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2021 regular session

ENGROSSED

Committee Substitute

for

House Bill 2592

By Delegates Summers, Howell, Phillips, J. Jeffries, Sypolt, Riley, Haynes, G. Ward, Kimble, Keaton and Smith

[Introduced February 18, 2021; referred to the Committee on Political Subdivisions then the Judiciary]

A BILL to amend and reenact §3-1-31 of the Code of West Virginia, 1931, as amended; to amend and reenact §11-8-16 and §11-8-17 of said Code; and, to amend and reenact §18-9-1, §18-9-2, and §18-9-2a of said code, all relating to bringing uniformity to local elections by ensuring that all counties and municipalities have their local elections held on a date that a statewide election is already taking place, on a primary or general election date; requiring that local elections and any elections to increase levies coincide with a primary or a general election; removing references to special elections for levies; providing a saving clause for the terms of existing local elected officials by providing for a vote of local bodies to schedule their elections in a manner which brings them into conformity with the new structure; providing a saving clause for the renewal of existing levies by providing for levying bodies and boards of education to vote in order to schedule such elections to renew or extend these levies in a manner which brings them into conformity with the new structure.

Be it enacted by the Legislature of West Virginia:

CHAPTER 3. ELECTIONS.

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-31. Days and hours of elections; scheduling of local elections; extension or shortening of terms of certain elected local officials.

General elections shall be held in the several election precincts of the state on the Tuesday next after the first Monday in November of each even year. Primary and special elections shall be held on the days provided by law therefor: *Provided,* That beginning July 1, 2021, all local elections shall be held concurrently with a scheduled primary or general election.

At every primary, general, or special election the polls shall be opened in each precinct on the day of ~~such~~ the election at ~~six-thirty o’clock~~ 6:30 in the ~~forenoon~~ morning and be closed at ~~seven-thirty o’clock~~ 7:30 in the evening.

All counties and municipalities in the state shall hold their local elections, including, but not limited to, municipal elections, bond elections, special levy elections, etc. on the date of a scheduled primary or general election. Local elections are prohibited from being held on any date other than delineated in this section: *Provided*, That, notwithstanding any provision of this Code to the contrary, in the case of municipal elections, when current terms for serving elected officials end at a time after July 1, 2021, and which will not be at a regularly scheduled primary or general election, the municipality, for those seats up for reelection, must, by a vote of its governing body, choose to hold the elections to fill those upcoming vacancies in those offices either at the next scheduled primary election or the next scheduled general election: *Provided, however,* That the governing body cannot, by such action, extend the term of those offices for more than twelve months, or reduce the term of those offices for more than twelve months.

**CHAPTER 11. TAXATION.**

ARTICLE 8. LEVIES.

§11-8-16. What order for election to increase levies to show; vote required; amount and continuation of additional levy; issuance of bonds.

A local levying body may provide for an election to increase the levies by entering on its record of proceedings an order setting forth:

(1) The purpose for which additional funds are needed;

(2) The amount for each purpose;

(3) The total amount needed;

(4) The separate and aggregate assessed valuation of each class of taxable property within its jurisdiction;

(5) The proposed additional rate of levy in cents on each class of property;

(6) The proposed number of years, not to exceed ~~five~~ six, to which the additional levy applies;

(7) The fact that the local levying body will or will not issue bonds, as provided by this section, upon approval of the proposed increased levy.

The local levying body shall submit to the voters within their political subdivision the question of the additional levy at either a primary~~,~~ or general~~, or~~ ~~special~~ election. If at least 60 percent of the voters cast their ballots in favor of the additional levy, the county commission or municipality may impose the additional levy. If at least a majority of voters cast their ballot in favor of the additional levy, the county board of education may impose the additional levy: *Provided,* That any additional levy adopted by the voters, including any additional levy adopted prior to the effective date of this section, shall be the actual number of cents per each $100 of value set forth in the ballot provision, which number shall not exceed the maximum amounts prescribed in this section, regardless of the rate of regular levy then or currently in effect, unless such rate of additional special levy is reduced in accordance with the provisions of section six-g of this article or otherwise changed in accordance with the applicable ballot provisions. For county commissions, this levy shall not exceed a rate greater than seven and fifteen hundredths cents for each $100 of value for Class I properties, and for Class II properties a rate greater than twice the rate for Class I properties, and for Class III and IV properties a rate greater than twice the rate for Class II properties. For municipalities, this levy shall not exceed a rate greater than six and twenty-five hundredths cents for each $100 of value for Class I properties, and for Class II properties a rate greater than twice the rate for Class I properties, and for Class III and IV properties a rate greater than twice the rate for Class II properties. For county boards of education, this levy shall not exceed a rate greater than twenty-two and ninety-five hundredths cents for each $100 of value for Class I properties, and for Class II properties a rate greater than twice the rate for Class I properties, and for Class III and IV properties a rate greater than twice the rate for Class II properties.

