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WEST VIRGINIA LEGISLATURE
SEVENTY-NINTH LEGISLATURE
REGULAR SESSION, 2010

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ENROLLED

Senate Bill No. 41

(BY SENATORS McCABE, MINARD, FOSTER,
PALUMBO AND CHAFIN)

[Passed March 13, 2010; in effect ninety days from passage.]

SB 41

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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Senate Bill No. 41

(BY SENATORS MCCABE, MINARD,
FOSTER, PALUMBO AND CHAFIN)

[Passed March 13, 2010; in effect ninety days from passage.]

AN ACT to amend and reenact §8A-5-12 of the Code of West Virginia, 1931, as amended; to amend and reenact §16-13E-2 and §16-13E-4 of said code; and to amend said code by adding thereto a new section, designated §16-13E-10a, all relating to generally to subdivision or land development plans or plats; extending the vesting period for certain subdivision or land development plans and plats; providing definitions relating to the development of community enhancement districts; and excepting from a utility's submission relating to petitions for the creation of a district the capacity of the district to provide its own utility services.

Be it enacted by the Legislature of West Virginia:

That §8A-5-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §16-13E-2 and §16-13E-4 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §16-13E-10a, all to read as follows:

CHAPTER 8A. LAND USE PLANNING.

ARTICLE 5. SUBDIVISION OR LAND DEVELOPMENT PLAN AND PLAT.

§8A-5-12. Vested property right.

1 (a) A vested property right is a right to undertake and
2 complete the land development. The right is established
3 when the land development plan and plat is approved by
4 the planning commission and is only applicable under the
5 terms and conditions of the approved land development
6 plan and plat.

7 (b) Failure to abide by the terms and conditions of the
8 approved land development plan and plat will result in
9 forfeiture of the right.

10 (c) Subject to section ten-a, article thirteen-e, chapter
11 sixteen of this code, the vesting period for an approved
12 land development plan and plat which creates the vested
13 property right is five years from the approval of the land
14 development plan and plat by the planning commission.

15 (d) Without limiting the time when rights might other-
16 wise vest, a landowner's rights vest in a land use or
17 development plan and cannot be affected by a subsequent
18 amendment to a zoning ordinance or action by the plan-
19 ning commission when the landowner:

20 (1) Obtains or is the beneficiary of a significant affirma-
21 tive governmental act which remains in effect allowing
22 development of a specific project;

23 (2) Relies in good faith on the significant affirmative
24 governmental act; and

25 (3) Incurs extensive obligations or substantial expenses
26 in diligent pursuit of the specific project in reliance on the
27 significant affirmative governmental act.

28 (e) A vested right is a property right, which cannot be
29 taken without compensation. A court may award damages

30 against the local government in favor of the landowner for
31 monetary losses incurred by the landowner and court costs
32 and attorneys' fees resulting from the local government's
33 bad faith refusal to recognize that the landowner has
34 obtained vested rights.

35 (f) Any subdivision or land development plan or plat,
36 whether recorded or not yet recorded, valid under West
37 Virginia law and outstanding as of January 1, 2010, shall
38 remain valid until July 1, 2012, or such later date provided
39 for by the terms of the planning commission or county
40 commission's local ordinance or for a longer period as
41 agreed to by the planning commission or county commis-
42 sion. Any other plan or permit associated with the subdi-
43 vision or land development plan or plat shall also be
44 extended for the same time period. *Provided*, That the
45 land development plan or plat has received at least
46 preliminary approval by the planning commission or
47 county commission by March 1, 2010.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 13E. COMMUNITY ENHANCEMENT ACT.

§16-13E-2. Definitions.

1 For purposes of this article:

2 (a) "Assessment bonds" means special obligation bonds
3 or notes issued by a community enhancement district
4 which are payable from the proceeds of assessments.

