

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

### **Originating**

## **Senate Bill 701**

BY SENATORS TRUMP, FERNS, GAUNCH, KIRKENDOLL,  
BEACH, ASHLEY, KARNES, LEONHARDT, ROMANO,  
PALUMBO, WILLIAMS, CLINE, SNYDER, MAYNARD  
AND CARMICHAEL

[Originating in the Committee on the Judiciary;

Reported on February 28, 2016]



A BILL to repeal §7-25-15, §7-25-17, §7-25-19, §7-25-21 and §7-25-22 of the Code of West Virginia, 1931, as amended; to amend and reenact §7-25-3 and §7-25-8 of said code; and to amend and reenact §60-5-1, §60-5-2, §60-5-3, §60-5-4, §60-5-6, §60-5-7 and §60-5-8 of said code, all relating generally to resort area districts; removing resort area district authority to conduct property assessments; authorizing resort area districts to hold local option elections as to whether or not the sale of alcoholic beverages may be sold within the district; and providing voting mechanisms therefor.

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

That §7-25-15, §7-25-17, §7-25-19, §7-25-21 and §7-25-22 of the Code of West Virginia, 1931, as amended, be repealed; that §7-25-3 and §7-25-8 of said code be amended and reenacted; and that §60-5-1, §60-5-2, §60-5-3, §60-5-4, §60-5-6, §60-5-7 and §60-5-8 of said code be amended and reenacted, all to read as follows:

## **CHAPTER 7. COUNTY COMMISSIONERS AND OFFICERS.**

### **ARTICLE 7. RESORT AREA DISTRICTS.**

#### **§7-25-3. Definitions.**

For purposes of this article:

~~(a) "Assessment" means the fee, including interest, paid by an owner of real property located within a resort area district to pay for the cost of a project or projects constructed upon or benefitting or protecting such property and administrative expenses thereto, which fee is in addition to all taxes and other fees levied on the property.~~

~~(b) "Assessment bonds" means special obligation bonds or notes issued by a resort area district which are payable from the proceeds of assessments.~~

~~(c)~~ (a) "Board" means a resort area board created pursuant to this article.

~~(d)~~ (b) "Code" means the Code of West Virginia, 1931, as amended by the Legislature.

~~(e)~~ (c) "Cost" means the cost of any or all of the following:

(1) Providing services within a resort area district;

(2) Construction, reconstruction, renovation and acquisition of all lands, structures, real or personal property, rights, rights-of-way, franchises, easements and interests acquired or to be acquired by a resort area district;

(3) All machinery and equipment, including machinery and equipment needed to provide, expand or enhance services to a resort area district;

(4) Financing charges and interest prior to and during construction and, if deemed advisable by a resort area district, for a limited period after completion of construction;

(5) Interest and reserves for principal and interest, including costs of bond insurance and any other type of financial guarantee;

(6) Costs of issuance in connection with the issuance of assessment bonds or resort service fee bonds;

(7) The design of extensions, enlargements, additions and improvements to the facilities of a resort area district;

(8) Architectural, engineering, financial and legal services;

(9) Plans, specifications, studies, surveys and estimates of costs and revenues;

(10) Administrative expenses necessary or incident to any project or service; and

(11) Other expenses as may be necessary or incident to the provision of services or the construction, acquisition and financing of a project.

~~(f)~~ (d) "Governing body" means the county commission of a county.

~~(g)~~ (e) "Governmental agency" means the state government or any agency, department, division or unit thereof; counties; municipalities; any watershed enhancement districts, soil conservation districts, sanitary districts, public service districts, drainage districts, school districts, urban renewal authorities or regional governmental authorities established pursuant to this code.

~~(h)~~ (f) "Landowner" or "owner of real property" means the person or persons holding an interest in the record fee title to one or more parcels of real property, including residential, improved real property and unimproved, developable real property, or of units within a multiunit

property, including condominiums and townhouses, within a resort area district or a proposed resort area district: *Provided*, That the holder or holders of a deed of trust shall not be considered a landowner or owner of real property.

