

# WEST VIRGINIA LEGISLATURE

## 2021 REGULAR SESSION

**Introduced**

### **House Bill 2751**

**FISCAL  
NOTE**

BY DELEGATES WESTFALL AND HOTT

[BY REQUEST OF THE WEST VIRGINIA STATE AUDITOR]

[Introduced February 24, 2021; Referred to the  
Committee on Political Subdivisions then the  
Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
 2 designated §6-9C-1, §6-9C-2, §6-9C-2A, §6-9C-3, §6-9C-4, §6-9C-5, §6-9C-6, §6-9C-7,  
 3 §6-9C-8, §6-9C-9, §6-9C-10, and §6-9C-11; to amend and reenact §8-35-2 of said code;  
 4 and to amend said code by adding thereto by adding 4 new sections, designated §8-35-  
 5 3, §8-35-4, §8-35-5 and §8-35-6, all relating generally to fiscal emergencies of local  
 6 governments; establishing a system to remediate those emergencies; requiring certain  
 7 action be taken by the State Auditor or a designee; and modernizing the process for the  
 8 dissolution of municipalities.

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

## **CHAPTER 6. GENERAL PROVISIONS RESPECTING OFFICERS.**

### **ARTICLE 9C. LOCAL FISCAL EMERGENCIES.**

#### **§6-9C-1. Legislative findings.**

1 (a) The Legislature finds:

2 (1) That local governments are instrumentalities of this state, and the Legislature must act  
 3 for the public health, safety and welfare of its citizens to promote fiscal integrity of local  
 4 governments to prevent future emergencies;

5 (2) That negative economic changes, waste, fraud or abuse by public officials, or a  
 6 combination thereof, necessarily result in a significant impact on the revenues and effectiveness  
 7 of local governments, and cause significant indebtedness without any current possibility for  
 8 recovery; and

9 (3) That the failure of a local government to take actions on its own to address such a  
 10 condition will adversely affect the health, safety and welfare not only of the residents of the local  
 11 government, but also of other people of the state.

12 (b) It is the intent of the Legislature to direct the State Auditor or a designee to:

13 (1) Take necessary and appropriate actions to limit and restrict the powers of local  
 14 governments to prevent the abuse of statutory powers;

15           (2) Require reports and examinations of their financial condition, transactions, operations  
16 and undertakings;

17           (3) Ensure the fiscal integrity of local governments so that they may provide for the health,  
18 safety and welfare of their citizens; and

19           (4) Determine if local governments have paid due principal and interest on their debt  
20 obligations, meet financial obligations to their employees, vendors and suppliers, and provide for  
21 proper financial accounting procedures, budgeting and taxing practices.

22           (c) The Legislature further finds that the fiscal emergency conditions described in this  
23 article result from and constitute abuses of the powers of a local government to borrow money,  
24 contract debts and levy taxes, and that those conditions impair and threaten the health, safety  
25 and welfare of the people of the state within and beyond the local government.

**§6-9C-2. Definitions.**

1           As used in this article:

2           “Committee” means a financial planning and supervision group officially created under this  
3 article.

4           “Debt obligations” means bonds, notes, certificates of indebtedness, bond anticipation  
5 notes, current revenue notes, local government fund notes, leases or other obligations issued or  
6 incurred in borrowing money, or to renew, refund, fund or refinance, or issued in exchange for,  
7 such obligations, and any interest coupons pertaining thereto.

8           “Default” means failure to pay the principal of or the interest on a debt obligation, or failure  
9 to make other payment to be made to the holder or owner of a debt obligation, in the full amount  
10 and at the time provided for in the contractual commitment with respect thereto, unless the time  
11 for such payment has been extended by the owner or holder of the debt obligation without penalty  
12 or premium and without the effect of subjecting the local government to the initiation of remedies  
13 pertaining to such debt obligation or other debt obligations.

