

# **WEST VIRGINIA LEGISLATURE**

## **2017 REGULAR SESSION**

**Introduced**

### **House Bill 2903**

BY DELEGATES FOSTER, G., FOSTER, N., HIGGINBOTHAM,

BUTLER AND MAYNARD

[Introduced March 9, 2017; referred  
to the Committee on Political Subdivisions then  
Government Organization.]

1 A BILL to amend and reenact §7-11-3 of the Code of West Virginia, 1931, as amended; to amend  
 2 and reenact §7-12-3 and §7-12-3a of said code; and to amend and reenact §8A-2-3 of  
 3 said code, all relating to limiting the maximum number of appointees to certain county and  
 4 municipal bodies; and imposing quorum requirements on certain county and municipal  
 5 bodies.

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

1 That §7-11-3 of the Code of West Virginia, 1931, as amended, be amended and  
 2 reenacted; that §7-12-3 and §7-12-3a of said code be amended and reenacted; and that §8A-2-  
 3 3 of said code be amended and reenacted, all to read as follows:

**CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.**

**ARTICLE 11. COUNTY PARKS AND RECREATION COMMISSIONS.**

**§7-11-3. Number of members; quorum; qualifications; appointment; term; disqualifications.**

1 The commission shall consist of ~~eleven~~ at least five but not more than nine members, a  
 2 majority of whom shall constitute a quorum for the transaction of business: Provided, That the  
 3 commission shall not transact any business unless a majority of members are contemporaneously  
 4 present at a commission meeting. Each member of said commission shall be a bona fide resident  
 5 of the county and shall own real estate within such county. The term of the commission members  
 6 shall be for three years and until their successors have been appointed and have qualified:  
 7 ~~Provided, That the county court in appointing the members of the first commission shall appoint~~  
 8 ~~three members for a term of one year; four members for a term of two years and four members~~  
 9 ~~for a term of three years.~~ Provided, That the county court shall have until January 1, 2020, to  
 10 reduce the number of members to between five and nine members. The order of the county court  
 11 shall fix the date on which the term of such commission members shall begin. The members of  
 12 any board of park and recreation commissioners heretofore created under the former provisions  
 13 of this article shall continue in office as members of the parks and recreation commission of such

14 county until their terms expire and their successors have been appointed and have qualified. Any  
15 member of the commission who shall cease to be a bona fide resident of the county or a freeholder  
16 thereof, shall thereby be disqualified as a member of said commission and his or her office shall  
17 become vacant. When a vacancy occurs on said commission by reason of death, resignation,  
18 change of residence from the county, failure to remain a freeholder of the county, or expiration of  
19 term, the county court shall appoint a successor or successors to fill out the unexpired term of the  
20 member of the commission whose term has been vacated.

## **ARTICLE 12. COUNTY AND MUNICIPAL DEVELOPMENT AUTHORITIES.**

### **§7-12-3. Management and control of county authority vested in board; appointment and terms of members; vacancies; removal of members; quorum requirements.**

1 The management and control of a county authority, its property, operations, business and  
2 affairs shall be lodged in a board of not fewer than ~~twelve nor more than twenty-one~~ five nor more  
3 than nine persons who shall be appointed by the county commission and be known as members  
4 of the authority: Provided, That members appointed to the board prior to July 1, 2017, shall be  
5 permitted to complete their term of appointment even if the board's membership exceeds nine  
6 members. The county commission shall appoint one member to represent the county commission  
7 on the board and, for each municipality located within the county, the county commission shall  
8 appoint one member to represent the municipality. The city and town council of each municipality  
9 located within the county shall submit to the county commission the names of three persons, one  
10 of whom the county commission shall appoint to be the municipality's representative on the board.  
11 Other members of the board shall be appointed by the county commission and shall include  
12 representatives of business, industry and labor. The members of the authority first appointed shall  
13 serve respectively for terms of one year, two years and three years, divided equally or as nearly  
14 equal as possible between these terms. Thereafter, members shall be appointed for terms of  
15 three years each. A member may be reappointed for such additional term or terms as the county  
16 commission may deem proper. If a member resigns, is removed or for any other reason his or her

17 membership terminates during his or her term of office, a successor shall be appointed by the  
18 county commission to fill out the remainder of his or her term. Members in office at the expiration  
19 of their respective terms shall continue to serve until their successors have been appointed and  
20 have qualified. The county commission may at any time remove any member of the board by an  
21 order duly entered of record and may appoint a successor member for any member so removed.

22 Other persons, firms, unincorporated associations, and corporations, who reside, maintain  
23 offices, or have economic interests, as the case may be, in the county, shall be eligible to  
24 participate in and request the county commission to appoint members to the development  
25 authority as the said authority shall by its bylaws provide.

26 County boards authorized under this section shall not transact any business unless a  
27 majority of members are contemporaneously present at a board meeting. This quorum  
28 requirement shall not be amended by the board's bylaws.

**§7-12-3a. Management and control of municipal authority vested in board; appointment  
and terms of members; vacancies; removal of members; quorum requirements.**

1 The management and control of a municipal authority, its property, operations, business  
2 and affairs shall be lodged in a board of not fewer than ~~twelve nor more than twenty-one~~ five nor  
3 more than nine persons who shall be appointed by the governing body and be known as members  
4 of the authority: Provided, That members appointed to the board prior to July 1, 2017, shall be  
5 permitted to complete their term of appointment even if the board's membership exceeds nine  
6 members. One member of the authority shall also be a member of the governing body appointed  
7 to represent it on the board. Other members shall be appointed by the governing body and shall  
8 include representatives of business, industry and labor. The members of the authority first  
9 appointed shall serve respectively for terms of one year, two years and three years, divided  
10 equally or as nearly equal as possible between these terms. Thereafter, members shall be  
11 appointed for terms of three years each. A member may be reappointed for such additional term  
12 or terms as the appointing agency may deem proper. If a member resigns, is removed or for any

13 other reason his or her membership terminates during his or her term of office, a successor shall  
 14 be appointed by the appointing agency to fill out the remainder of his or her term. Members in  
 15 office at the expiration of their respective terms shall continue to serve until their successors have  
 16 been appointed and have qualified. The appointing agency may at any time remove its appointed  
 17 member of the authority by an order duly entered of record or by other action appropriate for such  
 18 appointing agency and may appoint a successor member for any member so removed.

