WEST virginia legislature

2022 regular session

Committee Substitute

for

House Bill 4353

By Delegates Smith, Summers, Mallow, Ellington, Steele, Hardy, Phillips, Sypolt, Howell, Fast, and Martin

[Introduced January 24, 2022; referred to the Committee on Political Subdivisions then the Judiciary]

A BILL to amend and reenact §3-1-30 and §3-1-31 of the Code of West Virginia, 1931, as amended; to amend and reenact §3-2-19 of said code; to amend and reenact §3-11-1 of said code; to amend and reenact §7-1-1a of said code; to amend and reenact §7-4-1 of said code; to amend and reenact §7-14B-21 of said code; to amend and reenact §7-17-12 of said code; to amend and reenact §7-20-7 and §7-20-12 of said code; to amend and reenact §8-1-2 of said code; to amend and reenact §8-2-5 of said code; to amend and reenact §8-3-6 of said code; to amend and reenact §8-4-7, §8-4-8, and §8-4-10 of said code; to amend and reenact §8-5-5 of said code; to amend and reenact §8A-7-7, §8A-7-8a, and §8A-7-13 of said code; to amend and reenact §11-8-16, and §11-8-17 of said code; to amend and reenact §13-1-7, and §13-1-11 of said code; to amend and reenact §15-2-13 of said code; to amend and reenact §16-12-1 of said code; to amend and reenact §18-9-1, §18-9-2, and §18-9-2a of said code; to amend and reenact §20-5K-3 of said code; to amend and reenact §22-15A-18 of said code; to amend and reenact §22C-4A-2, and §22C-4A-3 of said code; to amend and reenact §22C-6-3 of said code; to amend and reenact §29-22C-7 of said code; to amend and reenact §29-25-7 of said code; to amend and reenact §47-20-26 of said code; to amend and reenact §47-21-24 of said code; and to amend and reenact §60-5-1, §60-5-3, and §60-5-4 of said code, all relating to bringing uniformity to local elections by ensuring that all counties hold local elections 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 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; and authorizing poll clerks to work and be compensated for both full and half days worked during an election.

Be it enacted by the Legislature of West Virginia:

CHAPTER 3. ELECTIONS.

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-30. Nomination and appointment of election officials and alternates; notice of appointment; appointment to fill vacancies in election boards.

(a) For any primary, general or special election held throughout a county, poll clerks and election commissioners may be nominated as follows:

(1) The county executive committee for each of the two major political parties may, by a majority vote of the committee at a duly called meeting, nominate one qualified person for each team of poll clerks and one qualified person for each team of election commissioners to be appointed for the election;

(2) The appointing body shall select one qualified person as the additional election commissioner for each board of election officials;

(3) Each county executive committee shall also nominate qualified persons as alternates for at least 10 percent of the poll clerks and election commissioners to be appointed in the county and is authorized to nominate as many qualified persons as alternates as there are precincts in the county to be called upon to serve in the event any of the persons originally appointed fail to accept appointment or fail to appear for the required training or for the preparation or execution of their duties;

(4) When an executive committee nominates qualified persons as poll clerks, election commissioners or alternates, the committee, or its chair or secretary on its behalf, shall file in writing with the appointing body, no later than the 70th day before the election, a list of those persons nominated and the positions for which they are designated.

(b) For any municipal primary, general or special election, the poll clerks and election commissioners may be nominated as follows:

(1) In municipalities which have municipal executive committees for the two major political parties in the municipality, each committee may nominate election officials in the manner provided for the nomination of election officials by county executive committees in subsection (a) of this section;

(2) In municipalities which do not have executive committees, the governing body shall provide by ordinance for a method of nominating election officials or shall nominate as many eligible persons as are required, giving due consideration to any recommendations made by voters of the municipality or by candidates on the ballot.

(c) The governing body responsible for appointing election officials is:

(1) The county commission for any primary, general or special election ordered by the county commission and any joint county and municipal election;

(2) ~~The board of education for any special election ordered by the board of education conducted apart from any other election;~~

~~(3)~~ The municipal governing body for any primary, general or special municipal election ordered by the governing body.

(d) The qualifications for persons nominated to serve as election officials may be confirmed prior to appointment by the clerk of the county commission for any election ordered by the county commission or for any joint county and municipal election and by the official recorder of the municipality for a municipal election.

(e) The appropriate governing body shall appoint the election officials for each designated election board no later than the 49th day before the election as follows:

(1) Those eligible persons whose nominations for poll clerk and election commissioner were timely filed by the executive committees and those additional persons selected to serve as an election commissioner are to be appointed;

(2) The governing body shall fill any positions for which no nominations were filed.

(f) At the same time as the appointment of election officials or at a subsequent meeting the governing body shall appoint persons as alternates. However, no alternate may be eligible for compensation for election training unless the alternate is subsequently appointed as an election official or is instructed to attend and actually attends training as an alternate and is available to serve on election day. Alternates shall be appointed and serve as follows:

(1) Those alternates nominated by the executive committees shall be appointed;

(2) The governing body may appoint additional alternates who may be called upon to fill vacancies after all alternates designated by the executive committees have been assigned, have declined to serve or have failed to attend training; and

(3) The governing body may determine the number of persons who may be instructed to attend training as alternates.

(g) The clerk of the county commission shall appoint qualified persons to fill all vacancies existing after all previously appointed alternates have been assigned, have declined to serve or have failed to attend training.

(h) Within seven days following appointment, the clerk of the county commission shall notify, by first-class mail, all election commissioners, poll clerks and alternates of the fact of their appointment and include with the notice a response notice form for the appointed person to return indicating whether or not he or she agrees to serve in the specified capacity in the election.

