

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend the Code of Virginia by adding in Chapter 24 of Title 15.2 an article numbered 4, consisting of sections numbered 15.2-2413.12 through 15.2-2413.21, relating to localities; business improvement and recruitment districts.

[S 956]

Approved

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 24 of Title 15.2 an article numbered 4, consisting of sections numbered 15.2-2413.12 through 15.2-2413.21, as follows:

Article 4.

Business Improvement and Recruitment Districts.

§ 15.2-2413.12. Definitions.

As used in this article, unless the context requires a different meaning:

"Activities" means any programs or services provided for (i) the purposes of recruiting businesses to relocate in the business improvement and recruitment district and (ii) conferring specific benefits upon the businesses that are located in the business improvement and recruitment district and to which a fee is charged.

"Benefited business" means a business located within a business improvement and recruitment district that benefits, directly or indirectly, by business improvement and recruitment district activities provided by such business improvement and recruitment district. "Benefited business" includes one or more types of businesses, one or more segments of businesses, or businesses within one or more industries, as set forth in a business improvement and recruitment district plan.

"Benefit zone" means an apportioned area designated within a business improvement and recruitment district in which businesses pay a fee based upon the degree of benefit derived from activities to be provided.

"Business" means a business of any kind located in a business improvement and recruitment district.

"Business fee" means any fee charged to a benefited business pursuant to this article.

"Business improvement and recruitment district" means a district established by a locality under the provisions of this article.

"Business improvement and recruitment district plan" means a proposal for a business improvement and recruitment district under the provisions of this article.

"Business owner" means any person recognized by a locality as the owner of a business subject to a business fee. A business may appoint an authorized agent to act as its representative for the purposes of this article. Such agent shall be considered the business owner for the purposes of any signature required under this article or for any other purpose authorized by the business owner. A locality shall have no obligation to obtain other information as to the ownership of businesses, and its determination of ownership shall be final and conclusive for the purposes of this article.

"Capital improvement" means an improvement to tangible personal property with an estimated useful life of five years or more.

"Fee" means a fee charged by a locality in accordance with a business improvement and recruitment district plan.

"Lead locality" means the locality in which the business improvement and recruitment district plan is filed for the establishment of a business improvement and recruitment district where such district includes more than one locality.

"Locality" means any county, city, or town in the Commonwealth.

"Majority share of benefited businesses" means one or more benefited businesses within a business improvement and recruitment district or proposed business improvement and recruitment district that cumulatively comprise a majority, based on the weighting methodology set forth in the business improvement and recruitment district plan.

§ 15.2-2413.13. Filing of business improvement and recruitment district plan.

Any prospective benefited business may file a business improvement and recruitment district plan with the clerk of a locality. The business improvement and recruitment district plan shall contain the following:

1. A map of the proposed business improvement and recruitment district;

2. A description of the boundaries of the business improvement and recruitment district proposed for establishment or extension in a manner sufficient to identify the businesses included;

3. The activities proposed and the projected cost thereof;

4. A description of how businesses included within the business improvement and recruitment district or who may relocate to such district will benefit;

5. The total estimated annual amount proposed to be expended for all costs relating to business improvement and recruitment district operation and implementation of activities and the manner in which benefited businesses will be charged a fee;

6. The proposed source or sources of financing;

7. The proposed time for implementation and completion of the business improvement and recruitment district plan;

8. The weighting methodology for calculating a majority share of benefited businesses for the business improvement and recruitment district;

9. Any proposals for rules and regulations to be applicable to the business improvement and recruitment district;

10. Identification of an entity charged with promoting business activity in that locality or region;

11. Identification of businesses in the business improvement and recruitment district who may be eligible for a reduction in any taxes levied pursuant to Chapter 37 (§ 58.1-3700 et seq.) of Title 58.1 and a process to effectuate any such reduction, if deemed; and

12. Any other item or matter that the locality requires to be included in the business improvement and recruitment district plan.