5 (b) "Assessment" means the fee, including interest, paid
6 by the owner of real property located within a community
7 enhancement district to pay for the cost of a project or
8 projects constructed upon or benefitting or protecting such
9 property and administrative expenses related thereto,
10 which fee is in addition to all taxes and other fees levied
11 on the property.

12 (c) "Board" means a Community Enhancement Board
13 created pursuant to this article.

14 (d) "Community enhancement district" or "district"
15 means a community enhancement district created pursu-
16 ant to this article.

17 (e) "Cost" means the cost of:

18 (1) Construction, reconstruction, renovation and acquisi-
19 tion of all lands, structures, real or personal property,
20 rights, rights-of-way, franchises, easements and interests
21 acquired or to be acquired by the district;

22 (2) All machinery and equipment, including machinery
23 and equipment needed to expand or enhance county or
24 city services to the district;

25 (3) Financing charges and interest prior to and during
26 construction and, if deemed advisable by the district or
27 governing body, for a limited period after completion of
28 the construction;

29 (4) Interest and reserves for principal and interest,
30 including costs of municipal bond insurance and any other
31 type of financial guaranty;

32 (5) Costs of issuance in connection with the issuance of
33 assessment bonds;

34 (6) The design of extensions, enlargements, additions
35 and improvements to the facilities of any district;

36 (7) Architectural, engineering, financial and legal
37 services;

38 (8) Plans, specifications, studies, surveys and estimates
39 of costs and revenues;

40 (9) Administrative expenses necessary or incident to
41 determining to proceed with any project; and

42 (10) Other expenses as may be necessary or incident to
43 the construction, acquisition and financing of a project.

44 (f) "Development concept" means the following items, to
45 the extent set forth or specified in the subject subdivision
46 or land development plan and plat:

47 (1) The maximum aggregate number of lots or parcels
48 into which the subject land is to be subdivided.

49 (2) The size and boundaries of the individual lots or
50 parcels into which the subject land is to be subdivided.

51 (3) The density of the land development.

52 (4) Designation of use of the individual lots or parcels.

53 (5) The location of roads, streets, parking lots, sidewalks
54 and other paved areas.

55 (6) The location of ingress and egress for the land
56 development.

57 (7) Setback lines and distances and buildable areas.

58 (8) The finished layout and grade of the land.

59 (g) "Development concept vesting period" means the
60 period commencing upon approval of the subject land
61 development plan and plat by the planning commission
62 and terminating on the maturity date of the subject
63 assessment bonds or tax increment financing obligation.
64 The development concept vesting period pertains only to
65 the vested property right in a development concept that is
66 established upon approval by the planning commission of
67 a land development plan and plat in which a development
68 concept is set forth or specified.

69 (h) "Five-year vesting period" means the five-year
70 vesting period for an approved land development plan and

71 plat provided under subsection (c), section twelve, article
72 five, chapter eight-a of this code.

73 (i) "Governing body" means, in the case of a county, the
74 county commission and in the case of a municipality, the
75 mayor and council together, the council or the board of
76 directors as charged with the responsibility of enacting
77 ordinances and determining the public policy of such
78 municipality.

79 (j) "Governmental agency" means the state government
80 or any agency, department, division or unit thereof;
81 counties; municipalities; any watershed enhancement
82 districts, soil conservation districts, sanitary districts,
83 public service districts, drainage districts, school districts,
84 urban renewal authorities or regional governmental
85 authorities established pursuant to this code.

86 (k) "Person" means an individual, firm, partnership,
87 corporation, voluntary association or any other type of
88 entity.