~~(f)~~ (g) "Parcel" shall mean:

(1) A lot or parcel of real property as set forth on a plat covering such real property or, in the event no plat exists, as set forth on the tax maps of a county; or

(2) A unit within a multiunit property.

~~(f)~~ (h) "Person" means an individual, firm, partnership, corporation, limited liability company, voluntary association or any other type of entity.

~~(k)~~ (i) "Project" means the design, construction, reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement, equipping, maintenance, repair (including replacements) and start-up operation of public buildings, culverts, streets, bridges (including approaches, causeways, viaducts, underpasses and connecting roadways), motor vehicle parking facilities (including parking lots, buildings, ramps, curb-line parking, meters and other facilities deemed necessary, appropriate, useful, convenient or incidental to the regulation, control and parking of motor vehicles), public transportation, public recreation centers, public recreation parks, bicycle paths and trails, hiking paths and trails, landscaping, swimming pools, tennis courts, golf courses, skating rinks, equine facilities, motor vehicle competition and recreational facilities, flood protection or relief projects, or the grading, regrading, paving, repaving, surfacing, resurfacing, curbing, recurbing, widening, lighting or otherwise improving any street, avenue, road, highway, alley or way, or the building or renewing of sidewalks and flood protection; and the term shall mean and include any project as a whole, and all integral parts thereof, including all necessary, appropriate, useful, convenient or incidental appurtenances and equipment in connection with any one or more of the above: *Provided*, That a project shall not include a facility or service that benefits only the resort operator, or which the resort operator charges a fee or obtains revenue, or that constitutes part of any facility or service provided by the resort operator, such as a ski lift or ski slope.

~~(f)~~ (i) "Purchase price" means the measure subject to the resort service fee authorized to be imposed by this article and has the same meaning as sales price. For purposes of this article, the purchase price of a good or service shall not include the taxes levied under articles fifteen or fifteen-a of chapter eleven of this code or any other provision of law.

~~(m)~~ (k) "Ranger" means a resort area ranger.

~~(n)~~ (l) "Resort area" means an area that:

(1) Is an unincorporated area with a contiguous geographic boundary within one county that has been defined by the process set forth in this article;

(2) Has a permanent population of less than two thousand people, according to the most recent federal census;

(3) Derives the major portion of its economic well-being from businesses catering to the recreational and personal needs of persons traveling to or through the area;

(4) Is a destination location containing each of the following:

(i) Residential, improved real property;

(ii) One or more resort operators;

(iii) Commercial business properties such as retail stores, restaurants and hotels or other lodging accommodations; and

(iv) Unimproved real property which remains developable;

(5) Does not include real property primarily used for manufacturing, milling, converting, producing, processing or fabricating materials, generating electricity or the extraction or processing of minerals.

~~(o)~~ (m) "Resort area district" or "district" means a resort area district created pursuant to this article.

~~(p)~~ (n) "Resort operator" means any person owning and operating the primary outdoor recreational facilities in a resort area and offering outdoor recreational services such as skiing, golf or boating to the general public.

~~(q)~~ (o) "Resort service fee" means the fee imposed on the purchase price of goods and services sold within a resort area district by any of the following establishments:

(1) Hotels, motels, campgrounds, lodges and other lodging or camping facilities;

(2) Restaurants, fast-food stores and other food service establishments selling prepared foods;

(3) Taverns, bars, nightclubs, lounges and other public establishments that serve beer, wine, liquor or other alcoholic beverages by the drink;

(4) Retail establishments;

(5) Entertainment facilities, including, but not limited to, theaters, amphitheaters, halls and stadiums; and

(6) Recreational facilities and activities, including, but not limited to, ski resorts, golf courses, water sports, rafting, canoeing, kayaking, rock climbing and zip lines.