§ 15.2-2413.14. Petition for a proposed business improvement and recruitment district.

Upon the submission to the clerk of a locality of a written petition, signed by a majority of the business owners in the proposed business improvement and recruitment district who will pay more than 50 percent of the fees proposed to be charged, a locality may initiate proceedings to form a business improvement and recruitment district. The amount of the fees attributable to a business owned by the same business owner that is in excess of 40 percent of the amount of all fees proposed to be charged shall not be included in determining whether the petition is signed by business owners who will pay more than 50 percent of the total amount of fees proposed to be charged.

Any petition shall include a summary of the business improvement and recruitment district plan. The summary shall include a map showing the boundaries of the business improvement and recruitment district, information specifying where the complete business improvement and recruitment district plan can be obtained, and information specifying that the complete business improvement and recruitment district plan shall be furnished by the signatories of the petition upon request.

§ 15.2-2413.15. Hearing on a proposed business improvement and recruitment district.

A. After the filing of the business improvement and recruitment district plan pursuant to § 15.2-2413.13 and the submission of a petition pursuant to § 15.2-2413.14, a locality may adopt a resolution containing:

1. A copy of the business improvement and recruitment district plan;

2. A statement that the business improvement and recruitment district plan is on file in the clerk's office for public inspection;

3. The time and place the locality will meet and hold a public hearing to hear all persons interested in the subject of the business improvement and recruitment district plan;

4. A statement that any business owner who is to be charged a fee under the business improvement and recruitment district plan who objects to the plan shall file an objection with the clerk within 30 days of the conclusion of the hearing on forms made available by the clerk; and

5. The place, if any, other than the clerk's office, where the business improvement and recruitment district plan may be inspected in advance of the hearing if the locality determines that, in the public interest, any additional place of inspection is necessary or desirable.

B. Any objection shall be made orally or in writing by any interested person. Every written objection shall be filed with the clerk at or before the time fixed for the public hearing. The locality may waive any irregularity in the form or content of any written objection. A written objection may be withdrawn in writing at any time before the conclusion of the public hearing. Each written objection shall contain a description of the business in which the person filing the objection is interested, sufficient to identify the business, and, if a person filing is not shown on the official records of the locality as the owner of the business, the objection shall contain or be accompanied by written evidence that the person subscribing is the owner of the business or the authorized representative. A written objection that does not comply with this section shall not be counted in determining a majority objection. If written objections are received from the owners or authorized representatives of businesses in the proposed business improvement and recruitment district that will pay 50 percent or more of the fees proposed to be charged and objections are not withdrawn so as to reduce the objections to less than 50 percent, no further proceedings to charge the proposed fee against such businesses, as contained in the proposed business improvement and recruitment district plan, shall be taken for a period of one year from the

date of the finding by the locality of such majority objection.

C. The locality shall cause a copy of the resolution adopted under subsection A, or a summary thereof, to be published at least once in a newspaper in general circulation in the locality, the first publication to be not less than 10 days and not more than 30 days before the date set for the hearing. Not less than 10 days and not more than 30 days before the date set for the hearing, the locality shall mail a copy of the resolution or a summary thereof to each owner of a business that is proposed to be charged a fee within the proposed business improvement and recruitment district at the address shown on the locality's most recent list of businesses. If the locality publishes or mails a summary of the resolution, such summary shall include the address of the clerk, a statement that copies of the resolution shall be made available free of charge to the public, the activities proposed, the total estimated annual amount proposed to be expended for activities, and a statement indicating the rights of owners to object pursuant to subsection B.

D. If a business improvement and recruitment district includes multiple localities or portions thereof, the notice and hearing process set forth in this section shall be conducted by the lead locality. A lead locality may not form a business improvement and recruitment district within the territorial jurisdiction of another locality without that locality granting by majority vote of the governing body consent to the lead locality.