19 In addition to the appointing agencies hereinbefore named, such other persons, firms,  
 20 unincorporated associations, and corporations, who reside, maintain offices, or have economic  
 21 interests, as the case may be, in the municipality, are eligible to participate in and request the  
 22 governing body to appoint members to the development authority as the said authority by its  
 23 bylaws provides.

24 Municipal boards authorized under this section shall not transact any business unless a  
 25 majority of members are contemporaneously present at a board meeting. This quorum  
 26 requirement shall not be amended by the board's bylaws.

## CHAPTER 8A. LAND USE PLANNING.

### ARTICLE 2. PLANNING COMMISSIONS.

#### §8A-2-3. Municipal planning commission.

1 (a) A municipal planning commission in a Class I, II or III city shall have not less than five  
 2 nor more than ~~fifteen~~ nine members, the exact number to be specified in the ordinance creating  
 3 the planning commission. A municipal planning commission in a Class IV town or village shall  
 4 have not less than three nor more than nine members, the exact number to be specified in the  
 5 ordinance creating the planning commission.

6 (b) The members of a municipal planning commission must be:

7 (1) Residents of the municipality; and

8           (2) Qualified by knowledge and experience in matters pertaining to the development of the  
9 municipality.

10           (c) At least three fifths of all of the members must have been residents of the municipality  
11 for at least three years prior to nomination or appointment and confirmation.

12           (d) The members of a municipal planning commission must fairly represent different areas  
13 of interest, knowledge and expertise, including, but not limited to, business, industry, labor,  
14 government and other relevant disciplines. One member must be a member of the municipal  
15 governing body or a designee and one member must be a member of the administrative  
16 department of the municipality or a designee. The term of membership for these two members is  
17 the same as their term of office.

18           (e) The Legislature finds that there are persons willing to serve on planning commissions  
19 who may also own interests in businesses that regularly conduct business in front of or with  
20 planning commission staff. Such persons may have experience and expertise which would be  
21 valuable assets to a planning commission. For those reasons, notwithstanding any other  
22 provisions in this code to the contrary, any person employed by, owning an interest in or otherwise  
23 associated with a business that regularly conducts business in front of or with planning  
24 commission staff may also serve as a member of a planning commission and shall not be  
25 disqualified from serving as a member because of a conflict of interest as defined in section fifteen,  
26 article ten, chapter sixty-one of this code and shall not be subject to prosecution under provisions  
27 of that chapter when the violation is created solely as a result of his or her relationship with the  
28 business. This member must recuse himself or herself from any vote, discussion, participation or  
29 other activity regarding the conflicting issue.

30           (f) The Legislature finds that there are persons willing to serve on planning commissions  
31 who may also own interests in businesses who regularly conduct business in front of or with  
32 planning commission staff. Such persons may have experience and expertise which would be  
33 valuable assets to a planning commission. For those reasons, notwithstanding any other

34 provisions in this code to the contrary, any person employed by, owning an interest in or otherwise  
35 associated with a business that regularly conducts business in front of or with planning  
36 commission staff may also serve as a member of a planning commission and shall not be in  
37 violation of subsection (g), section five, article two, chapter six-b of this code if the member  
38 recuses himself or herself from any vote, discussion, participation or other activity regarding the  
39 conflicting issue: *Provided*, That such members do not constitute a majority of the members of  
40 the planning commission at the same time.

41 (g) The remaining members of the municipal planning commission first selected shall  
42 serve respectively for terms of one year, two years and three years, divided equally or as nearly  
43 equally as possible between these terms. Thereafter, members shall serve three-year terms.  
44 Vacancies shall be filled for the unexpired term and made in the same manner as original  
45 selections were made: *Provided*, That members appointed to the commission prior to July 1,  
46 2017, shall be permitted to complete their term of appointment even if the commission's  
47 membership exceeds nine members.

48 (h) The members of a municipal planning commission shall serve without compensation,  
49 but shall be reimbursed for all reasonable and necessary expenses actually incurred in the  
50 performance of their official duties.

51 (i) Nominations for municipal planning commission membership shall be made by the  
52 administrative authority and confirmed by the governing body when the administrative authority  
53 and the governing body are separate, or appointed and confirmed by the governing body where  
54 the administrative authority and governing body are the same.

55 (j) An individual may serve as a member of a municipal planning commission, a county  
56 planning commission, a multicounty planning commission, a regional planning commission or a  
57 joint planning commission, at the same time.

58 (k) The governing body of the municipality may establish procedures for the removal of  
59 members of the planning commission for inactivity, neglect of duty or malfeasance. The

60 procedures must contain provisions requiring that the person to be removed be provided with a  
61 written statement of the reasons for removal and an opportunity to be heard on the matter.

62 (l) The planning commission shall not transact any business unless a majority of members  
63 are contemporaneously present at a commission meeting. This quorum requirement shall not be  
64 amended by the commission's bylaws.

NOTE: The purpose of this bill is to impose limits on the number of appointees to certain county and municipal bodies; and impose quorum requirements on certain county and municipal bodies.

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