~~(f)~~ (p) "Resort service fee bonds" means special obligation bonds or notes issued by a resort area district which are payable from the proceeds of resort service fees.

~~(s)~~ (q) "Service" includes, but is not limited to, snow removal; operation and maintenance of public transportation; maintenance, upgrade and beautification of public common areas; maintenance and repair of roads and sidewalks; providing for the collection and disposal of garbage and other refuse matter; recycling; operation, upgrade and maintenance of any projects or improvements; and any other public service authorized by this article, including fire protection and public safety. For purposes of this article, a common area shall not include any facility that benefits only the resort operator, or for which the resort operator charges a fee or obtains revenue, or which constitutes part of any facility or service provided by the resort operator, such as a ski lift or ski slope.

~~(t)~~ (r) "Sheriff" means the sheriff of the county in which a resort area district is located.

**§7-25-8. Powers of resort area district.**

Each resort area district may:

(a) Have and use a corporate seal, and alter the same;

(b) Sue and be sued, and be a party to suits, actions and proceedings;

(c) Purchase insurance;

(d) Enter into agreements, contracts or other transactions with any person or governmental agency necessary or incident to the provision of services or the development, planning, construction, acquisition or improvement of a project or for the operation, maintenance or disposition of a project or for any other services required by a project, or to carry out any purposes of the district;

(e) Establish a bank account or accounts in its name;

(f) Design, plan, finance, develop, construct, acquire, extend, improve and complete a project or projects;

(g) Upon following the procedures set forth in this article, assess the cost of all or any portion of a project on real property located within the resort area district;

(h) Accept from any public or private source appropriations, grants, gifts, bequests, devises, loans, contributions and any other benefits available for use in furtherance of district purposes, and to use or dispose of the same to carry out district purposes;

(i) Expend funds to pay the costs of providing services within the district and to acquire, or construct part of a project on property located within or outside of a district, and for any work undertaken thereon, as may be necessary or incident to the completion of a project;

(j) Enter into agreements with the county within which the resort area district is located to plan, develop, construct, acquire or improve a project jointly;

(k) Borrow money and incur indebtedness and other obligations and evidence the same by certificates, notes or debentures: *Provided*, That such indebtedness shall not exceed the annual budget for the resort without the approval of the property owners at a meeting called for such purpose, a majority of those voting shall constitute approval. Voting may be in person, by mailed ballot, by proxy or by electronic means;



(l) Raise funds by the issuance and sale of ~~assessment bonds and~~ resort service fee bonds: *Provided*, That the source and sales of bonds shall be approved at a meeting of the property owners called for such purpose. A majority of those voting shall constitute approval.

Voting at such meeting may done be in person, by mailed ballot, by proxy or by electronic means;

~~(m) Annually, on or before June 7, certify to the sheriff of the county in which the property is located the assessments granted against all property in the district for inclusion in the tax ticket;~~

~~(n) Charge interest and levy fines and penalties on unpaid assessments;~~

~~(o) Create and enforce liens for unpaid assessments;~~

~~(p)~~ (m) Adopt bylaws not inconsistent with law;

~~(q)~~ (n) Implement, administer and collect a resort service fee for the purpose of providing funds for the provision of services and to design, plan, finance, develop, construct, acquire, extend, improve and complete a project or projects within a resort area district;

~~(r)~~ (o) Acquire, own or hold, in its corporate name, real or personal property, including easements and rights-of-way, by purchase, lease, gift or otherwise, within or without a resort area district for district purposes, as well as obtain options for the acquisition of real property;

~~(s)~~ (p) Provide services necessary to protect the health and welfare of residents in a resort area district and the value of property therein and to enter into agreements with any governmental agency, public or private agency, institution or person for the furnishing of such services;

~~(t)~~ (q) Provide for fire protection service;

~~(u)~~ (r) Provide for the public safety, including the appointment of resort area rangers;