14           “Deficit fund” means the general fund or any other fund that, as at the time indicated, has

15 a deficit balance or a balance that is less than the amount required to be in such fund pursuant to  
16 law or pursuant to contractual requirements, demonstrating that over a period of time  
17 expenditures charged or chargeable to the fund have exceeded moneys credited to the fund, or  
18 that moneys credited to the fund have not been in the amounts required by law or contractual  
19 requirements.

20 “Effective financial accounting and reporting system” means an accounting and reporting  
21 system as prescribed by the West Virginia State Auditor’s Office.

22 “Employee benefits” means expenditures for goods and services furnished to local  
23 government officers or employees by the local government, including, but not limited to, such  
24 benefits as food, temporary housing and clothing, and the provision of pension, retirement,  
25 disability, hospitalization, health care, insurance or other benefits to employees requiring the  
26 advance payment of money other than directly to employees or other beneficiaries, or the deposit  
27 or reservation of money for such purpose.

28 “Estimated revenues” means the aggregate estimates of revenue receipts in the budget  
29 of the general fund and other funds as estimated and supplemented, modified, or amended by  
30 the local government, as approved by the West Virginia State Auditor’s Office or other regulatory  
31 agency.

32 “Financial recovery plan” means the financial plan approved by the committee in  
33 accordance with §6-9C-6 of this code, as it may from time to time be amended in accordance with  
34 this article.

35 “Fiscal emergency” means the existence of fiscal emergency conditions.

36 “Fiscal emergency period” means the period of time commencing on the date when the  
37 determination of a fiscal emergency is made by the State Auditor or a designee and ending when  
38 the determination of termination is made and certified.

39 “Fiscal watch” means the existence of fiscal watch conditions as provided in this article.

40 “General fund” means the fund used to account for and report the primary operating

41 activities of the local government.

42 “General fund budget” means the estimates of revenue and expenditure as a plan of  
43 financial operation of the general fund during the applicable fiscal year as approved by the West  
44 Virginia State Auditor’s Office or other regulatory agency.

45 “Local government” means any unit of local government within the state, including a  
46 county, municipality, and any other authority, board, commission, district, office, public authority,  
47 public corporation, or other instrumentality of a county, municipality, or any combination of two or  
48 more local governments.

49 “Other funds” means funds other than the general fund, including, but not limited to,  
50 special revenue funds, capital project funds, debt service funds, permanent funds, enterprise  
51 funds, internal service funds, pension trust funds, custodial funds, investment trust funds, and  
52 private purpose trust funds.

53 “Payroll” means compensation due and payable to employees of local government other  
54 than employee benefits.

**§6-9C-2A. Auditable Condition of Local Governments.**

1 The State Auditor or designee may determine that a local government’s accounts, records,  
2 files, or reports have not been maintained in accordance with §6-9-2 of this code. The State  
3 Auditor or designee shall notify the local government, in writing, of the deficiencies present and  
4 the action necessary to present the accounts, records, files, or reports in an auditable condition.  
5 Furthermore, the State Auditor or designee may prescribe the deadline for the local government  
6 in completing the necessary action and institute a fiscal monitoring plan to improve the local  
7 government’s financial records.

**§6-9C-3. Initiating fiscal watch review.**

1 A local government may undergo a fiscal watch review to determine whether it is  
2 approaching a state of fiscal emergency. A fiscal watch review shall be initiated by a written  
3 request to the State Auditor or a designee from the governing body when duly authorized by a

4 majority of the legislative authority; or may be initiated by the State Auditor or a designee if  
5 conditions for a fiscal watch have been determined to exist. Fiscal watch conditions include but  
6 are not limited to (a) the inability of a local government to meet financial obligations (b) the lack  
7 of adequate financial records necessary to conduct an examination pursuant to §6-9-1 et seq. of  
8 this code (c) an examination pursuant to §6-9-1 et seq. of this code would cause an undue  
9 financial burden to the local government. The State Auditor or a designee will notify the local  
10 government when a fiscal watch review will or will not be conducted. The State Auditor's Office  
11 will perform the fiscal watch review, which may be substituted for an examination, as required by  
12 §6-9-1 et seq. of this code at the discretion of the State Auditor or a designee. Furthermore, all  
13 working papers acquired or created to produce the fiscal watch review shall be considered  
14 confidential pursuant to §6-9-9b of this code.

