

1 **H. B. 2665**

2
3 (By Delegates Moye, Staggers, Manchin, T. Campbell
4 and Miley)

5
6 [Introduced January 20, 2011; referred to the
7 Committee on Political Subdivisions then the Judiciary.]

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9
10 A BILL to amend and reenact §8-6-1, §8-6-2, §8-6-3, §8-6-4, §8-6-5
11 and §8-6-6 of the Code of West Virginia, 1931, as amended; and
12 to amend said code by adding thereto a new section, designated
13 §8-6-7, all relating to annexation generally; fixing
14 antiquated language; and granting circuit court review of
15 county commission decisions.

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

17 That §8-6-1, §8-6-2, §8-6-3, §8-6-4, §8-6-5 and §8-6-6 of the
18 Code of West Virginia, 1931, as amended, be amended and reenacted;
19 and to amend said code by adding thereto a new section, designated
20 §8-6-7, all to read as follows:

21 **ARTICLE 6. ANNEXATION.**

22 ~~PART I. GENERAL.~~

23 **§8-6-1. Annexation of unincorporated territory.**

24 (a) Contiguous unincorporated territory may be annexed to and
25 become part of a municipality ~~contiguous thereto only~~ in accordance

1 with the provisions of this article.

2 (b) ~~Any farmlands or operations~~ Agricultural lands as
3 described in article nineteen, chapter nineteen of this code which
4 may be annexed into a municipality shall be protected in the
5 continuation of agricultural use after being annexed.

6 (c) Any new imposition of a tax or any increase in the rate of
7 tax upon any business, occupation or privilege following annexation
8 shall be applied in accordance with the provisions of section five,
9 article thirteen, chapter eight of this code.

10 ~~PART II. ANNEXATION BY ELECTION.~~

11 **§8-6-2. Petition for annexation.**

12 (a) Five percent or more of the freeholders of a municipality
13 desiring to have territory annexed thereto may file a petition in
14 writing with the governing body thereof setting forth the change
15 proposed in the metes and bounds of the municipality and asking
16 that a vote be taken upon the proposed change. The petition shall
17 be verified and shall be accompanied by an accurate survey map
18 showing the territory to be annexed to the corporate limits by the
19 proposed change.

20 (b) The petitioners shall obtain a surety bond in an amount
21 set by the governing body sufficient to cover the cost of the
22 election. The bond shall be forfeited if a majority of the votes
23 cast are against the proposed annexation.

24 (c) The governing body shall, upon receipt of the bond, order

1 a vote of the qualified voters of the municipality to be taken upon
2 the proposed annexation on a date and at a time and place to be
3 named in the order.

4 (d) The governing body shall, at the same time, order a vote
5 of all of the qualified voters of the additional territory and of
6 all of the freeholders of the additional territory whether they
7 reside or have a place of business therein or not, to be taken upon
8 the question on the same day at some convenient place in or near
9 the additional territory.

10 (e) The governing body shall cause the order for the election
11 to be published, at the cost of the municipality, as a Class II-0
12 legal advertisement in compliance with the provisions of article
13 three, chapter fifty-nine of this code. The publication area is
14 the municipality and the additional territory. The first
15 publication must be at least fourteen days prior to the date upon
16 which the vote is to be taken. The order for the election shall
17 contain an accurate description by metes and bounds of the
18 additional territory proposed to be annexed to the corporate limits
19 by the proposed change, a summary of the municipality's plan for
20 providing services to the additional territory and, if practicable,
21 shall also contain a popular description of the additional
22 territory.

23 (f) The election shall be held, superintended and conducted
24 and the results thereof ascertained, certified, returned and

1 canvassed in the same manner by the same individuals as elections
2 for municipal officers. ~~The election is reviewable by the circuit
3 court of the county in which the municipality or the major portion
4 thereof, including the area proposed to be annexed, is located.
5 The order may be reviewed by the circuit court as an order of a
6 county commission ordering an election may be reviewed under
7 section sixteen, article five of this chapter.~~

8 (g) The ballots, or ballot labels where voting machines are
9 used, shall have written or printed on them the words:

10 / / For Annexation

11 / / Against Annexation

12 (h) Any freeholder which is a firm or corporation may vote by
13 its manager, president or executive officer duly designated in
14 writing by the firm or corporation.