(i) The position of any person notified of appointment who fails to return the response notice or otherwise confirm to the clerk of the county commission his or her agreement to serve within 14 days following the date of appointment is considered vacant and the clerk shall proceed to fill the vacancies according to the provisions of this section.

(j) If the governing body and the clerk of the county commission are unable to nominate a sufficient number of qualified persons agreeing to serve on a standard receiving board for each precinct, the clerk may assign members of one precinct’s standard receiving board to serve simultaneously on the standard receiving board of another precinct where the polling places of both precincts are located within the same physical building or facility: *Provided*, That no more than three precincts within the same building or facility may share board members in this manner.

(k) On election day, if an appointed election official or a poll clerk working a full day fails to appear at the polling place by ~~45 minutes past five o’clock~~ 5:45 a.m. ~~on election day~~ or, for a poll clerk working a half day, a later time designated by the clerk of the county commission, the election officials present shall contact the office of the clerk of the county commission for assistance in filling the vacancy. The clerk shall proceed as follows:

(1) The clerk may attempt to contact the person originally appointed, may assign an alternate nominated by the same political party as the person absent if one is available or, if no alternate is available, may appoint another eligible person;

(2) If the election officials present are unable to contact the clerk within a reasonable time, they shall diligently attempt to fill the position with an eligible person of the same political party as the party that nominated the person absent until a qualified person has agreed to serve;

(3) If two teams of election officials, as defined in §3-1-29 of this code, are present at the polling place, the person appointed to fill a vacancy in the position of the additional commissioner may be of either political party.

(l) In a municipal election, the recorder or other official designated by charter or ordinance to perform election responsibilities shall perform the duties of the clerk of the county commission as provided in this section.

(m) Nothing in this section shall be construed to require any county executive committee or county commission to offer half day shifts for poll clerks during any election.

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

(a) 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, 2022, all local municipal elections may be held concurrently with a regularly scheduled statewide primary or general election. Municipalities shall follow the provisions of §8-5-5 for coming to an agreement with the county for establishing the election date, shared costs if any, election officials and registration books to be used, and other matters pertaining to changing the municipal election to be held on the same day as the county-state primary or general election.

(b) 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.

ARTICLE 2. REGISTRATION OF VOTERS.

§3-2-19. Maintenance of active and inactive registration records for municipal elections.

(a) For municipal elections, the registration records of active and inactive voters shall be maintained as follows:

(1) Clerks of the county commissions shall prepare pollbooks or voter lists to be used in municipal elections when the county precinct boundaries and the municipal precinct boundaries are the same and all registrants of the precinct are entitled to vote in state, county and municipal elections within the precinct or when the registration records of municipal voters within a county precinct are separated and maintained in a separate municipal section or book for that county precinct and can be used either alone or in combination with other pollbooks or voter lists to make up a complete set of registration records for the municipal election precinct.

(2) ~~Upon request of the municipality, and if the clerk of the county commission does not object, separate municipal precinct books shall be maintained in cases where municipal or ward boundaries divide county precincts and it is impractical to use county pollbooks or voter lists or separate municipal sections of those pollbooks or voter lists. If the clerk of the county commission objects to the request of a municipality for separate municipal precinct books, the State Election Commission must determine whether the separate municipal precinct books should be maintained~~

~~(3)~~ No registration record may be removed from a municipal registration record unless the registration is lawfully transferred or canceled pursuant to the provisions of this article in both the county and the municipal registration records.

(b) Within 30 days following the entry of any annexation order or change in street names or numbers, the governing body of an incorporated municipality shall file with the clerk of the county commission a certified current official municipal boundary map and a list of streets and ranges of street numbers within the municipality to assist the clerk in determining whether a voter’s address is within the boundaries of the municipality.

ARTICLE 11. AMENDMENTS TO THE STATE CONSTITUTION

§3-11-1. Proposing amendments to state Constitution; withdrawal of proposed amendments.

Any amendment to the Constitution of the State may be proposed in either house of the Legislature by a joint resolution.

When an amendment as proposed is agreed to as provided by section two, article fourteen of the Constitution, the question of ratification or rejection of such amendment shall be submitted to the voters of the state at the next primary or general election, as specified: *Provided*, That a statewide question on the issuance of bonds may be submitted to the voters of the state at a special election called for that purpose.

The Legislature may, by concurrent resolution adopted by a two-thirds vote of the members elected to each house, withdraw from consideration the question of ratification or rejection by the voters of such amendment in any session prior to the election at which it is to be submitted to the voters.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-1a. Requirements for reforming, altering or modifying a county commission; alternative forms of county government.

(a) A county government may be reformed, altered or modified as follows:

(1) The county commission or county council of the county may pass a resolution making application to the Legislature to reform, alter or modify an existing form of county government in accordance with the requirements of the West Virginia Constitution and this section; or

(2) Ten percent of the registered voters of the county may sign a petition requesting reformation, alteration or modification of the existing form of county government in accordance with the requirements of the West Virginia Constitution and this section.

(b) A county commission or county council seeking to make application to reform, alter or modify its county government pursuant to the provisions of section thirteen, article IX of the West Virginia Constitution shall adopt a resolution containing the following information:

(1) The reasons for the reformation, alteration or modification of the county commission or county government;

(2) The form of the proposed county government selected from the alternatives authorized by this section;

(3) The proposed name of the county government;

(4) When the question of reformation, alteration or modification of the county government will be on the ballot;

(5) How and when the officers of the proposed county government will be elected or appointed, taking into consideration the following:

(A) When the election on the question of reformation, alteration or modification of the county government will be held;

(B) The normal election cycles for county officials; and

(C) The time frames for early and absentee voting provided in article three, chapter three of this code; and

(6) When the new county government will become effective.

