

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

House Bill 4819

BY DELEGATE HOUSEHOLDER

[Introduced February 11, 2020; Referred to the
Committee on Political Subdivisions then the
Judiciary]

1 A BILL to amend and reenact §8-35-1 and §8-35-2 of the Code of West Virginia, 1931, as
 2 amended; and to amend said code by adding thereto four new sections, designated §8-
 3 35-3, §8-35-4, §8-35-5 and §8-35-6, all relating to the dissolution of municipalities and to
 4 modernizing the process.

Be it enacted by the Legislature of West Virginia:

ARTICLE 35. DISSOLUTION OF MUNICIPALITIES.

§8-35-1. Forfeiture of charter or certificate of incorporation; notice; dissolution of municipality.

1 (a) Any municipality heretofore incorporated or which ~~shall~~ is hereafter ~~be~~ incorporated
 2 ~~and which has no substantial indebtedness, and which shall fail~~ fails for one year to exercise its
 3 corporate powers and privileges, or which has not 20 qualified voters, or in which there were not
 4 20 legal votes cast at its last election, or the population of which shall be reduced below 100
 5 persons and so remain for six consecutive months, shall, in either event, have its charter or
 6 certificate of incorporation and all rights, powers and privileges so conferred upon ~~such~~ that
 7 municipality forfeited and declared dissolved.

8 (b) The county ~~court~~ commission of the county wherein any such municipality or the major
 9 portion of the territory thereof is located ~~shall have jurisdiction to~~ may hear and determine all
 10 matters relating to the forfeiture of ~~such~~ the charter or certificate of incorporation, upon the petition
 11 of one or more of its ~~inhabitants~~ qualified voters, or the State Auditor, and to dissolve ~~such~~ the
 12 municipal corporation. Ten days' notice of the filing of ~~such~~ the petition with the clerk of the county
 13 ~~court~~ commission of ~~such~~ the county, served upon the mayor and recorder or on the last mayor
 14 or recorder thereof, ~~shall be~~ is sufficient notice upon which ~~such~~ the ~~court~~ commission shall so
 15 act, and upon the proper proof of the allegations of ~~such~~ the petition, any such charter or certificate
 16 of incorporation shall be declared forfeited and the municipal corporation dissolved and all debts
 17 of ~~such~~ the municipality shall be ordered paid and the forfeiture and dissolution ~~shall~~ may not
 18 become effective until ~~such~~ the debts have been paid or until the State Auditor has fully exercised

19 ~~the actions authorized by §8-4-1 et seq. of this code. Upon such forfeiture and dissolution all~~
 20 ~~interest of such municipality in corporate funds, if any, in excess of the amounts required to pay~~
 21 ~~corporate debts shall be and the same is hereby transferred to and vested in the State of West~~
 22 ~~Virginia to be controlled by the State Auditor. If the territory so incorporated, or a major part~~
 23 ~~thereof, either in area or in population, shall, however, within one year next after such declaration~~
 24 ~~of forfeiture and dissolution by the county court be reincorporated under this chapter, then the~~
 25 ~~Auditor of the State of West Virginia shall convey unto such new municipality all of the rights of~~
 26 ~~the State of West Virginia in and to the corporate property, moneys, claims, demands and taxes~~
 27 ~~collected or uncollected, of the former municipal corporation so dissolved~~

28 (c) A petition for forfeiture shall be filed with the clerk of the county commission. The
 29 petition shall be in writing and set forth the reasons for the request to forfeit and dissolve the
 30 municipality. The petition for dissolution shall be served upon the mayor and recorder, or on the
 31 last mayor or recorder thereof.

32 (d) The State Auditor shall promptly conduct an examination under the authority granted
 33 under §6-9-1 et seq. of this code, to determine the financial condition of the municipality.

PART II. VOLUNTARY DISSOLUTION OF CLASS III CITY OR
 CLASS IV TOWN OR VILLAGE MUNICIPALITIES.

§8-35-2. Voluntary dissolution of Class III city or Class IV town or village municipal corporation.