15 (i) An individual who is a qualified voter and freeholder of
16 the municipality or the additional territory shall be entitled to
17 vote only once.

18 (j) For purposes of this section, the term "qualified voter of
19 the additional territory" includes a firm or corporation in the
20 additional territory regardless of whether the firm or corporation
21 is a freeholder. A firm or corporation may vote by its manager,
22 president, or executive officer duly designated in writing by the
23 firm or corporation. In any instance where a freeholder leases or
24 rents real property to a firm or corporation the freeholder and the

1 firm or corporation shall determine which entity will be entitled
2 to vote in the annexation election.

3 (k) When an election is held in any municipality in accordance
4 with the provisions of this section, another election relating to
5 the same proposed change or any part thereof shall not be held for
6 a period of one year.

7 (l) If a majority of all of the legal votes cast in the
8 municipality and a majority of all the legal votes cast in the
9 territory are in favor of the proposed annexation, then the
10 governing body shall proceed as specified in the immediately
11 succeeding section of this article.

12 **§8-6-3. Governing body of municipality to certify annexation;**
13 **order.**

14 The governing body of ~~such~~ the municipality shall enter the
15 results of ~~such~~ the election in its minutes, and, when the proposed
16 annexation ~~proposed~~ is adopted, as provided in the immediately
17 preceding section of this article, the municipality shall forward
18 a certificate to such effect to the county ~~court of the county~~
19 ~~wherein~~ commission where the municipality or the major portion of
20 the territory thereof, including the annexed territory, is located;
21 and ~~such court~~ the commission shall ~~thereupon~~ enter an order in
22 ~~substance~~ as follows:

23 "A certificate of the governing body of the municipality of
24 was this day filed showing that an annexation

1 has been made, in the manner required by law, to the corporate
2 limits thereof, and that by such annexation the said corporate
3 limits are as follows:

4 "Beginning at (here recite the boundaries as changed). It is,
5 therefore, ordered that such annexation to said corporate limits
6 be, and the same is hereby approved and confirmed, and the clerk of
7 this ~~court~~ commission is directed to deliver to the said governing
8 body a certified copy of this order as soon as practicable after
9 the rising of this ~~court~~ commission."

10 After the ~~date of such~~ order is entered, the corporate limits
11 of the municipality shall be as set forth therein.

12 ~~PART III. ANNEXATION WITHOUT ELECTION.~~

13 **§8-6-4. Annexation without an election.**

14 (a) The governing body of a municipality may, by ordinance,
15 provide for the annexation of additional territory without ordering
16 a vote on the question if: (1) A majority of the qualified voters
17 of the additional territory file with the governing body a petition
18 to be annexed; and (2) a majority of all freeholders of the
19 additional territory, whether they reside or have a place of
20 business therein or not, file with the governing body a petition to
21 be annexed.

22 (b) For purposes of this section, the term "qualified voter of
23 the additional territory" includes firms and corporations in the
24 additional territory regardless of whether the firm or corporation

1 is a freeholder. A firm or corporation may sign a petition by its
2 manager, president or executive officer duly designated in writing
3 by the firm or corporation. In any instance where a freeholder
4 leases or rents real property to a firm or corporation the
5 freeholder and the firm or corporation shall determine which entity
6 will be entitled to sign a petition relating to the proposed
7 annexation.

8 ~~(c) The determination that the requisite number of petitioners~~
9 ~~have filed the required petitions shall be reviewable by the~~
10 ~~circuit court of the county in which the municipality or the major~~
11 ~~portion of the territory thereof, including the area proposed to be~~
12 ~~annexed is located, upon certiorari to the governing body in~~
13 ~~accordance with the provisions of article three, chapter fifty-~~
14 ~~three of this code.~~

15 ~~(d)~~ (c) A qualified voter of the additional territory who is
16 also a freeholder of the additional territory may join only one
17 petition of the additional territory.