(c) Prior to the adoption of a resolution seeking to reform, alter or modify a county commission or county council, the governing body of the county shall publish by a Class II legal advertisement in one or more newspapers of general circulation throughout the county, in compliance with the provisions of §59-3-1 *et seq.* of this code, notice of the proposed changes to the current form of county government. The publication area shall be the entire county. The notice shall summarize the proposed changes to the county government and include the date, time and place for the meeting or meetings in which the resolution will be considered.

(d) After the publication and adoption of the resolution, the following information shall be submitted by the county to the Clerk of the Senate and to the Clerk of the House of Delegates no later than the tenth day of a regular legislative session in which the request for reforming, altering or modifying a county commission or county government is to be considered by the Legislature:

(1) A certified copy of the adopted resolution;

(2) A copy of the required public notice;

(3) The vote on the adoption of the resolution; and

(4) The date the resolution was adopted.

(e) Registered voters of a county seeking to reform, alter or modify the county commission or county council pursuant to section thirteen, article IX of the West Virginia Constitution shall submit a petition, signed by ten percent of the registered voters in the county, to the county commission or county council, setting forth the information required in subsection (b) of this section. Upon receipt of the petition, the county commission or county council shall verify that the signatures on the petition are: (1) Legally registered voters of the county; and (2) equal to ten percent of the registered voters of the county.

(f) The county commission or county council shall, within thirty days of receipt of a Constitutionally defective petition, return it to the petitioners with a written statement as to why the petition is defective. The petitioners may, within 90 days of receipt of the written statement from the county commission or council and after making the necessary changes, resubmit the petition to the county commission or county council.

(g) After verifying that the signatures on the petition meet the Constitutional requirements, the county commission or council shall forward the petition to the Clerk of the Senate and to the Clerk of the House of Delegates no later than the tenth day of a regular legislative session in which the request for reforming, altering or modifying a county commission or county government is to be considered by the Legislature.

(h) After receipt of a certified resolution or verified petition by the Clerk of the Senate and the Clerk of the House of Delegates, the Legislature shall determine whether all Constitutional and statutory requirements have been met. If such requirements have not been met, the certified resolution or verified petition shall be returned with a written statement of the deficiencies. A certified resolution or verified petition may be revised following the procedures set forth in this section for an original submission and then may be resubmitted to the Clerk of the Senate and the Clerk of the House of Delegates for consideration by the Legislature. The requirement that the petition be submitted prior to the tenth day of the legislative session shall not apply to resubmitted resolutions or petitions.

(i) Following passage of an act by the Legislature authorizing an election on the question of reforming, altering or modifying a county commission or council, the question shall be placed on the ballot of the county at the next primary or general election following such passage ~~or, at the expense of the county, a special election~~.

(j) Following approval of the reformation, alteration or modification of the county commission or council by a majority of the county’s registered voters, nomination of the county commission or council members and, where authorized, the chief executive, shall be held in the next primary election or the primary election set forth in the resolution or petition to reform, alter or modify the county commission or council. Election of the county commissioners or council members and, where authorized, the chief executive shall be held in the next general election or the general election set forth in the resolution or petition to change the form of the county commission.

(k) All elections required by this section shall be held in accordance with the provisions of chapter three of this code.

(l) The following are guidelines for forms of county government:

(1) “*Chief executive - county commission plan*”. — Under this plan:

(A) There shall be a chief executive elected by the registered voters of the county at large and three county commissioners that shall be elected at large;

(B) The commission shall be the governing body;

(C) The chief executive shall have the exclusive authority to supervise, direct and control the administration of the county government. The chief executive shall carry out, execute and enforce all ordinances, policies, rules and regulations of the commission;

(D) The salary of the chief executive shall be set by the Legislature;

(E) Other nonelected officers and employees shall be appointed by the chief executive subject to the approval of the county commission; and

(F) The chief executive shall not be a member of the county commission nor shall he or she hold any other elective office.

(2) “*County manager - county commission plan*”. — Under this plan:

(A) There shall be a county manager appointed by the county commission and three county commissioners that may be elected at large;

(B) The commission shall be the governing body;

(C) The county manager shall have the exclusive authority to supervise, direct and control the administration of the county government. The county manager shall carry out, execute and enforce all ordinances, policies, rules and regulations of the commission;

(D) The salary of the county manager shall be set by the county commission;

(E) Other nonelected officers and employees shall be appointed by the county manager subject to the approval of the commission; and

(F) The county manager shall not be a member of the county commission nor shall he or she hold any other elective office.

(3) “*County administrator - county commission plan*”. — Under this plan:

(A) There shall be a county administrator appointed by the county commission and three county commissioners that shall be elected at large;

(B) The commission shall be the governing body;

(C) The county administrator shall have the authority to direct the administration of the county government under the supervision of the county commission. The county administrator shall carry out, execute and enforce all ordinances, policies, rules and regulations of the commission;

(D) The salary of the county administrator shall be set by the county commission;

(E) The county administrator shall appoint or employ all subordinates and employees for whose duties or work he or she is responsible to the commission; and

(F) The county administrator shall not be a member of the county commission nor shall he or she hold any other elective office.

(4) A county council consisting of four or more members that shall be elected at large.

(5) Any form of county government adopted pursuant to section thirteen, article IX of the West Virginia Constitution and this section may, by the methods set forth in this section, return to the traditional county commission or change to another form of county government, as set out in this section.

(m) The purpose of this section is to establish the basic requirements for reforming, altering or modifying a county commission or county council pursuant to section thirteen, article IX of the West Virginia Constitution. The structure and organization of a county government may be specified in greater detail by resolution or ordinance so long as such provisions do not conflict with the purposes and provisions set forth in this section, chapter seven-a of this code or the Constitution.