**§6-9C-4. Guidelines for identifying potential for declarations of fiscal watch or fiscal  
emergency; rulemaking authority.**

1 (a) The State Auditor or a designee shall propose rules for legislative approval in  
2 accordance with the provisions of §29A-3-1 et seq. of this code, setting forth guidelines for  
3 identifying fiscal practices and budgetary conditions of local government that, if uncorrected, could  
4 result in declaration of a fiscal watch or fiscal emergency.

5 (b) If the State Auditor or a designee determines that a local government is engaging in  
6 any of those practices or that any of those conditions exist, the State Auditor or a designee may  
7 declare the local government to be under a fiscal watch.

8 (c) The State Auditor or a designee, may visit and inspect any local government that is  
9 declared to be under a fiscal watch. The State Auditor or a designee may provide technical  
10 assistance to the local government in implementing proposals to eliminate the practices or  
11 budgetary conditions that prompted the declaration of fiscal watch and may make  
12 recommendations concerning those proposals.

13 (d) If the State Auditor or a designee finds that a local government declared to be under a

14 fiscal watch has not made reasonable proposals or otherwise taken action to discontinue or  
15 correct the fiscal practices or budgetary conditions that prompted the declaration of fiscal watch,  
16 and if the State Auditor or a designee considers it necessary to prevent further fiscal decline, the  
17 State Auditor or a designee may determine that the local government should be in a state of fiscal  
18 emergency.

**§6-9C-5. Conditions constituting grounds for fiscal watch.**

1 (a) The conditions constituting grounds for a fiscal watch may include, but are not limited  
2 to:

3 (1) Accounts have been due and payable for more than 30 days or for which a penalty  
4 was added for failure to pay. Accounts include, but are not limited to, final judgments, employee  
5 benefits payments due and payable, and amounts due and payable to persons and other  
6 governmental entities and including any interest and penalties thereon. Accounts that are due  
7 and payable do not include any account, or portion of any account, that is being contested in good  
8 faith.

9 (2) The deficit amount within the general fund for the preceding fiscal year exceed the  
10 estimated revenues made in the general fund budget of the current fiscal year.

11 (3) The local government has failed to comply with debt covenants as required by the  
12 issuer of any debt with such requirement.

13 (4) Any such rule, as proposed by the State Auditor or a designee for legislative approval  
14 in accordance with the provisions of §29A-3-1 et seq. of this code, identified as indicators of  
15 financial watch condition.

**§6-9C-6. Declaring existence of fiscal watch; financial recovery plan.**

1 (a) Upon determining that one or more of the conditions constituting grounds for a fiscal  
2 watch are present, the State Auditor or a designee shall issue a written declaration of the  
3 existence of a fiscal watch to the governing body of the local government. The fiscal watch shall  
4 be in effect until the State Auditor or a designee determines that the conditions have been

5 satisfactorily addressed, cancels the watch, or until the State Auditor or a designee determines  
6 that a state of fiscal emergency exists. The State Auditor or a designee, shall provide such  
7 technical and support services to the municipal corporation, county or political subdivision after a  
8 fiscal watch has been declared to exist as the State Auditor or a designee considers necessary  
9 and provide mandatory recommendations to address the fiscal watch conditions.

10 (b) Within 90 days after the day a written declaration of the existence of a fiscal watch is  
11 issued under this section, the governing body of the local government for which a fiscal watch  
12 was declared shall submit to the State Auditor or a designee a financial recovery plan that shall  
13 identify actions to be taken to eliminate all of the conditions described in §6-9C-5 of this code,  
14 and shall include a schedule detailing the approximate dates for beginning and completing the  
15 actions and a five-year forecast reflecting the effects of the actions. The financial recovery plan  
16 also shall evaluate the feasibility of entering into shared services agreements with other political  
17 subdivisions for the joint exercise of any power, performance of any function, or rendering of any  
18 service, if so authorized by statute. The financial recovery plan is subject to review and approval  
19 by the State Auditor or a designee. The State Auditor or a designee may extend the amount of  
20 time by which a financial recovery plan is required to be filed, for good cause shown.

