3mm. Transfer of development rights in growth counties.**

1           (a) In addition to all other powers and duties now conferred  
2 by law upon county commissions, if a county has been desig-  
3 nated as a growth county, as that term is defined in section  
4 three, article twenty, chapter seven of this code, those county  
5 commissions, upon approval by a majority of the legal votes  
6 cast at an election as provided in section three-nn of this article,  
7 are hereby authorized to, as part of a county-wide zoning  
8 ordinance, which has been in effect for a minimum of five years,  
9 establish a program for the transfer of development rights, in  
10 order to:

11           (1) Encourage the preservation of natural resources;

12           (2) Protect the scenic, recreational and agricultural qualities  
13 of open lands; and

14           (3) Facilitate orderly growth and development in the county.

15           (b) The program for the transfer of development rights may  
16 provide for:

17           (1) The voluntary transfer of the development rights  
18 permitted on any parcel of land to another parcel of land;

19           (2) Restricting or prohibiting further development of the  
20 parcel from which development rights; and

21           (3) Increasing the density or intensity of development of the  
22 parcel to which such rights are transferred.

23           (c) The program for the transfer of development rights shall:

24           (1) Designate a universal program for which development  
25 rights may be transferred from any parcel of land to any other  
26 parcel of land;

27 (2) Provide that any rights transferred under this section be  
28 for ten years; and

29 (3) Any rights purchased, but not used for development,  
30 revert to the original owner after ten years.

31 (d) The county commission may not set a price for any  
32 development rights that are proposed to be transferred or  
33 received.

34 (e) "Transferable development rights" means an interest in  
35 real property that constitutes the right to develop and use  
36 property under the zoning ordinance which is made severable  
37 from the parcel to which the interest is appurtenant and transfer-  
38 able to another parcel of land for development and use in  
39 accordance with the zoning ordinance. Transferable develop-  
40 ment rights may be transferred by deed from the owner of the  
41 parcel from which the development rights are derived and upon  
42 the transfer shall vest in the grantee and be freely alienable. The  
43 zoning ordinance may provide for the method of transfer of  
44 these rights and may provide for the granting of easements and  
45 reasonable regulations to effect and control transfers and assure  
46 compliance with the provisions of the ordinance.

**§7-1-3nn. Election on ordinance for program for transfer of  
development rights; form of ballots or ballot  
labels; procedure.**

1 (a) A county commission which has been designated as a  
2 growth county may submit a proposed ordinance to establish a  
3 program for the transfer of development rights pursuant to  
4 section three-mm of this article to the qualified voters residing  
5 within the county for approval or rejection at any regular  
6 primary or general election. Notice of the election shall be  
7 provided and the ballots shall be printed as set forth in subsec-  
8 tion (b) of this section. The ordinance may be adopted if it is  
9 approved by a majority of the legal votes cast thereon in that  
10 county. If the ordinance is rejected, no election on the issue shall  
11 be held thereafter for a period of one hundred-four weeks.

12 (b) On the election ballots shall be printed the following:

13 Shall the County Commission of (name of county) be  
14 authorized to adopt an ordinance to establish a program for the  
15 transfer of development rights in accordance with Section three-  
16 ll, Article one, Chapter seven of the Code of West Virginia?

17 / / Yes

18 / / No

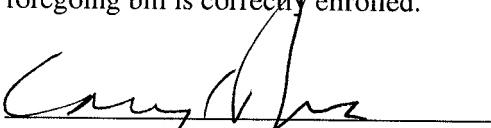
19 (c) If a majority of the legal votes cast upon the question be  
20 for the ordinance, the provisions of the ordinance become  
21 effective upon the date the results of the election are declared.  
22 If a majority of the legal votes cast upon the question be against  
23 the ordinance, the ordinance shall not take effect.

24 (d) Subject to the provisions of subsection (c) of this  
25 section, an election permitted by this section may be conducted  
26 at any regular primary or general election as the county commis-  
27 sion in its order submitting the same to a vote may designate.

28 (e) Notice of an election pursuant to this section shall be  
29 given by publication of the order calling for a vote on the  
30 question as a Class II-0 legal advertisement in compliance with  
31 the provisions of article three, chapter fifty-nine of this code and  
32 the publication area for the publication shall be the county in  
33 which the election is to be conducted.

34 (f) Any election permitted by this section shall held at the  
35 voting precincts established for holding primary or general  
36 elections. All of the provisions of the general election laws of  
37 this state applicable to primary or general elections not inconsis-  
38 tent with the provisions of this section shall apply to voting and  
39 elections authorized by this section.

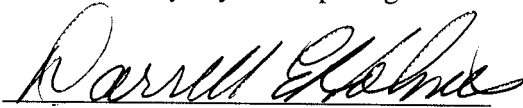
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

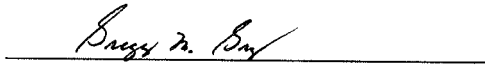
  
Chairman Senate Committee

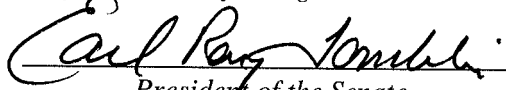
  
Chairman House Committee

Originating in the House.

In effect ninety days from passage

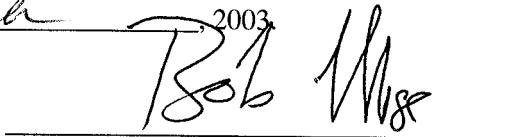
  
Clerk of the Senate

  
Clerk of the House of Delegates

  
President of the Senate

  
Speaker of the House of Delegates

The within is approved this the 27<sup>th</sup>  
day of March 2003.

  
Governor

PRESENTED TO THE  
GOVERNOR

Date 3/26/13

Time 4:00 pm