ARTICLE 4. PROSECUTING ATTORNEY, REWARDS AND LEGAL ADVICE.

§7-4-1. Duties of prosecuting attorney; further duties upon request of Attorney General.

(a) The prosecuting attorney shall attend to the criminal business of the state in the county in which he or she is elected and qualified and when the prosecuting attorney has information of the violation of any penal law committed within the county, the prosecuting attorney shall institute and prosecute all necessary and proper proceedings against the offender and may, in such case, issue or cause to be issued a summons for any witness the prosecuting attorney considers material. Every public officer shall give the prosecuting attorney information regarding the commission of any criminal offense committed within his or her county. The prosecuting attorney shall also attend to civil suits in the county in which the state or any department, commission or board thereof, is interested, and to advise, attend to, bring, prosecute or defend, as the case may be, all matters, actions, suits and proceedings in which such county or any county board of education is interested.

(b) (1) In furtherance of a prosecuting attorney’s duty to investigate and prosecute criminal offenses, a prosecuting attorney and assistant prosecuting attorneys under his or her supervision shall have the authority to arrest any person committing a violation of the criminal laws of the State of West Virginia, the United States or a violation of Rule 42 of the West Virginia Rules of Criminal Procedure which occur within the office of the prosecuting attorney and committed in the presence of the prosecuting attorney or assistant prosecuting attorney.

(2) For purposes of subdivision (1) of this subsection, the arrest authority of a prosecuting attorney or assistant prosecuting attorney shall be consistent with that authority vested in a deputy sheriff within the geographic limitations set forth in said subdivision.

(3) Should a prosecuting attorney desire to establish a program authorizing prosecuting attorneys and assistant prosecuting attorneys to carry a concealed firearm for self-defense purposes pursuant to the provisions of 18 U. S. C. §926B, the following criteria must be met:

(A) The prosecuting attorney’s office shall have a written policy authorizing the prosecuting attorney and his or her assistant prosecuting attorneys to carry a concealed firearm for self-defense purposes;

(B) There shall be in place in the office of the prosecuting attorney a requirement that the prosecuting attorney and assistant prosecuting attorneys must regularly qualify in the use of a firearm with standards therefor which are equal to or exceed those required of sheriff’s deputies in the county in which the prosecuting attorney was elected or appointed;

(C) The office of the prosecuting attorney shall issue a photographic identification and certification card which identify the prosecuting attorney or assistant prosecuting attorneys as law-enforcement employees of the prosecuting attorney’s office pursuant to the provisions of §30-29-12 of this code.

(4) Any policy instituted pursuant to paragraph (A), subdivision (3) of this subsection shall include provisions which: (i) Preclude or remove a person from participation in the concealed firearm program who is subject to any disciplinary or legal action which could result in the loss of the authority to participate in the program; (ii) preclude from participation persons prohibited by federal or state law from possessing or receiving a firearm and; (iii) prohibit persons from carrying a firearm pursuant to the provisions of this subsection while in an impaired state as defined in §17C-5-2 of this code.

(5) Any prosecuting attorney or assistant prosecuting attorney who participates in a program authorized by the provisions of this subsection shall be responsible, at his or her expense, for obtaining and maintaining a suitable firearm and ammunition.

(6) It is the intent of the Legislature in enacting the amendments to this section during the 2017 regular session of the Legislature to authorize prosecuting attorney’s offices wishing to do so to allow prosecuting attorneys and assistant prosecuting attorneys to meet the requirements of the federal Law-Enforcement Officer’s Safety Act, 18 U. S. C. §926B.

(c) The prosecuting attorney shall keep his or her office open in the charge of a responsible person during the hours when polls are open during general and primary ~~and special~~ countywide election days, and the prosecuting attorney, or the prosecuting attorney’s assistant, if any, shall be available for the purpose of advising election officials. The prosecuting attorney, when requested by the Attorney General, shall perform or assist the Attorney General in performing, in the county in which the prosecuting attorney is elected, any legal duties required to be performed by the Attorney General and which are not inconsistent with the duties of the prosecuting attorney as the legal representative of the county. The prosecuting attorney, when requested by the Attorney General, shall perform or assist the Attorney General in performing, any legal duties required to be performed by the Attorney General in any county other than that in which the prosecuting attorney is elected and for the performance of these duties in any county other than that in which the prosecuting attorney is elected, the prosecuting attorney shall be paid his or her actual expenses.

Upon the request of the Attorney General, the prosecuting attorney shall make a written report of the state and condition of the several causes in which the state is a party, pending in his or her county, and upon any matters referred to the prosecuting attorney by the Attorney General as provided by law.

ARTICLE 14B. CIVIL SERVICE FOR CORRECTIONAL OFFICERS.

§7-14B-21. County commission of counties with a population of less than twenty-five thousand may place correctional officers under civil service; protest and election with respect thereto.

The county commission of any county having a population of less than 25,000 may by order entered of record provide that the provisions of this article providing civil service for correctional officers shall apply to such county on and after the effective date of this article. A copy of such order, together with a notice advising the qualified voters of such county of their right to protest the placing of correctional officers of such county under civil service, shall be published 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 county.

In the event 15 percent of the qualified voters of such county protest such order, by petition duly signed by them in their own handwriting (which petition may be signed in any number of counterparts) and filed with the county clerk of such county within 60 days after publication of such copy and notice, such order shall not become effective unless and until it is ratified by a majority of the legal votes cast with respect to the question of civil service coverage for the correctional officers of such county by the qualified voters of such county at a ~~regular or special~~ primary or general election. Any such election shall be conducted and superintended and the results thereof ascertained as provided by law for ~~regular or special~~ primary or general elections, as the case may be.

