

H. B. 2914

(BY DELEGATE(S) 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:

ARTICLE 25. RESORT AREA DISTRICTS.

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

- 1 (a) The owners of twenty-five percent or more of the real
- 2 property in a resort area district may petition the board to
- 3 dissolve that resort area district.
- 4 (b) Within sixty days of the submission of a petition for the
- 5 dissolution of a resort area district, the board shall verify the
- 6 total number of eligible petitioners to determine whether the
- 7 required percentage of petitioners has been obtained. If the board
- 8 determines that the petition has met the requirements of
- 9 subsection (a) of this section, the board shall set a date for a
- 10 special election on the question of continuing or dissolving the

11 resort area district. The board shall, using reasonable efforts,
12 cause a notice to be mailed to the owners of real property located
13 within the resort area district of a special election to determine
14 continuance or dissolution of the resort area district. The date set
15 by the board for the special election required by this section may
16 be no less than sixty nor more than ninety days from the date the
17 board mails the notice, in the form described in subsection (c) of
18 this section, to the owners of real property located within the
19 district. The board shall make a copy of the petition available for
20 inspection by interested persons before the special election. If
21 the board determines that the petition has not met the
22 requirements of subsection (a) of this section, the petition shall
23 be returned to the petitioners with a statement of the reason why
24 the petition was rejected.

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

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

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

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

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

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

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

48 (3) The location of the real property;

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

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

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

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

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

61 (e) At the special election, the board shall submit the
62 question of continuing or dissolving the resort area district to
63 owners of qualified real property within the resort area district.

64 For purposes of this section, the term "qualified real property"
65 shall include the following classes of real property:

66 Unimproved/developable; commercial business; resort operator;

67 and residential improved. Each owner of qualified real property

68 shall be entitled to one undivided vote in the special election for

69 each parcel of qualified real property owned. The special
70 election ballots shall have written or printed on them the
71 following:

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

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

76 If a simple majority of the votes cast be for dissolution, then
77 the board shall request that the governing body dissolve the
78 resort area district. Following the receipt of a request, the resort
79 area district shall be dissolved by the governing body by
80 operation of law. However, all debts or other obligations
81 outstanding against the resort area district must be settled in full
82 prior to the dissolution. If a simple majority of the votes is cast
83 for continuance, the resort area district shall continue in
84 existence until dissolved at some later date under this section.
85 However, another election may not be held within two years of
86 the last election.

87 (f) An election under this section shall be held, and
88 conducted and the result determined, certified, returned and

89 canvassed in the same manner and by the same persons as an
90 election for resort area district board members pursuant to
91 section eleven of this article.

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

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

7 (b) Prior to the meeting required by this section, the
8 petitioners for the creation of the resort area district shall, using
9 reasonable efforts, cause notice of the initial election meeting to
10 be given to all owners of real property, including owners of
11 commercial business property, located within the district. Such
12 notice shall be mailed to each owner of real property included in
13 the resort area district as provided in subsection (h) of this
14 section, posted in multiple, conspicuous public locations within
15 such district and published at least thirty days prior to the date of

16 the meeting as a Class II legal advertisement in compliance with
17 the provisions of article three, chapter fifty-nine of this code and
18 the publication area for such publication shall be the resort area
19 district. The notice shall provide, at a minimum, the following
20 information:

21 (1) The purpose of the meeting;

22 (2) Descriptions of the board positions;

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

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

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

31 ~~(5)~~ (6) The date and time of the meeting.

32 (c) ~~At the meeting required by this section~~ Nominations shall
33 be made for each board position by persons eligible to vote for
34 each board position. Nominations may be made at the meeting

35 required by this section, by mail or by electronic means.

36 Nominations made by mail or by electronic means must be

37 received by the petitioners prior to the meeting to be valid.