1 (a) A petition for dissolution shall be filed with the governing body of the municipality. The
 2 petition shall be in writing, set forth the reasons for the request to dissolve the municipality, and
 3 be signed by not less than 25 percent of the legal voters of the municipality as shown by the last
 4 preceding general election. The petition for dissolution shall be served upon the mayor and
 5 recorder, or on the last mayor or recorder thereof.

6 (b) Upon the filing of a qualified petition for dissolution of twenty-five or more percent of

7 ~~the legal voters of any Class III city or Class IV town or village~~ municipal corporation, the governing
 8 body thereof shall submit to the qualified voters of ~~such~~ the municipal corporation at the next
 9 regular municipal election, or at a special municipal election called for that purpose, the question
 10 of continuing or dissolving such municipal corporation. ~~It shall be the responsibility of the~~ The
 11 governing body ~~to~~ shall verify the total number of eligible petitioners and ~~to~~ determine whether
 12 the required percentage of petitioners has been obtained. The governing body shall provide
 13 written notice of the election to the State Auditor within five days of determining an election date.
 14 The ballots, or ballot labels where voting machines are used, shall have written or printed on them
 15 the words:

16 ~~// For Continuance of Municipal Corporation~~

17 ~~// For Dissolution of Municipal Corporation~~

18 Shall the municipality of _____ (name of municipality subject to dissolution) be
 19 dissolved?

20 () Yes.

21 () No.

22 (c) The dissolution election shall be conducted in accordance with applicable election
 23 laws.

24 (d) If a majority of the legal votes cast be for dissolution, then ~~such~~ the municipal
 25 corporation shall by operation of law be dissolved ~~upon termination of the term of the governing~~
 26 ~~body then in office: Provided, That all debts or other obligations outstanding against such~~
 27 ~~municipal corporation shall be settled in full~~ at the expiration of six (6) months from the date of the
 28 election on the question. The State Auditor shall promptly conduct an examination under the
 29 authority granted under §6-9-1 et seq. of this code, to determine the financial condition of the
 30 municipality. If a majority of the legal votes cast be for continuance, then ~~such~~ the municipal
 31 corporation shall continue in existence unless and until dissolved at some later date under ~~the~~
 32 ~~provisions of §8-35-1 of this code~~ or this section. ~~two. Provided, however, That another election~~

33 ~~under the provisions of this section two shall not be held within two years of the last such election.~~
34 ~~Any election under the provisions of this section two shall be held, conducted and superintended~~
35 ~~and the result thereof ascertained, certified, returned and canvassed in the same manner and by~~
36 ~~the same persons as an election for municipal officers of such municipal corporation.~~

PART III. INVOLUNTARY DISSOLUTION OF MUNICIPAL CORPORATION.

§8-35-3. Involuntary dissolution of municipal corporation.

1 (a) The prosecuting attorney for the county where the municipality or the major portion of
2 the territory thereof is located, or the State Auditor, may petition for involuntary dissolution of a
3 municipality when the government of a municipality ceases to function by reason of the following:

4 (1) General municipal elections have not been called in the municipality for two successive
5 general municipal elections;

6 (2) A majority of all the members of the governing body fail to qualify for two successive
7 general municipal elections.

8 (b) The petition requesting involuntary dissolution shall be filed in the circuit court in the
9 county in which the municipality or the major portion of the territory thereof is located. The petition
10 shall state the facts which justify the request and shall set forth a detailed statement of the assets
11 and liabilities of the municipality insofar as they can be ascertained.

12 (c) Upon the filing of a petition for the involuntary dissolution of a municipality, the circuit
13 court shall fix a date for a hearing on the request and written notice shall be provided to the State
14 Auditor, and the prosecuting attorney for the county where the municipality or the major portion
15 of the territory thereof is located, within five days. The date of the hearing shall be not less than
16 30 days after the date of filing. The prosecuting attorney for the county in which such municipality
17 or the major portion of the territory thereof is located shall give at least 20 days' notice of the
18 hearing by publication in a newspaper of general circulation in the municipality, and by posting
19 copies of the notice in a manner consistent with court proceedings. The notice shall state the
20 purpose of the petition and the date and place of the hearing.

21 (d) The State Auditor shall promptly conduct an examination under the authority granted
22 under §6-9-1 et seq. of this code, to determine the financial condition of the municipality.