Whenever the correctional officers of any county are placed under civil service pursuant to the provisions of this section, such civil service system for the correctional officers of such county shall thereupon become mandatory and all of the provisions of this article shall apply to the correctional officers of such county with like effect as if said county had a population of 25,000 or more.

ARTICLE 17. COUNTY FIRE BOARDS.

§7-17-12. County fire service fees; petition; election; dedication; and amendment.

(a) Every county commission which provides fire protection services has plenary power and authority to provide by ordinance for the continuance or improvement of such service, to make regulations with respect thereto and to impose by ordinance, upon the users of such services, reasonable fire service rates, fees and charges to be collected in the manner specified in the ordinance.

(b) Any fees imposed under this article are dedicated to the county fire board for the purposes provided in this article.

(c) A county commission can impose by ordinance, upon the users of such service, a reasonable fire service fee, by one of two methods:

(1) Ten percent of the qualified voters shall present a petition duly signed by them in their own handwriting, and filed with the clerk of the county commission, directing that the county commission impose such a fee. The county commission shall not have a lien on any property as security for payments due under the ordinance. Any ordinance enacted under the provisions of this section shall be published as a Class II 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 county in which the county fire board is located. In the event 30 percent of the qualified voters of the county by petition duly signed by them in their own handwriting and filed with the clerk of the county commission within 45 days after the expiration of such publication protest against such ordinance as enacted or amended, the ordinance may not become effective until it is ratified by a majority of the legal votes cast thereon by the qualified voters of such county at any primary orgeneral ~~or special~~ election as the county commission directs. Voting thereon may not take place until after notice of the submission has been given by publication as above provided for the publication of the ordinance after it is adopted. The powers and authority hereby granted to county commissions are in addition to and supplemental to the powers and authority otherwise granted to them by other provisions of this code; or

(2) If the county fire board determines an amendment in the fee imposed in subsection (a) of this article is necessary, it may, by resolution, request the county commission for such a change. Upon receipt of the resolution from the county fire board, the county commission shall, by ballot referendum, amend the ordinance imposing a fire fee and adopt the changes in the fee requested by the county fire board.

(A) This referendum, to determine whether it is the will of the voters of a county that an amendment to the fire fee is necessary, may be held at any regular primary or general election, or, in conjunction with any other countywide election. Any election at which the question of amending the fire fee is voted upon shall be held at the voting precincts established for holding primary or general elections. All of the provisions of the election laws, when not in conflict with the provisions of this article, shall apply to voting and elections hereunder, insofar as practicable. The county commission shall, not less than 90 days before the election, order that the issue be placed on the ballot and referendum held at the next primary~~,~~ or general, or special election to determine whether it is the will of the voters of the county that a fire fee be amended: *Provided*, That prior to issuing the order, the county commission shall publish the ordinance which must contain the anticipated allocation of any fees or charges and which would be enacted should the referendum succeed as a Class II 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 county in which the county fire board is located.

(B) The ballot, or the ballot labels where voting machines are used, shall have printed thereon substantially the following:

“Shall the county commission be permitted to amend the fire fee in \_\_\_\_\_\_\_\_\_\_ County, West Virginia?

\_\_ For the fee amendment.

\_\_ Against the fee amendment.

(Place a cross mark in the square opposite your choice.)”

(C) If a majority of legal votes cast upon the question be for the fire fee amendment, the county commission shall, after the certification of the results of the referendum, thereinafter adopt an ordinance, within 60 days of certification, establishing the fire fee amendment in the county: *Provided*, That such program shall be implemented and operational no later than 12 months following certification. If a majority of the legal votes cast upon the question be against the fire fee amendment, then the policy shall not take effect, but the question may again be submitted to a referendum at any subsequent election in the manner herein provided.

ARTICLE 20. FEES AND EXPENDITURES FOR COUNTY DEVELOPMENT.

§7-20-7. Establishment of impact fees; levies may be used to fund existing capital improvements.

(a) Impact fees assessed against a development project to fund capital improvements and public services may not exceed the actual proportionate share of any benefit realized by such project relative to the benefit to the resident taxpayers.

Notwithstanding any other provision of this code to the contrary, those counties that meet the requirements of §7-20-6 of this code are hereby authorized to assess, levy, collect and administer any tax or fee as has been or may be specifically authorized by the Legislature by general law to the municipalities of this state: *Provided,* That any assessment, levy or collection shall be delayed 60 days from its regular effective date: *Provided, however,* That in the event fifteen percent of the qualified voters of the county by petition duly signed by them in their own handwriting and filed with the county commission within 45 days after any impact fee or levy is imposed by the county commission, pursuant to this article, the fee or levy protested may not become effective until it is ratified by a majority of the legal votes cast thereon by the qualified voters of such county at any primary or general ~~or special~~ election as the county commission directs. Voting thereon may not take place until after notice of the subcommission of the fee a levy on the ballot has been given by publication of class II legal advertisement and publication area shall be the county where such fee or levy is imposed: *Provided further,* That counties may not “double tax” by applying a given tax within any corporate boundary in which that municipality has implemented such tax. Any such taxes or fees collected under this law may be used to fund a proportionate share of the cost of existing capital improvements and public services where it is shown that all or a portion of existing capital improvements and public services were provided in anticipation of the needs of new development.