§ 15.2-2413.16. Establishment or extension of the business improvement and recruitment district.

A. Not earlier than 30 days after the conclusion of the last day of the public hearing held pursuant to § 15.2-2413.15, the governing body of the locality that conducted the hearing process shall determine:

1. Whether the notice of hearing for all hearings required to be held was published and mailed as required by law and is otherwise sufficient;

2. Whether all the businesses charged a fee within the boundaries of the proposed business improvement and recruitment district or extension will benefit from the establishment or extension of the business improvement and recruitment district; and

3. Whether the establishment or extension of the business improvement and recruitment district is in the public interest.

B. If the locality determines the question of subdivision A 3 in the negative, or if the requisite number of owners file objections as provided in subsection B of § 15.2-2413.15, the locality shall not establish or extend the business improvement and recruitment district, as applicable. Thereafter, no plan for the establishment or extension of a business improvement and recruitment district to include any business proposed to be included in the disapproved business improvement and recruitment district may be submitted until the expiration of at least one year from the date of disapproval.

C. If the locality shall find that notice was incorrectly or insufficiently given or that any business charged a fee within the boundaries of the proposed business improvement and recruitment district or extension is not benefited thereby or that certain businesses benefited thereby had not been included therein, it shall call a further hearing at a definite place and time not less than 10 days and not more than 30 days after this determination. In the resolution calling such hearing, it shall specify the necessary changes, if any, to the boundaries of the proposed business improvement and recruitment district or extension to be made in order that all of the benefited businesses are included in the general business improvement and recruitment district, and only those businesses deemed benefited shall be subject to fees within such business improvement and recruitment district. Notice of the further hearing shall be published and mailed in the manner provided in § 15.2-2413.15, except that, where boundaries are to be altered, this notice shall also specify the manner in which it is proposed to alter the boundaries of the proposed business improvement and recruitment district or extension. The further hearing shall be conducted in the same manner as the original hearing.

D. If a locality determines in the affirmative all questions in subsection A, it may by ordinance establish a business improvement and recruitment district and any ordinances provided for in § 15.2-2413.17.

§ 15.2-2413.17. Local ordinances related to business improvement and recruitment districts.

A. Any locality establishing a business improvement and recruitment district may enact ordinances on any of the following subjects that provide for:

1. Activities and other additional services required for business promotion, improvements to existing businesses, economic development, encouragement and recruitment for businesses to locate or relocate, as applicable, into the business improvement and recruitment district, or for enhancement of the business improvement and recruitment district;

2. Activities in the business improvement and recruitment district that will fund the activities and other additional services of subdivision 1;

3. Operation and maintenance of any business improvement and recruitment district activity;

4. The charging of fees on all benefited businesses within a business improvement and recruitment

district;

5. A process by which businesses charged a fee pursuant to this article may be eligible for a reduction in the taxes levied by a locality pursuant to Chapter 37 (§ 58.1-3700 et seq.) of Title 58.1 in the business improvement and recruitment district;

6. A process for the collection of revenues from fees from benefited businesses; and

7. Formation of a business improvement and recruitment district in cooperation with, and that includes, other localities.

B. After establishing a business improvement and recruitment district, a locality shall not decrease the level of publicly funded business services and business recruitment services in a business improvement and recruitment district existing prior to the creation of such district.

C. Nothing in this article shall be construed to prevent a locality from using the provisions of Article 1 (§ 15.2-2400 et seq.) to establish a business improvement district or business improvement and recruitment district.

§ 15.2-2413.18. Amendment to the business improvement and recruitment district plan.

A. At any time after the establishment or extension of a business improvement and recruitment district pursuant to the provisions of this article, the business improvement and recruitment district plan upon which the establishment or extension was based may be amended by the locality after compliance with the procedures set forth in this section.