89 (l) "Project" means the design, construction, reconstruc-
90 tion, establishment, acquisition, improvement, renovation,
91 extension, enlargement, equipping, maintenance, repair
92 (including replacements) and start-up operation of water
93 source of supply, treatment, transmission and distribution
94 facilities, sewage treatment, collection and transmission
95 facilities, stormwater systems, police stations, fire sta-
96 tions, libraries, museums, schools, other public buildings,
97 hospitals, piers, docks, terminals, drainage systems,
98 culverts, streets, roads, bridges (including approaches,
99 causeways, viaducts, underpasses and connecting road-
100 ways), motor vehicle parking facilities (including parking
101 lots, buildings, ramps, curb-line parking, meters and other
102 facilities deemed necessary, appropriate, useful, conve-
103 nient or incidental to the regulation, control and parking
104 of motor vehicles), public transportation, public recreation
105 centers, public recreation parks, swimming pools, tennis

106 courts, golf courses, equine facilities, motor vehicle
107 competition and recreational facilities, flood protection or
108 relief projects, or the grading, regrading, paving, repaving,
109 surfacing, resurfacing, curbing, recurbing, widening,
110 lighting or otherwise improving any street, avenue, road,
111 highway, alley or way, or the building or renewing of
112 sidewalks and flood protection; and the terms shall mean
113 and include any project as a whole, and all integral parts
114 thereof, including all necessary, appropriate, useful,
115 convenient or incidental appurtenances and equipment in
116 connection with any one or more of the above.

**§16-13E-4. Petition for creation or expansion of community
enhancement district; petition requirements.**

1 (a) The owners of at least sixty-one percent of the real
2 property, determined by acreage, located within the
3 boundaries of the area described in the petition, by metes
4 and bounds or otherwise in a manner sufficient to describe
5 the area, may petition a governing body to create or
6 expand a community enhancement district.

7 (b) The petition for the creation or expansion of a
8 community enhancement district shall include, where
9 applicable, the following:

10 (1) The proposed name and proposed boundaries of such
11 district and a list of the names and addresses of all owners
12 of real property within the proposed district;

13 (2) A detailed project description;

14 (3) A map showing the proposed project, including all
15 proposed improvements;

16 (4) A list of estimated project costs and the preliminary
17 plans and specifications for such improvements, if avail-
18 able;

19 (5) A list of nonproject costs and how they will be
20 financed;

21 (6) A consultant study outlining the projected assess-
22 ments, setting forth the methodology for determining the
23 assessments and the methodology for allocating portions
24 of an initial assessment against a parcel expected to be
25 subdivided in the future to the various lots into which the
26 parcel will be subdivided and demonstrating that such
27 assessments will adequately cover any debt service on
28 bonds issued to finance the project and ongoing adminis-
29 trative costs;

30 (7) A development schedule;

31 (8) A list of recommended members for the board;

32 (9) If the project includes water, wastewater or sewer
33 improvements, written evidence from the utility or
34 utilities that will provide service to the district, if any, that
35 said utility or utilities:

36 (A) Currently has adequate capacity to provide service
37 without significant upgrades or modifications to its
38 treatment, storage or source of supply facilities, except
39 facilities which the community enhancement district will
40 provide as described in the petition;

41 (B) Will review and approve all plans and specifications
42 for the improvements to determine that the improvements
43 conform to the utility's reasonable requirements and, if the
44 improvement consists of water transmission or distribu-
45 tion facilities, that the improvements provide for adequate
46 fire protection for the district; and

47 (C) If built in conformance with said plans and specifica-
48 tions, will accept the improvements following their
49 completion, unless such projects are to be owned by the
50 district;

51 (10) If the project includes improvements other than as
52 set forth in subdivision (9) of this subsection that will be
53 transferred to another governmental agency, written

54 evidence that such agency will accept such transfer, unless
55 such projects are to be owned by the district;

56 (11) The benefits that can be expected from the creation
57 of the district and the project; and

58 (12) A certification from each owner of real property
59 within the proposed district who joins in the petition that
60 he or she is granting an assessment against his or her
61 property in such an amount as to pay for the costs of the
62 project and granting a lien for said amount upon said
63 property enforceable in accordance with this article.