Levies authorized by this section shall not continue for more than five years without resubmission to the voters.

Upon approval of an increased levy as provided by this section, a local levying body may immediately issue bonds in an amount not exceeding the amount of the increased levy plus the total interest thereon, but the term of the bonds shall not extend beyond the period of the increased levy.

Insofar as they might concern the issuance of bonds as provided in this section, the provisions of sections three and four, article one, chapter thirteen of this code shall not apply.

§11-8-17. Special levy elections; notices; ~~election officers~~ conduct of election; supplies; canvass of returns; form of ballot.

(a) The local levying body shall publish a notice, calling the election, as a Class II-0 legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code, and the publication area for such publication shall be the territory in which the election is held. Such notice shall be so published within 14 consecutive days next preceding the election.

(b) All the provisions of the law concerning general elections shall apply so far as they are practicable: *Provided*, That, notwithstanding any provision of this code to the contrary, in the case of a levy which expires at a time after July 1, 2021, and which will not be up for renewal at a regularly scheduled primary or general election, the local levying body shall, by a vote, choose to hold the election to renew that levy either at the next scheduled primary election or the next scheduled general election: *Provided, however,* That notwithstanding any other provision of this code, a local levying body, by a vote authorizing the action, may, prior to January 1, 2022, hold a special election for the purpose of synchronizing the renewal of an existing or expiring levy with a future primary or general election. ~~, except as follows: (1) Where a special election is held, the local levying body, having due regard to the minimum expense involved, shall determine the number of election officials necessary to properly conduct said election, which number shall in no case be less than three commissioners and two clerks, and shall appoint the same and fix and pay their compensation, but otherwise the election officials shall be such as are appointed to serve with respect to the general election held at the same time~~

~~(2) The local levying body shall provide the election supplies necessary for such election and shall canvass the returns thereof:~~ *~~Provided~~*~~, That the county commission is the board of canvassers to canvass the returns of levy elections called by the board of education.~~

(c) A separate ballot shall be used at a levy election held in connection with any other election. The ballot shall be entitled: “Special election to authorize additional levies for the year(s) \_\_\_\_\_\_\_\_\_\_\_\_ and for the purpose of \_\_\_\_\_\_\_\_\_\_\_\_\_ according to the order of the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ entered on the \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.”

The additional levy shall be on Class I property \_\_\_\_\_\_\_\_\_\_ cents; on Class II property \_\_\_\_\_\_\_\_\_\_\_\_\_\_ cents; on Class III property (if any) \_\_\_\_\_\_\_\_\_\_\_\_\_\_ cents; on Class IV property (if any) \_\_\_\_\_\_\_\_\_\_\_\_\_ cents.

CHAPTER 18. EDUCATION.

ARTICLE 9. SCHOOL FINANCES.

§18-9-1. School levies; when levy election necessary. ~~special election~~

The Board of Education of every school district or independent school district, wherein a majority of the votes cast on the question of school levy at the last primary or general ~~or special~~ election at which the question of school levy was submitted to the qualified voters of such district or independent school district were in favor of such levy, shall annually, at the time and in the manner provided by law for making levies, levy a tax on all taxable property in its district or independent school district for the support and maintenance of free schools therein: *Provided,* That upon petition of not less than forty percent of the registered voters in any district or independent school district, as shown by the last registration of voters therein, addressed to the Board of Education of such district or independent school district, requesting the submission of the school levy to the voters of such district, the Board of Education of such district or independent district shall submit the question of authorizing a levy for school purposes to the voters of such district at the general election held next after such petition is presented; and the board of ballot commissioners of the county of which such district constitutes a part shall prepare or cause to be prepared separate ballots from the official ballot to be voted at said election, which separate ballot shall have printed thereon the following:

BALLOT ON SCHOOL LEVY

/ / For school levy.

/ / Against school levy.

The officers conducting the general election at each place of voting shall conduct the election on the question of the school levy and canvass and certify the result thereof to the commissioners of the county court in the same manner, so far as applicable, as they are required to conduct and certify the result of the general election; and such commissioners shall promptly certify the result of the election on the question of the school levy to the Board of Education of the district or independent school district within which the election was held, and such certificate shall be entered by the secretary as part of the minutes and records of such Board of Education. If a majority of the ballots cast at said general election in any district or independent school district on the question of such school levy be in favor of the levy, the Board of Education of such district or independent school district shall annually thereafter levy a tax on all the taxable property in its district, for the support and maintenance of the schools in the district, until such time as an election may again be held on the question of such school levy in the manner hereinbefore provided.