21 (c) The State Auditor or a designee may declare that a fiscal emergency condition exists  
22 under this article in the municipal corporation, county or political subdivision if either of the  
23 following applies:

24 (1) A feasible financial recovery plan for a local government or which a fiscal watch was  
25 declared is not submitted within the time period prescribed by subsection (b) of this section, or  
26 within any extension of time thereof; or

27 (2) The State Auditor or a designee finds that a local government for which a fiscal watch  
28 has been declared has not made reasonable proposals or otherwise taken action to discontinue  
29 or correct the fiscal practices or budgetary conditions that prompted the declaration of fiscal  
30 watch, and the State Auditor or a designee determines a fiscal emergency declaration is

31 necessary to prevent further decline.

**§6-9C-7. Fiscal emergency conditions.**

1 (a) The conditions constituting a fiscal emergency of a local government may include, but  
2 are not limited to:

3 (1) The existence, of a default on any debt obligation for more than 30 days.

4 (2) The failure to make payment of all payroll to employees of the local government in the  
5 amounts and at the times required by law, ordinances, resolutions, or agreements.:

6 (3) The failure to make payment of all employee benefits of the local government in the  
7 amounts and at the times required by law, ordinances, resolutions, or agreements.

8 (4) The existence of a condition in which accounts were due and payable from the general  
9 fund and that either had been due and payable for at least 30 days or to which a penalty has been  
10 added for failure to pay, including, but not limited to, final judgments, employee benefits payments  
11 due and payable, and amounts due and payable to persons and other governmental entities and  
12 including any interest and penalties thereon. Accounts due and payable do not include any  
13 account, or portion of any account, that is being contested in good faith.

14 (5) The deficit amount within the general fund for the preceding fiscal year exceed the  
15 estimated revenues made in the general fund budget of the current fiscal year.

16 (6) The local government has failed to comply with debt covenants as required by the  
17 issuer of any debt with such requirement.

18 (7) Any such rule, as proposed by the State Auditor or a designee for legislative approval  
19 in accordance with the provisions of §29A-3-1 et seq. of this code, identified as indicators of a  
20 financial emergency condition.

21 (8) The State Auditor or a designee declares a fiscal emergency pursuant to section 6 of  
22 this code.

23 (b) Any condition described in subdivisions (4), (5), (6) or (7) of subsection (a) of this  
24 section shall not constitute a fiscal emergency condition if the local government clearly

25 demonstrates to the satisfaction of the State Auditor or a designee that such condition no longer  
26 exists prior to the time of the determination.

27 (c) Neither the time periods nor the amounts used in subsection (a) of this section to  
28 determine what constitutes a fiscal emergency condition of a local government for purposes of  
29 this article authorize actions otherwise contrary to law or any agreement of the local government.

**§6-9C-8. Determining existence of fiscal emergency conditions.**

1 (a) The existence of fiscal emergency conditions shall be determined by the State Auditor  
2 or a designee. Fiscal emergency condition determinations shall be set forth in written reports by  
3 the State Auditor or a designee, which shall be filed with the governing body, and with the State  
4 Treasurer, Secretary of State, Governor, and Legislative Auditor.

5 (b) In making such determination, the State Auditor or a designee may rely on reports or  
6 other information filed or otherwise made available by the local government, accountants' reports,  
7 or other sources and data the State Auditor or a designee considers reliable for such purpose.  
8 The determination of a fiscal emergency condition may be made without need of the specific  
9 amounts noted related to such conditions.