B. Amendments to the business improvement and recruitment district plan that provide for changes to the boundaries of such district or any change in the method of determining fees upon which the business fee is based may be adopted by ordinance, provided that the locality shall, after a public hearing, determine that it is in the public interest to authorize the changes to the boundaries of such district or the changes to the method of determining fees. The locality shall give notice of the hearing by publication of a notice on the locality's website or in at least one newspaper having general circulation in the business improvement and recruitment district specifying the time and place of the hearing and stating any changes to the boundaries of such district or any change in the method of determining fees upon which the business fee is based. The notice shall be published at least 10 days prior to the date specified for the hearing.

C. Amendments to the business improvement and recruitment district plan that provide for such district to incur indebtedness in order to provide for additional activities, that provide for an increase only in the amount to be expended annually for activities, or that provide for an increase in the total maximum amount to be expended for activities in the business improvement and recruitment district may be adopted by ordinance. Prior to the adoption of an ordinance making one or more of the amendments as described in this subsection, the governing body shall, after a public hearing, determine that it is in the public interest to authorize the business improvement and recruitment district to incur indebtedness to provide for additional activities, to increase the amount to be expended annually, or to increase the total maximum amount to be expended for activities in the business improvement and recruitment district, or any applicable combination of the foregoing. Notice of the hearing shall be published and mailed in the manner provided in § 15.2-2413.15.

§ 15.2-2413.19. Establishment of separate benefit zones within business improvement and recruitment district; categories of businesses.

The locality may establish one or more separate benefit zones within the business improvement and recruitment district based upon the degree of benefit derived from the activities to be provided within the benefit zone and may impose a different fee within each benefit zone. The locality may also define categories of businesses based upon the degree of benefit that each will derive from the activities to be provided within the business improvement and recruitment district and may impose a different fee or rate of fee on each category of business, or on each category of business within each zone.

§ 15.2-2413.20. Expenses of the business improvement and recruitment district.

A. A locality may appropriate funds to pay expenses associated with the business improvement and recruitment district.

B. A locality may issue bonds and other obligations subject to the provisions of the Public Finance Act of 1991 (§ 15.2-2600 et seq.) for the purpose of funding the costs of the business improvement and recruitment district plan. Principal and interest payments on such bonds may be paid from the proceeds of any fees imposed under this article.

C. No funds raised pursuant to this article shall be used by the locality for any purposes other than funding the expenses of the business improvement and recruitment district.

§ 15.2-2413.21. Dissolution.

A. Any business improvement and recruitment district established or extended pursuant to the provisions of this article, where there is no indebtedness, outstanding and unpaid, incurred to accomplish any of the purposes of the business improvement and recruitment district, may be dissolved by majority vote of the local governing body. The business improvement and recruitment district may be

dissolved if the locality determines there has been misappropriation of funds, malfeasance, or a violation of law in connection with the management of the business improvement and recruitment district. In the event of dissolution of a business improvement and recruitment district, any remaining revenues, after all outstanding debts are paid, derived from the charge of fees, or derived from the sale of assets acquired with the revenues, or from bond reserve or construction funds, shall be appropriated for the purposes of the business improvement and recruitment district plan or shall be refunded to the businesses that are charged a fee by applying the same method and basis that was used to determine the business improvement and recruitment district fees that were charged.

B. During the operation of the business improvement and recruitment district, there shall be a 30-day period each year in which owners of benefited businesses may request dissolution of the business improvement and recruitment district. The first such period shall begin one year after the date of establishment of the business improvement and recruitment district and shall continue for 30 days. The next such 30-day period shall begin two years after the date of the establishment of the business improvement and recruitment district. Each successive year of operation of the business improvement and recruitment district shall have such a 30-day period. Upon the written petition of the owners or authorized representatives of businesses in the business improvement and recruitment district that pay 50 percent or more of the fees charged, the locality may by majority vote of the local governing body dissolve the business improvement and recruitment district.

C. The locality shall hold a hearing on any proposed dissolution.