64 (c) After reviewing the petition presented pursuant to
65 this section, the governing body may by order or ordinance
66 determine the necessity and economic feasibility of
67 creating a community enhancement district and develop-
68 ing, constructing, acquiring, improving or extending a
69 project therein. If the governing body determines that the
70 creation of a community enhancement district and con-
71 struction of the project is necessary and economically
72 feasible, it shall set a date for the public meeting required
73 under section five of this article and shall cause the
74 petition to be filed with the clerk of the county commis-
75 sion or the clerk or recorder of the municipality, as the
76 case may be, and be made available for inspection by
77 interested persons before the meeting.

78 (d) Notwithstanding any other contrary provision of this
79 article, nothing in this article shall modify:

80 (1) The jurisdiction of the Public Service Commission to
81 determine the convenience and necessity of the construc-
82 tion of utility facilities, to resolve disputes between
83 utilities relating to which utility should provide service to
84 a district or otherwise to regulate the orderly development
85 of utility infrastructure in the state; or

86 (2) The authority of the Infrastructure and Jobs Develop-
87 ment Council as to the funding of utility facilities to the

88 extent that loans, loan guarantees, grants or other funding
89 assistance from a state infrastructure agency are involved.

**§16-13E-10a. Extension of vesting period for land development
plans and plats; approval of phases.**

1 (a) The five-year vesting period is extended to the
2 development concept vesting period with respect to the
3 development concept if: (i) The land development will be
4 wholly contained within a community enhancement
5 district; and (ii) either:

6 (A) Such community enhancement district has been
7 created and is in existence, and such facts have been
8 communicated to the planning commission, at the time the
9 planning commission approves the subject land develop-
10 ment plan and plat (whether such plan and plat is denomi-
11 nated final, preliminary, phased preliminary, concept or
12 otherwise); or

13 (B) Such community enhancement district is created
14 after the initial approval of the subject land development
15 plan and plat and the planning commission subsequently
16 ratifies the approval of such plan and plat with the
17 knowledge of the existence of the community enhance-
18 ment district; and (iii) assessment bonds or tax increment
19 financing obligations payable from or secured by, in
20 whole, or in part, assessments against real property
21 located within the district are issued within the five-year
22 vesting period.

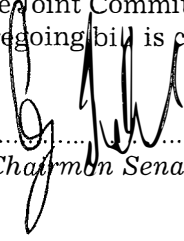
23 (b) Nothing herein shall be deemed to extend or other-
24 wise modify the five-year vesting period with respect to
25 items other than those included in the development
26 concept.

27 (c) When a land development will be wholly contained
28 within a community enhancement district, a land develop-
29 ment plan and plat that otherwise pertains to and seeks

30 approval of only a portion or phase of the land develop-
31 ment may also contain the development concept for a
32 greater portion, multiple phases or the entirety of the land
33 development if the plan and plat expressly so provides.
34 Approval of a land development plan and plat by the
35 planning commission constitutes approval of, and the
36 establishment of a vested property right in, the entire
37 development concept contained in the land development
38 plan and plat.

39 (d) This section shall apply to all community enhance-
40 ment districts, regardless of whether created prior or
41 subsequent to enactment of this section.

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

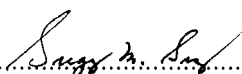

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Chairman Senate Committee

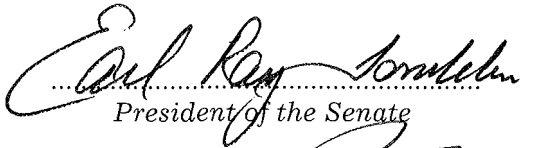

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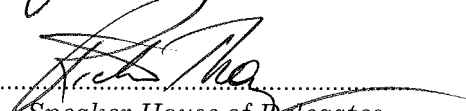
Originated in the Senate.

In effect ninety days from passage.


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Clerk of the Senate


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Clerk of the House of Delegates


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President of the Senate


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Speaker House of Delegates

The within is approved this the 2nd ..
Day of April, 2010.


.....
Governor

PRESENTED TO THE
GOVERNOR

APR 01 2010

Time 11:25 am