(b) In determining a proportionate share of capital improvements and public services costs, the following factors shall be considered:

(1) The need for new capital improvements and public services to serve new development based on an existing capital improvements plan that shows (A) any current deficiencies in existing capital improvements and services that serve existing development and the means by which any such deficiencies may be eliminated within a reasonable period of time by means other than impact fees or additional levies; and (B) any additional demands reasonably anticipated as the result of capital improvements and public services created by new development;

(2) The availability of other sources of revenue to fund capital improvements and public services, including user charges, existing taxes, intergovernmental transfers, in addition to any special tax or assessment alternatives that may exist;

(3) The cost of existing capital improvements and public services;

(4) The method by which the existing capital improvements and public services are financed;

(5) The extent to which any new development, required to pay impact fees, has contributed to the cost of existing capital improvements and public services in order to determine if any credit or offset may be due such development as a result thereof;

(6) The extent to which any new development, required to pay impact fees, is reasonably projected to contribute to the cost of the existing capital improvements and public services in the future through user fees, debt service payments, or other necessary payments related to funding the cost of existing capital improvements and public services;

(7) The extent to which any new development is required, as a condition of approval, to construct and dedicate capital improvements and public services which may give rise to the future accrual of any credit or offsetting contribution; and

(8) The time-price differentials inherent in reasonably determining amounts paid and benefits received at various times that may give rise to the accrual of credits or offsets due new development as a result of past payments.

(c) Each county shall assess impact fees pursuant to a standard formula so as to ensure fair and similar treatment to all affected persons or projects. A county commission may provide partial or total funding from general or other nonimpact fee funding sources for capital improvements and public services directly related to new development, when such development benefits some public purpose, such as providing affordable housing and creating or retaining employment in the community

§7-20-12. Countywide service fees.

(a) Notwithstanding any provision of this code to the contrary, every county shall have plenary power and authority to impose a countywide service fee upon each employee and self-employed individual for each week or part of a calendar week the individual works within the county, subject to the following:

(1) No individual shall pay the fee more than once for the same week of employment within the county.

(2) The fee imposed pursuant to this section is in addition to all other fees imposed by the jurisdiction within which the individual is employed.

(3) The fee imposed pursuant to this section may not take effect until the first day of a calendar month, as set forth in the order of the county commission establishing the fee, that begins at least thirty days after a majority of the registered voters of the county voting on the question approve imposition of the service fee, in a primary or general ~~or a special~~ election held in the county.

(4) The order of the county commission shall provide for the administration, collection and enforcement of the service fee. Employers who have employees that work in the county imposing the service fee shall withhold the fee from compensation paid to the employee and pay it over to the county as provided in the order of the county commission. Self-employed individuals shall pay the service fee to the county commission in accordance with the order establishing the fee.

(5) The terms “employed”, “employee”, “employer” and “self-employed” have the following meaning:

(A) “Employed” shall include an employee working for an employer so as to be subject to any federal or state employment or wage withholding requirement and a self-employed individual working as a sole proprietor or member of a firm so as to be subject to self-employment tax. An employee shall be considered employed in a calendar week so long as the employee remains on the current payroll of an employer deriving compensation for such week and the employee has not been permanently assigned to an office or place of business outside the county. A self-employed individual shall be considered employed in a calendar week so long as such individual has not permanently discontinued employment within the county.

(B) “Employee” means any individual who is employed at or physically reports to one or more locations within the county and is on the payroll of an employer, on a full-time or part-time basis or temporary basis, in exchange for salary, wages or other compensation.

(C) “Employer” means any person, partnership, limited partnership, limited liability company, association (unincorporated or otherwise), corporation, institution, trust, governmental body or unit or agency, or any other entity (whether its principal activity is for-profit or not-for-profit) situated, doing business, or conducting its principal activity in the county and who employs an employee, as defined in this section.

(D) “Self employed individual” means an individual who regularly maintains an office or place of business for conducting any livelihood, job, trade, profession, occupation, business or enterprise of any kind within the county’s geographical boundaries over the course of four or more calendar weeks, which need not be consecutive, in any given calendar year.

(6) All revenues generated by the county service fee imposed pursuant to this section shall be dedicated to and shall be exclusively utilized for the purpose or purposes set forth in the referendum approved by the voters, including, but not limited to, the payment of debt service on any bonds issued pursuant to §7-20-13 of this code and any costs related to the administration, collection and enforcement of the service fee.

(b) Any order entered by a county commission imposing a countywide service fee pursuant to this part, or increasing or decreasing a countywide service fee previously adopted pursuant to this part, shall be published as a Class II legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code and the publication area for the publication shall be the county. The order shall not become effective until it is ratified by a majority of the lawful votes cast thereon by the qualified voters of the county at a primary or general ~~or special~~ election, as the county commission shall direct. Voting thereon shall not take place until after notice of the referendum shall have been given by publication as above provided for the publication of the order after it is adopted by the county commission. The notice of referendum shall at a minimum include: (1) The date of the referendum; (2) the amount of countywide service fee; (3) a general description of the capital improvement or improvements included in the special infrastructure project to be financed with the service fee; (4) whether revenue bonds will be issued; and (5) if bonds are to be issued, the estimated term of the revenue bonds. The county commission may include additional information in the notice of referendum.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 1. PURPOSE AND SHORT TITLE; DEFINITIONS; GENERAL PROVISIONS; CONSTRUCTION.

Part II. Definitions.

§8-1-2. Definitions of terms.