10 (c) A determination by the State Auditor or a designee under this section that a fiscal  
11 emergency condition does not exist is final and conclusive and not appealable. A determination  
12 by the State Auditor or a designee under this section that a fiscal emergency exists is final, except  
13 that the governing body affected by a determination of the existence of a fiscal emergency  
14 condition under this section, when authorized by a majority of the members of their governing  
15 body, may appeal the determination of the existence of a fiscal emergency condition to the circuit  
16 court of the county having territorial jurisdiction over the local government. The appeal shall be  
17 heard expeditiously by the circuit court for good cause shown shall take precedence over all other  
18 civil matters except earlier matters of the same character. Notice of such appeal must be filed  
19 with the State Auditor or a designee and such court within 30 days after the notification of a fiscal  
20 emergency determination by the State Auditor or a designee to the governing body of the local

21 government as provided for in subsection (a) of this section.

22 (d) Upon such appeal, determinations of the State Auditor or a designee shall be  
23 presumed to be valid and the local government shall have the burden of proving, by clear and  
24 convincing evidence, that each of the determinations made by the State Auditor or a designee as  
25 to the existence of a fiscal emergency condition under this Article was in error. If the local  
26 government fails, upon presentation of its case, to prove by clear and convincing evidence that  
27 each such determination by the State Auditor or a designee was in error, the court shall dismiss  
28 the appeal. The local government and the State Auditor or a designee may introduce any evidence  
29 relevant to the existence or nonexistence of such fiscal emergency conditions at the times  
30 indicated in the applicable provisions of subsections (a) and (b) of this section.

31 (e) The pendency of any such appeal shall not affect or impede the operations of this  
32 article; no restraining order, temporary injunction, or other similar restraint upon actions consistent  
33 with this article shall be imposed by the court or any court pending determination of such appeal;  
34 and all things may be done under this article that may be done regardless of the pendency of any  
35 such appeal. Any action taken or contract executed pursuant to this article during the pendency  
36 of such appeal is valid and enforceable among all parties, notwithstanding the decision in such  
37 appeal. If the circuit court reverses the determination of the existence of a fiscal emergency  
38 condition by the State Auditor or a designee, the determination no longer has any effect, and any  
39 procedures undertaken as a result of the determination shall be terminated.

40 (f) All expenses incurred by the State Auditor or a designee relating to a determination or  
41 termination of a fiscal emergency or a fiscal watch under this article, including providing technical  
42 and support services, or for conducting a financial review, shall be reimbursed from an  
43 appropriation for that purpose. If necessary, the governing body may provide sufficient funds for  
44 these purposes.

**§6-9C-9. Financial planning and supervision committee; rule-making authority.**

1 (a) Upon the occurrence of a fiscal emergency in any local government, there is

2 established, with respect to that local government, a supervising body to perform essential  
3 governmental functions of the local government to be known as the “financial planning and  
4 supervision committee for (name of local government)”, which, in that name, may exercise all  
5 authority vested in such a committee by this article. Furthermore, if a local government in which  
6 fiscal watch or fiscal emergency exists has failed to develop a financial recovery plan the.  
7 “financial planning and supervision committee for (name of local government)” may develop such  
8 a plan for the local government.

9 (b) The State Auditor shall propose rules for legislative approval in accordance with the  
10 provisions of §29A-3-1 et seq. of this code, setting forth the following:

11 (1) Minimum requirements for the composition of the members of said committee;

12 (2) The rules of governance for such a committee;

13 (3) Requirements for the detailed financial recovery plan to be submitted by the subject  
14 local government;

15 (4) The powers, duties and functions of the committee;

16 (5) The payment of expenses and obligations;

17 (6) The establishment of enhanced financial reporting;

18 (7) The requirements of the local government operating under the plan;

19 (8) Recourse for a noncompliant local government;

20 (9) Limitations for appropriations;

21 (10) Communications of the committee;

22 (11) The approval of debt obligations;

23 (12) The issuance of general obligation, special obligation, or revenue bonds and notes in  
24 anticipation of bonds; and

25 (13) The continuance and dissolution of the committee.

### **§6-9C-10. Compliance**

1 (a) Local government officials shall:

2           (1) Take the necessary corrective action recommended by the State Auditor or designee  
3 pursuant to §6-9C-2A of this code to present financial records in an auditable condition.