18 ~~(e)~~ (d) ~~It shall be the responsibility of~~ The governing body
19 ~~to~~ shall enumerate and verify the total number of eligible
20 petitioners, in each category, from the additional territory. In
21 determining the total number of eligible petitioners, in each
22 category, a freeholder or any other entity that is a freeholder
23 shall be limited to one signature on a petition as provided in this
24 section. There shall be allowed only one signature on a petition

1 per parcel of property and any freehold interest that is held by
 2 more than one individual or entity shall be allowed to sign a
 3 petition only upon the approval by the majority of the individuals
 4 or entities that have an interest in the parcel of property.

5 ~~(f)~~ (e) If all of the eligible petitioners are qualified
 6 voters, only a voters' petition is required.

7 ~~(g)~~ (f) If satisfied that the petition is sufficient in every
 8 respect, the governing body shall enter that fact upon its journal
 9 and forward a certificate to that effect to the county commission
 10 of the county wherein the municipality or the major portion of the
 11 territory thereof, including the additional territory, is located.
 12 The county commission shall ~~thereupon~~ enter an order. ~~as described~~
 13 ~~in the immediately preceding section of this article~~ After the date
 14 of the order, the corporate limits of the municipality shall be as
 15 set forth therein.

16 ~~PART IV. ANNEXATION BY MINOR BOUNDARY ADJUSTMENT.~~

17 **§8-6-5. Annexation by minor boundary adjustment.**

18 (a) ~~In the event~~ If a municipality desires to increase its
 19 corporate limits by making a minor boundary adjustment, the
 20 governing body of the municipality may apply to the county
 21 commission of the county ~~wherein~~ where the municipality or the major
 22 portion of the territory thereof, including the territory to be
 23 annexed, is located for permission to effect annexation by minor
 24 boundary adjustment. The municipality shall pay the costs of all

1 proceedings before the commission.

2 (b) In addition to any other annexation configuration, a
3 municipality may incorporate by minor boundary adjustment: (i)
4 Territory that consists of a street or highway as defined in section
5 thirty-five, article one, chapter seventeen-c of this code and one
6 or more freeholders; or (ii) territory that consists of a street or
7 highway as defined in section thirty-five, article one, chapter
8 seventeen-c of this code which does not include a freeholder but
9 which is necessary for the provision of emergency services in the
10 territory being annexed.

11 (c) A county commission may develop a form application for
12 annexation for minor boundary adjustment. An application for
13 annexation by minor boundary adjustment shall include, but not be
14 limited to:

15 (1) The number of businesses located in and persons residing
16 in the additional territory;

17 (2) An accurate map showing the metes and bounds of the
18 additional territory;

19 (3) A statement setting forth the municipality's plan for
20 providing the additional territory with all applicable public
21 services such as police and fire protection, solid waste collection,
22 public water and sewer services and street maintenance services,
23 including to what extent the public services are or will be provided
24 by a private solid waste collection service or a public service

1 district;

2 (4) A statement of the impact of the annexation on any private
3 solid waste collection service or public service district currently
4 doing business in the territory proposed for annexation in the event
5 the municipality should choose not to utilize the current service
6 providers;

7 (5) A statement of the impact of the annexation on fire
8 protection and fire insurance rates in the territory proposed for
9 annexation;

10 (6) A statement of how the proposed annexation will affect the
11 municipality's finances and services; and

12 (7) A statement that the proposed annexation meets the
13 requirements of this section.

14 (d) Upon receipt of a complete application for annexation by
15 minor boundary adjustment, the county commission shall determine
16 whether the application meets the threshold requirements for
17 consideration as a minor boundary adjustment including whether the
18 annexation could be efficiently and cost effectively accomplished
19 under section two or four of this article.

20 (e) If the application meets the threshold requirements, the
21 county commission shall order publication of a notice of the
22 proposed annexation to the corporate limits and of the date and time
23 set by the commission for a hearing on the proposal. Publication
24 shall be as in the case of an order calling for an election, as set

1 forth in section two of this article. A like notice shall be
2 prominently posted at not less than five public places within the
3 area proposed to be annexed.