(a) For the purpose of this chapter:

(1) “Municipality” is a word of art and shall mean and include any Class I, Class II and Class III city and any Class IV town or village, heretofore or hereafter incorporated as a municipal corporation under the laws of this state;

(2) “City” is a word of art and shall mean, include and be limited to any Class I, Class II and Class III city, as classified in section three of this article (except in those instances where the context in which used clearly indicates that a particular class of city is intended), heretofore or hereafter incorporated as a municipal corporation under the laws of this state, however created and whether operating under (i) a special legislative charter, (ii) a home rule charter framed and adopted or revised as a whole or amended under the provisions of former §8A-1-1 *et seq.* of this code or under the provisions of §8-3-1 or §8-4-1 of this code, (iii) general law, or (iv) any combination of the foregoing; and

(3) “Town or village” is a term of art and shall, notwithstanding the provisions of §2-2-10 of this code, mean, include and be limited to any Class IV town or village, as classified in §8-3-1 of this code, heretofore or hereafter incorporated as a municipal corporation under the laws of this state, however created and whether operating under (i) a special legislative charter, (ii) general law, or (iii) a combination of the foregoing.

(b) For the purpose of this chapter, unless the context clearly requires a different meaning:

(1) “Governing body” shall mean the mayor and council together, the council, the board of directors, the commission, or other board or body of any municipality, by whatever name called, as the case may be, charged with the responsibility of enacting ordinances and determining the public policy of such municipality; and in certain articles dealing with intergovernmental relations shall also mean the county ~~court~~ commission of any county or governing board of other units of government referred to in said articles;

(2) “Councilmen” shall mean the members of a governing body, by whatever name such members may be called;

(3) “Mayor” shall mean the individual called mayor unless as to a particular municipality a commissioner (in a commission form of government) or the city manager (in a manager form of government) is designated or constituted by charter provision as the principal or chief executive officer or chief administrator thereof, in which event the term “mayor” shall mean as to such municipality such commissioner or city manager unless as to any particular power, authority, duty or function specified in this chapter to be exercised, discharged or fulfilled by the mayor it is provided by charter provision or ordinance that such particular power, authority, duty or function shall be exercised, discharged or fulfilled by the individual called mayor and not by a commissioner or city manager, in which event such particular power, authority, duty or function shall in fact be exercised, discharged or fulfilled in and for such municipality by the individual called mayor: *Provided,* That in the exercise and discharge of the ex officio justice of the peace, conservator of the peace and mayor’s court functions specified in this chapter, the term “mayor” shall always mean the individual called mayor;

(4) “Recorder” shall mean the recorder, clerk or other municipal officer, by whatever name called, charged with the responsibility of keeping the journal of the proceedings of the governing body of the municipality and other municipal records;

(5) “Treasurer” shall mean the treasurer or other municipal officer, by whatever name called, exercising the power and authority commonly exercised by a treasurer;

(6) “Administrative authority” shall mean the officer, commission or person responsible for the conduct and management of the affairs of the municipality in accordance with the charter, general law and the ordinances, resolutions and orders of the governing body thereof;

(7) “Charter” shall mean, except where specific reference is made to a particular type of charter, either a special legislative charter (whether or not amended under the provisions of former chapter eight-a of this code or under article four of this chapter, and although so amended, such special legislative charter shall, for the purposes of this chapter, remain a special legislative charter), or a home rule charter framed and adopted or revised as a whole or amended by a city under the provisions of former chapter eight-a of this code or under the provisions of article three or article four of this chapter;

(8) “Ordinance” shall mean the ordinances and laws enacted by the governing body of a municipality in the exercise of its legislative power, and in one or more articles of this chapter, ordinances enacted by a county ~~court~~ commission;

(9) “Inconsistent or in conflict with” shall mean that a charter or ordinance provision is repugnant to the Constitution of this state or to general law because such provision (i) permits or authorizes that which the Constitution or general law forbids or prohibits, or (ii) forbids or prohibits that which the Constitution or general law permits or authorizes;

(10) “Qualified elector,” “elector,” “qualified voter” or “legal voter” shall mean any individual who, at the time ~~he~~ the individual offers to vote or at the time ~~he~~ the individual participates in any event or activity (such as signing a petition) under the provisions of this chapter for which ~~he~~ the individual must be a qualified elector, elector, qualified voter or legal voter, is a resident within the corporate limits of the municipality or within the boundaries of a territory referred to in this chapter, as the case may be, and who (i) has been a resident of the state for one year and of the municipality or territory in question for at 60 sixty days next preceding such election or date pertinent to any such event or activity, and (ii) in the case of a regular municipal election, special municipal election, municipal public question election or any such municipal event or activity, is duly registered on the municipal registration books set up in the office of the clerk of the county ~~court~~ commission of the county in which the municipality or the major portion of the territory thereof is located under the integration of the municipal registration of voters with the “permanent registration system” of the state, or, in the event there be no such integration of the municipal registration of voters, is duly registered in the county in which ~~he~~ the individual resides to vote in state-county elections, or (iii) in the case of a territory election, general election or any such territory event or activity, is duly registered in the county in which ~~he~~ the individual resides to vote in state-county elections; and any charter provision or ordinance establishing a voting residency requirement different than that in this definition provided shall be of no force and effect; and in any case where a particular percentage of the qualified electors, electors, qualified voters or legal voters is required under the provisions of this chapter in connection with any such event or activity as aforesaid, the percentage shall be determined on the basis of the number of qualified electors, electors, qualified voters or legal voters, as of the time of such event or activity, unless it is impracticable to determine such percentage as of such time and it is provided by ordinance, resolution or order that the percentage shall be determined on the basis of the number of qualified electors, electors, qualified voters or legal voters, as of the date of the last preceding election (whether a general election, regular municipal election or special municipal election and whether or not they voted at such election) held in such municipality or territory, as the case may be;

(11) “Public question” shall mean any issue or proposition required to be submitted to the qualified voters of a municipality or of a territory referred to in this chapter for decision at an election, as the case may be;

(12) “Inhabitant” shall mean any individual who is a resident within the corporate limits of a municipality or within the boundaries of a territory referred to in this chapter, as the case may be;