4           (2) Complete and mandatory recommendations imposed by the State Auditor or designee  
5 pursuant to §6-9C-6a of this code.

6           (3) Provide a financial recovery plan in accordance with §6-9C-6b of this code.

7           (4) Make reasonable proposals or otherwise take action to discontinue or correct the  
8 fiscal practices or budgetary conditions that prompted the declaration of fiscal watch or fiscal  
9 emergency.

10           (5) Comply with the financial recovery plan instituted by a financial planning and  
11 supervision committee created pursuant to §6-9C-9 of this code.

12           (b) If local government officials fail to adequately comply with the provision of this section,  
13 the State Auditor or designee may institute appropriate recourse measures pursuant to the rules  
14 authorized by §6-9C-9 of this code.

**§6-9C-11. Severability.**

1           (a) In case any section or provision of this article, including any condition or prerequisite  
2 to any action or determination thereunder, or in case any act or action, or part thereof, made, or  
3 taken under this article, or any application thereof, is for any reason held to be illegal or invalid,  
4 such illegality or invalidity shall not affect the remainder thereof or any other section or provision  
5 of this article, including any condition or prerequisite to any action or determination thereunder,  
6 or any agreement, act or action, or part thereof, made, entered into, or taken under such article,  
7 which shall be construed and enforced and applied as if such illegal or invalid portion were not  
8 contained therein, nor shall such illegality or invalidity or any application thereof affect any legal  
9 and valid application thereof, and each such section, provision, agreement, act, or action, or part  
10 thereof, shall be deemed to be effective, operative, made, and entered into or taken in the manner  
11 and to the full extent permitted by law.

12           (b) Any action or proceeding bringing into question the interpretation, legality, or validity

13 of any provision of this article, the existence or authority, or the legality or validity of any act, of  
 14 the committee or the State Auditor or of any action taken under this article, is a matter of great  
 15 public interest to the state and shall be advanced on the docket of the court and expedited to final  
 16 determination.

## CHAPTER 8. MUNICIPAL CORPORATIONS.

### ARTICLE 35. DISSOLUTION OF MUNICIPALITIES.

#### PART I. FORFEITURE OF CHARTER OR CERTIFICATE OF INCORPORATION.

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

1 (a) Any municipality heretofore incorporated or which shall hereafter be incorporated ~~and~~  
 2 ~~which has no substantial indebtedness, and~~ which shall fail for one year to exercise its corporate  
 3 powers and privileges, or which has not 20 qualified voters, or in which there were not 20 legal  
 4 votes cast at its last election, or the population of which shall be reduced below 100 persons and  
 5 so remain for six consecutive months, shall in either event have its charter or certificate of  
 6 incorporation and all rights, powers and privileges so conferred upon such municipality forfeited  
 7 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 hear and determine all matters  
 10 relating to the forfeiture of such charter or certificate of incorporation, upon the petition of one or  
 11 more of its ~~inhabitants~~ qualified voters, or the State Auditor, and to dissolve such municipal  
 12 corporation. Ten days' notice of the filing of such petition with the clerk of the county ~~court~~  
 13 commission of such county, served upon the mayor and recorder, or on the last mayor or recorder  
 14 thereof, shall be sufficient notice upon which such county ~~court~~ commission shall so act, and upon  
 15 the proper proof of the allegations of such petition, any such charter or certificate of incorporation  
 16 shall be declared forfeited and the municipal corporation dissolved and all debts of such