23 (e) Any person owning property in or registered to vote in the municipality may appear at
24 the hearing and give testimony for or against dissolution of the municipality. If the court finds that
25 the government of the municipality has ceased to function because of the reasons listed in
26 subsection (a) of this section, it shall enter an order for dissolution of the municipality. The order
27 of the circuit court shall state when the dissolution shall take effect and appoint the State Auditor
28 to act as special receiver to wind up the affairs of the municipality and dispose of its property.

29 (f) The order of dissolution shall be filed with the clerk of the county commission and the
30 Office of the Secretary of State.

PART IV. DISPOSITION OF PROPERTY, DEBTS AND LIABILITIES.

§8-35-4. State Auditor as special receiver.

1 (a) Upon declaration of the forfeiture of the charter or certificate of incorporation by the
2 county commission, or the certification of the election for voluntary dissolution, or upon an order
3 by the circuit court for involuntary dissolution, as set forth in this article, the State Auditor shall by
4 operation of law, act as special receiver for the dissolved municipality.

5 (b) The State Auditor, acting as special receiver of the dissolved municipality may:

6 (1) Take legal control of assets, including municipal corporate property, moneys, claims,
7 demands and taxes collected or uncollected;

8 (2) Protect assets;

9 (3) File claims on behalf of the dissolved municipality in receivership;

10 (4) Initiate necessary and proper bankruptcy proceedings, including, but not limited to,
11 filing a petition in the name of the municipal corporation under Chapter 9 of Title 11 of the United
12 States Code, and to act on the municipality's behalf in such proceeding, to distribute assets to
13 claimants or creditors, and;

14 (5) Take any such actions as the State Auditor may determine necessary and appropriate
15 to wind up the affairs of the municipality.

16 (c) Any excess of amounts required to pay corporate debts shall be maintained in a special
17 fund titled "municipal dissolution account" to be controlled by the State Auditor to offset the costs
18 associated with conducting examinations and legal expenses pursuant to the provisions of this
19 article.

§8-35-5. Disposition of property belonging to dissolved municipal corporation.

1 (a) No dissolution of an incorporated municipality may impair the rights of any person in
2 any contract or agreement to which the municipality is a party.

3 (b) The deposits and investments belonging to the dissolved municipality shall be used
4 first to pay the municipality's debts and liabilities.

5 (c) If the deposits and investments belonging to the municipality are not sufficient to satisfy
6 its debts and liabilities, then the State Auditor may initiate the liquidation of the dissolved
7 municipality's property pursuant to §8-35-8 of this code.

§8-35-6. Sale and liquidation of dissolved municipal assets.

1 (a) If the State Auditor, as special receiver, makes a determination that a dissolved
2 municipality's real and/or personal property shall be liquidated to satisfy its debts and liabilities
3 then a public auction may be conducted. The property shall be sold either at an on-site public
4 auction or by utilizing an Internet-based public auction service, or at a suitable location within the
5 county wherein the dissolved municipality was principally located and shall be conducted by the
6 State Auditor. Before making a sale, notice of the time, terms, manner and either the location of
7 the sale or the Internet-based public auction service to be utilized, together with a brief description
8 of the property to be sold, shall be published as a Class II legal advertisement in compliance with
9 §6-9-1 et seq. of this code, and the publication area for the publication shall be within the county.

10 (b) The provisions of subsection (a) of this section concerning sale as public auction are
11 not applicable to the State Auditor selling or disposing of the property for public use to:

- 12 (1) The United States of America its instrumentalities, agencies or political subdivisions;
13 (2) The State of West Virginia, or its political subdivisions, including county boards of
14 education, volunteer fire departments, and volunteer ambulance services; or
15 (3) Any authority, commission, instrumentality, or agency established by act of the State
16 of West Virginia.
- 17 (c) The State Auditor is not required to exclusively consider the present commercial or
18 market value of the property for all sales made pursuant to this section,
- 19 (d) No officer or employee of the State Auditor or the prosecuting attorney for the county
20 where the municipality or the major portion of the territory thereof is located, or his or her
21 immediate family, may purchase or acquire any property municipal assets disposed of pursuant
22 to this section.

NOTE: The purpose of this bill is to modernize the process for dissolution of municipal corporations in this state.

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