~~(v)~~ (s) Provide for public recreation by means of parks, including, but not limited to, playgrounds, golf courses, swimming pools, skating rinks or recreation buildings;

~~(w)~~ (t) Provide for the opening, widening, extending, straightening and surfacing, in whole or in part, of, any street and snow removal or clearance for the same or other roads or streets;

~~(x)~~ (u) Provide for the construction and improvement of street lights, bridges, culverts, curbs, gutters, drains and works incidental to any street improvement; and

54        ~~(y)~~ (v) Do any and all other things necessary to carry out the purposes of this article and  
55        not in violation of the Constitution of this state as may be necessary or incident to the provision of  
56        services or the construction and completion of a project.

## CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

## ARTICLE 5. LOCAL OPTION ELECTIONS.

**§60-5-1. Election in county, magisterial district, or municipality or resort area district.**

1           A county, magisterial district, ~~or any municipality~~ or resort area district may, in an election  
2 held especially for the purpose, determine whether the sale of alcoholic liquors for beverage  
3 purposes shall be permitted within that county, magisterial district, ~~or municipality~~ or resort area  
4 district.

5 A local option election shall not be held within sixty days of a general or municipal election.

**§60-5-2. Election called on petition of five percent of qualified voters.**

1           The county commission, or the governing body of the municipality or resort area district,  
2   as the case may be, shall call a special "local option election" upon the filing of a petition signed  
3   by not less than five percent of the qualified voters within the county, a magisterial district, or  
4   municipality; or resort area district: *Provided, That, for purposes of elections held under this*  
5   article, property owners are deemed to be qualified voters.

**§60-5-3. Form of petition.**

1 The petition shall be in the following form:

## 2 Petition for Local Option Election

3 We, the undersigned legally qualified voters, resident within the county (magisterial  
4 district) (municipality) (resort area district) of \_\_\_\_\_, do hereby petition that a special  
5 election be held within the county (city, town, resort area district) of \_\_\_\_\_ on the  
6 \_\_\_\_\_ day of \_\_\_\_\_, ~~19-20~~ \_\_\_\_\_, upon the following question:

Shall the sale of alcoholic beverages under the West Virginia Alcohol Beverage Control Commissioner be permitted in \_\_\_\_\_?

Name

Address

Date

(Post office or street and number)

**§60-5-4. Notice of election; when held; election officers.**

The county commission or governing body of the municipality or resort area district shall give notice of the special "local option election" by publication thereof as a Class II-zero legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code and the publication area for such publication shall be the area in which the election is to be held. Such notice shall be so published within fourteen consecutive days next preceding the election. The election shall be held not more than ninety nor less than sixty days from the filing of the petition. The regular election officers of the county, ~~or~~ municipal corporation or resort area district shall open the polls and conduct the election in the same manner provided for general elections.

**§60-5-6. How election conducted and results certified.**

The ballots shall be counted, returns made and canvassed as in general elections, and the results certified by the commissioners of election to the county commission of the county, or the governing body of the municipality or resort area district, as the case may be. The county commission or governing body shall without delay certify the result of the election to the Alcohol Beverage Control Administration.

**§60-5-7. Discontinuance of state stores and agencies in local option territory.**

Within thirty days after a "local option election" in which a majority has voted "No," the commissioner shall close all state stores and discontinue all agencies situated within the county, the magisterial district, ~~or~~ municipality or resort area district.

**§60-5-8. When another election may be held.**

When a "local option election" has been held in a county, a magisterial district, ~~or~~ municipality or resort area district, another such election shall not be held for a period of two years;

- 3    except that an election may be held within a municipality without regard to an election held in<sub>1</sub> or  
4    the time limit applicable to<sub>1</sub> the county within which the municipality, or a part thereof, is located.

NOTE: The purpose of this bill is to remove assessment authority of resort area districts and allowing resort area districts to hold local option elections regarding the sale of alcohol.

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