17 municipality shall be ordered paid and the forfeiture and dissolution shall ~~not~~ become effective  
 18 ~~until~~ when such debts have been paid or when the State Auditor has fully exercised the actions  
 19 authorized by §8-35-4 of said code. ~~Upon such forfeiture and dissolution all interest of such~~  
 20 ~~municipality in corporate funds, if any, in excess of the amounts required to pay corporate debts~~  
 21 ~~shall be and the same is hereby transferred to and vested in the State of West Virginia, to be~~  
 22 ~~controlled by the State Auditor. If the territory so incorporated, or a major part thereof, either in~~  
 23 ~~area or in population, shall, however, within one year next after such declaration of forfeiture and~~  
 24 ~~dissolution by the county court be reincorporated under this chapter, then the Auditor of the State~~  
 25 ~~of West Virginia shall convey unto such new municipality all of the rights of the State of West~~  
 26 ~~Virginia in and to the corporate property, moneys, claims, demands and taxes collected or~~  
 27 ~~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 municipal corporation at the next regular  
 9 municipal election, or at a special municipal election called for that purpose, the question of  
 10 continuing or dissolving such municipal corporation. It shall be the responsibility of the governing  
 11 body to verify the total number of eligible petitioners and to determine whether the required  
 12 percentage of petitioners has been obtained. The governing body shall provide written notice of  
 13 the election to the State Auditor within five days of determining an election date. The ballots, or  
 14 ballot labels where voting machines are used, shall have written or printed on them the words:

15 ~~/For Continuance of Municipal Corporation~~

16 ~~/For Dissolution of Municipal Corporation~~

17 Shall the municipality of \_\_\_\_\_ (name of municipality subject to dissolution) be  
 18 dissolved?

19 ( ) Yes.

20 ( ) No.

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

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

31 ~~this article or this section two. Provided, however, That another election under the provisions of~~  
 32 ~~this section two shall not be held within two years of the last such election. Any election under the~~  
 33 ~~provisions of this section two shall be held, conducted and superintended and the result thereof~~  
 34 ~~ascertained, certified, returned and canvassed in the same manner and by the same persons as~~  
 35 ~~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 such municipality or the major portion  
 2 of 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 such municipality or the major portion of the territory thereof is located. The  
 10 petition shall state the facts which justify the request and shall set forth a detailed statement of  
 11 the assets and liabilities of the municipality insofar as they can be ascertained. The petition shall  
 12 state the facts which justify the request insofar as they can be ascertained.

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

20 copies of the notice in a manner consistent with court proceedings. The notice shall state the  
21 purpose of the petition and the date and place of the hearing.

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

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

30 (f) The order of dissolution shall be filed with the clerk of the county commission and the  
31 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, shall have  
6 the power and authority to:

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

9 (2) Protect assets;

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

11 (4) Initiate necessary and proper bankruptcy proceedings, including, but not limited to  
12 filing a petition in the name of the municipal corporation under Chapter 9 of Title 11 of the United

13 States Code, and to act on the municipality's behalf in such proceeding, to distribute assets to  
14 claimants or creditors, and;

15 (5) Any such actions as the State Auditor may deem necessary and appropriate to wind  
16 up the affairs of the municipality.

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

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

1 (a) No dissolution of an incorporated municipality shall 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) In the event that deposits and investments belonging to the municipality are not  
6 sufficient to satisfy its debts and liabilities, then the State Auditor may initiate the liquidation of the  
7 dissolved 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 must 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 such shall be conducted by  
6 the State Auditor. Before making such sale, notice of the time, terms, manner and either the  
7 location of the sale or the Internet-based public auction service to be utilized, together with a brief  
8 description of the property to be sold, shall be published as a Class II legal advertisement in  
9 compliance with the provision of §59-3-1 et seq. of this code, and the publication area for such

10 publication shall be the county.

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

13 (1) The United States of America its instrumentalities, agencies or political subdivisions;

14 (2) The State of West Virginia, or its political subdivisions, including county boards of  
15 education, volunteer fire departments, and volunteer ambulance services; or

16 (3) Any authority, commission, instrumentality, or agency established by act of the State  
17 of West Virginia.

18 (c) For all sales made pursuant to this section, the State Auditor is not required to  
19 exclusively consider the present commercial or market value of the property.

20 (d) No officer or employee of the State Auditor or the Prosecuting Attorney for the county  
21 where such municipality or the major portion of the territory thereof is located, or his or her  
22 immediate family, may purchase or acquire any property municipal assets disposed of pursuant  
23 to this section.

NOTE: The purpose of this bill is to establish a system to remediate fiscal emergencies of local governments, and 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.