38 Persons nominated for board positions shall meet the criteria

39 provided for each board position as set forth in subsection (b),

40 section ten of this article. Nominations shall be made for each

41 board position in the following manner:

42 (1) Only owners of residential, improved real property

43 located within the resort area district may nominate persons for

44 the three board positions provided for owners of or

45 representatives of owners of residential, improved real property

46 located within the resort area district;

47 (2) Only representatives of the resort operator or resort

48 operators may nominate persons for the two board positions

49 provided for representatives of the resort operator or resort

50 operators located within the resort area district;

51 (3) Only owners of commercial business property located

52 within the resort area district may nominate persons for the

53 board position provided for an owner of or a representative of

54 owners of commercial business property located within the
55 resort area district; and

56 (4) Only owners of unimproved, developable real property
57 located within the resort area district may nominate persons for
58 the board position provided for an owner of or a representative
59 of owners of unimproved, developable real property located
60 within the resort area district.

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

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

72 (2) Only a representative of each resort operator may vote
73 for the two board positions provided for representatives of the

74 resort operator or resort operators located within the resort area
75 district;

76 (3) Only owners of commercial business property located
77 within the resort area district may vote for the board position
78 provided for an owner of or a representative of owners of
79 commercial business property located within the resort area
80 district. Each owner is entitled to one vote per unit of
81 commercial business property he or she owns; and

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

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

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

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

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

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

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

103 (h) For purposes of the mailing of notice to owners of real
104 property required by this section, reasonable efforts shall be
105 made to mail such notice to all owners of real property included
106 within such resort area district using the real property tax records
107 and land books of the county in which such district is located and
108 any lists maintained by a resort operator or homeowners
109 association within such district. Such notice shall be also mailed
110 to each president of a homeowners association, if any, located
111 within a district which has registered with a resort operator to

112 receive such information. Immaterial defects in the mailing of
113 such notices shall not affect the validity of such notice.

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

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

10 (b) The bylaws of a district:

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

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

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

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

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

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

45 (f) An assessment shall not be authorized by the board if at
46 the public meeting required by this section written protest is filed
47 by at least twenty-five percent of the owners of the real property
48 within the district to be benefitted by the proposed project and
49 subject to the assessment. However, before an assessment
50 proposed by the board on its own initiative as provided in
51 subsection (c) of this section is authorized by the board, the
52 proposal must also receive the favorable vote of a majority of the
53 votes cast at the meeting for the proposal by the owners of real
54 property in the district that will be subject to the assessment.
55 Voting at the meeting shall be in person or by proxy at the

56 meeting or by mailed ballot or electronic means received prior
57 to the meeting. The voting rules set forth in subsection (e),
58 section eleven of this article apply to all voting on assessments.

59 In the event of such protest, the proposed assessment in the same
60 form may not be reconsidered by a board for a period of at least
61 one year from the date of the public meeting.

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

71 (h) An affidavit of publication of the notice made by
72 newspaper publisher, or a person authorized to do so on behalf
73 of such publisher, and a copy of the notice shall be made part of
74 the minutes of the board and spread on its records of the meeting
75 described in the notice. The service of said notice upon all

76 persons owning any interest in any real property located within
77 the resort area district shall conclusively be deemed to have been
78 given upon completion of mailing as provided in subsection (k)
79 of this section and such newspaper publication.

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

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

91 (k) For purposes of the mailing of each notice to owners of
92 real property required by this section, reasonable efforts shall be
93 made to mail such notice to all owners of real property required
94 to receive notice under this section using the real property tax
95 records and land books of the county in which such district is

96 located and any lists maintained by a resort operator or
97 homeowners association within such district. Such notice shall
98 be also mailed to each president of a homeowners association, if
99 any, located within a district which has registered with a resort
100 operator to receive such information. Immaterial defects in the
101 mailing of such notices shall not affect the validity of such
102 notices.

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

1 It is the intent of the Legislature that the amendments to this
2 article passed during the 2015 regular session of the Legislature
3 does not cause any petition for the creation of a resort area
4 district that is currently before the governing body of the county
5 in which the proposed resort area district is located to be voided
6 and that those petitions may be modified to meet the current
7 requirements of this article, put to a public meeting, and
8 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.