4 (f) In making its final decision on an application for
5 annexation by minor boundary adjustment, the county commission
6 shall, at a minimum, consider the following factors:

7 (1) Whether the territory proposed for annexation is contiguous
8 to the corporate limits of the municipality. For purposes of this
9 section, "contiguous" means that at the time the application for
10 annexation is submitted, the territory proposed for annexation
11 either abuts directly on the municipal boundary or is separated from
12 the municipal boundary by an unincorporated street or highway, or
13 street or highway right-of-way, a creek or river, or the right-of-
14 way of a railroad or other public service corporation, or lands
15 owned by the state or the federal government;

16 (2) Whether the proposed annexation is limited solely to a
17 Division of Highways right-of-way or whether the Division of
18 Highways holds title to the property in fee;

19 (3) Whether affected parties of the territory to be annexed
20 oppose or support the proposed annexation. For purposes of this
21 section, "affected parties" means freeholders, firms, corporations
22 and qualified voters in the territory proposed for annexation and
23 in the municipality and a freeholder whose property abuts a street
24 or highway, as defined in section thirty-five, article one, chapter

1 seventeen-c of this code, when: (i) The street or highway is being
2 annexed to provide emergency services; or (ii) the annexation
3 includes one or more freeholders at the end of the street or highway
4 proposed for annexation;

5 (4) Whether the proposed annexation consists of a street or
6 highway as defined in section thirty-five, article one, chapter
7 seventeen-c of this code and one or more freeholders;

8 (5) Whether the proposed annexation consists of a street or
9 highway as defined in section thirty-five, article one, chapter
10 seventeen-c of this code which does not include a freeholder but
11 which is necessary for the provision of emergency services in the
12 territory being annexed;

13 (6) Whether another municipality has made application to annex
14 the same or substantially the same territory; and

15 (7) Whether the proposed annexation is in the best interest of
16 the county as a whole.

17 (g) If the county commission denies the application for
18 annexation by minor boundary adjustment, the commission may allow
19 the municipality to modify the proposed annexation to meet the
20 commissions objections. The commission must order another public
21 hearing if significant modifications are proposed.

22 (h) The final order of the commission shall include the reasons
23 for the grant or denial of the application.

24 ~~(i) The municipality applying for annexation or any affected~~

~~1 party may appeal the commission's final order to the circuit court
2 of the county in which the municipality or the major portion
3 thereof, including the area proposed to be annexed, is located. The
4 county commission may participate in any appeal taken from its order
5 in the same manner and to the same extent as a party to the appeal.
6 The order may be reviewed by the circuit court as an order of a
7 county commission ordering an election may be reviewed under section
8 sixteen, article five of this chapter.~~

~~9 PART V. DUTIES AS TO AD VALOREM TAXES FOR MUNICIPAL PURPOSES
10 ON PROPERTIES IN NEWLY ANNEXED AREAS.~~

**11 §8-6-6. Duties as to ad valorem taxes for municipal purposes on
12 properties in newly annexed areas.**

13 Upon the effective date of any annexation under the provisions
14 of this article, ~~it shall be the duty of the governing body of the~~
15 ~~municipality to shall~~ notify the county assessor of such annexation,
16 and upon being so notified, ~~it shall be the duty of such the~~
17 ~~assessor to see to it that the~~ shall assess the properties ~~situate~~
18 situated within the newly annexed area ~~are assessed~~ with the
19 municipal ad valorem taxes for the current fiscal year and
20 subsequent fiscal years or the ensuing and subsequent fiscal years,
21 depending upon the date of notification to such assessor.

22 §8-6-7. Circuit court review.

23 (a) Any affected party may appeal the commission's final order
24 to the circuit court of the county in which the municipality or the

1 major portion thereof, including the area proposed to be annexed,
2 is located.

3 (b) The county commission may participate in any appeal taken
4 from its order in the same manner and to the same extent as a party
5 to the appeal.

6 (c) The circuit court shall review the order of the county
7 commission de novo.

NOTE: The purpose of this bill is to modernize language of the statute, give the county commission a first level of review and the circuit court de novo review of the commission's ruling.

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

§8-6-7 is new; therefore, it has been completely underscored.