~~In the event that a majority of the votes cast in any school district or independent school district upon the question of the school levy submitted at any general election be against the levy, the board of Education of such district or independent school district shall have authority to call a special election for the purpose of resubmitting the question of authorizing such school levy to the voters of such district or independent district. Such special election shall be held in accordance with the provisions of the next succeeding section of this article, so far as applicable, and the ballots shall be similar to those heretofore described in this section. If a majority of the ballots cast at such special election in any school district or independent school district be in favor of the school levy, the board of Education of such district or independent school district shall annually thereafter levy a tax for the support of the free schools in its district or independent school district, in the manner provided by law for school levies, until such time as the question of school levy may again be submitted at a general election upon a petition signed by not less than forty percent of the registered voters of the district or independent district, as hereinbefore provided, and a majority of the votes cast at such election be against the levy. If a majority of the votes cast at any such special election be against the school levy the board of Education of any such district or independent district shall again submit the question of a school levy to the voters of its district or independent district at the next general election:~~ *~~Provided, however,~~* ~~That upon petition of not less than forty percent of the qualified voters of the district, as determined from the last registration of voters, such Board of Education may again submit the question of school levy at a special election to be held for that purpose, in the manner hereinbefore provided, prior to the next succeeding general election~~

§18-9-2. Elections under this chapter; procedure.

(a) Any and all elections authorized by this chapter for school purposes ~~may, unless otherwise provided~~ will be held ~~separately or~~ in connection with any primary or general ~~or special~~ election. Notice of an election shall be given by the publication of the order of the board calling the same as a Class II-0 legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code, and the publication area for such publication is the territory in which the election is to be held. The order shall be published within 14 consecutive days next preceding the day of election. All provisions of the law concerning primary or general ~~and special~~ elections apply in these elections insofar as is practicable. ~~In cases of special elections the board calling the election shall appoint necessary election officers. The secretary of the board shall procure and furnish to the election commissioners at each place of voting the ballots, poll books, tally sheets and other election supplies necessary for the election~~ In calling elections, district and county boards of education shall follow the forms prescribed by the Attorney General. For all elections authorized by this chapter for school purposes, the county commission is the board of canvassers to canvass the returns.

(b) In the case of a levy which expires at a time after July 1, 2021, and which will not be up for renewal at a regularly scheduled primary or general election, notwithstanding any provision of this Code to the contrary, the Board of Education shall, by a vote, choose to hold the election to renew that levy either at the next scheduled primary election or the next scheduled general election: *Provided,* That, notwithstanding any other provision of this code, a Board of Education, by a vote authorizing the action, may, prior to January 1, 2022, hold a special election for the purpose of synchronizing the renewal of an existing or expiring levy with a future primary or general election.

§18-9-2a. Levies.

The board, as provided by §11-8-9 of this code shall impose a levy for the maintenance and operation of all schools in the county. This levy shall be uniform throughout the county and the funds shall be distributed and expended without regard to the locality from which collected: *Provided,* That if a majority of the voters of any political subdivision of the county shall file with the Board of Education of the county of which such political subdivision is a part, at their budget session as provided by §11-8-9 of this code, a petition praying for increased salaries, funds for the support and maintenance of libraries, medical and dental clinics, supervision and/or an extension of the school term therein for a given number of months, the board shall extend the term of school for the number of months requested in such petition and shall lay levies sufficiently high on each $100’ valuation of taxable property within such political subdivision according to the last assessment thereof for such purpose or purposes as specified in the petition, which levies shall be separated and designated as a special maintenance fund levy and special teachers’ fund levy of the political unit for which such levies are laid.

All additional levies so authorized shall be made as provided by law and shall in no case exceed the statutory limitation or maximum for the various classes of property of the political subdivision authorizing the same.

Upon a petition of 100 taxpayers of any political subdivision of a county to the Board of Education of the county of which such political subdivision is a part, the Board of Education shall call an election within said political subdivision for the purpose of authorizing the county board of education to lay special increased rates of levy on the property of said political subdivision, as provided by law, for educational purposes as may be set forth in the petition and in the call for the election. The election authorizing special increased levy rates shall be placed on the ballot in the primary or general election following the filing of the petition.

The bonded indebtedness incurred by former magisterial school district boards and independent district boards shall remain the debt of the property originally pledged as security for the payment of the obligation.

The county board shall impose separate levies in the manner provided by §11-8-9 and §11-8-13 of this code, upon the property in former magisterial districts and independent districts for the payment of current requirements of principal and interest of bonded indebtedness incurred prior to the creation of the county school districts.

NOTE: The purpose of this bill is to provide that all local elections be held on a date that a statewide election is being held.

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