(13) “Resident” shall mean any individual who maintains a usual and bona fide place of abode within the corporate limits of a municipality or within the boundaries of a territory referred to in this chapter, as the case may be;

(14) “Freeholder” shall mean any person (and in the case of an individual one who is sui juris and is not under a legal disability) owning a “freehold interest in real property”;

(15) “Freehold interest in real property” shall mean any fee, life, mineral, coal or oil or gas interest in real property, whether legal or equitable, and whether as a joint tenant or a tenant in common, but shall not include a leasehold interest (other than a mineral, coal or oil or gas leasehold interest), a dower interest, or an interest in a right-of-way or easement, and the freehold interest of a church or other unincorporated association shall be considered as one interest and not as an individual interest of each member thereof;

(16) “County ~~court~~ commission” shall mean the governmental body created by section twenty-two, article eight of the Constitution of this state, or any existing tribunal created in lieu of a county ~~court~~ commission;

(17) “Code” shall mean the Code of West Virginia, 1931, as heretofore and hereafter amended; and

(18) “Person” shall mean any individual, firm, partnership, corporation, company, association, joint-stock association, or any other entity or organization of whatever character or description.

(c) The term “intergovernmental relations” is used in this chapter to mean undertakings and activities which may be undertaken or engaged in by two or more units of government acting jointly, and in certain headings in this chapter to call attention to the fact that the provisions under such headings apply to units of government in addition to municipalities.

(d) For the purpose of this chapter, unless the context clearly indicates to the contrary, words importing the masculine gender shall include both the masculine and feminine gender, and the phrase “charter framed and adopted or revised as a whole or amended (or words of like import) under the provisions of former chapter eight-a of this code” shall include a charter framed and adopted or revised as a whole or amended under the provisions of former article two of former chapter eight of this code.

ARTICLE 2. CREATION OF MUNICIPALITIES.

Part II. Election.

§8-2-5. Special incorporation election — Voting precincts; time for election; supplies; commissioners and clerks; notice.

Upon receiving such a report from said enumerators, the county ~~court~~ commission shall forthwith fix a date for a special incorporation election, ~~not later than thirty days thereafter~~ to be held concurrently with the next regularly scheduled primary or general election if there are more than 90 days preceding such election, and, if not, then, at the next succeeding regularly scheduled primary or general election, and at ~~on~~ which election all qualified electors of the territory shall vote upon the question of incorporation between such hours as may be fixed by order of said ~~court~~ commission. For the purpose of holding and conducting said election, the county ~~court~~ commission shall divide the territory into one or more precincts, consisting of not more than five hundred qualified voters in each precinct; shall arrange for and provide at its expense polling places, registration books, challenges and other election supplies as provided for by law in general elections; shall appoint three commissioners of election and two clerks from the qualified electors of said territory for each precinct so established, dividing the election officials as nearly as possible equally between those favoring incorporation and those opposed to incorporation; and shall give notice of the date and place or places of election and hours for voting by publication of such notice 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 sought to be incorporated.

ARTICLE 3. FRAMING AND ADOPTING AN ORIGINAL CHARTER FOLLOWING INCORPORATION OF A CITY; REVISING OR AMENDING A CHARTER; EXPENSES OF INCORPORATION.

§8-3-6. Same — Special election; time for election; notice; voting precincts; supplies; officials; certification; canvass; declaration of results; recount.

The proposed charter shall be submitted to the qualified voters of the incorporated territory for approval or rejection at a special election ordered by the county ~~court~~ commission to be held ~~not less than thirty days nor more than ninety days following the date on which the two copies of the completed charter were filed with the clerk of the county court~~ concurrently with the next regularly scheduled primary or general election if there are more than 90 days preceding such election, and, if not, then, at the next succeeding regularly scheduled primary or general election, and at which election the officers provided for by said proposed charter and to be elected shall be voted upon in the manner provided in said proposed charter. The county ~~court~~ commission shall cause notice of the date, hours, place and purpose of such election to be given by publication thereof 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 incorporated territory. The first of said publications shall be made not less than thirty days prior to the date fixed for the election. Each such notice of election shall state that upon request any qualified voter and any freeholder of the incorporated territory may obtain a copy of the proposed charter from a designated person at a designated place.

For the purpose of holding and conducting said election, the county ~~court~~ commission shall divide the incorporated territory into one or more temporary precincts, consisting of not more than five hundred qualified voters in each temporary precinct; shall arrange for and provide at its expense polling places, registration books, challenges and other election supplies as provided for by law in general elections; and shall appoint three commissioners of election and two clerks from the qualified voters of said incorporated territory for each temporary precinct so established, subject, however, to the provisions of section eleven, article four of this chapter. Such election shall be held and conducted under the supervision of the commissioners and clerks of election appointed by the county ~~court~~ commission as aforesaid and shall be conducted as nearly as may be in accordance with the laws of this state governing general elections. The results of such election, both as to approval or rejection of the proposed charter and the election of officers, shall be certified as in general elections, and the returns shall be canvassed and the results declared by the county ~~court~~ commission. In the event any commissioner or clerk designated to serve in said election shall fail or refuse to serve, such vacancy may be filled in like manner as such vacancies are filled in general elections under the laws of this state governing general elections. A recount may be had, as in general elections, upon the party or parties desiring such recount providing adequate assurance to the county ~~court~~ commission that ~~he or they~~ the party or parties will pay all costs of such recount.

ARTICLE 4. FRAMING AND ADOPTING A CHARTER OTHER THAN IMMEDIATELY FOLLOWING INCORPORATION; REVISING OR AMENDING A CHARTER; ELECTIONS AND EXPENSES.

Part II. Revising Or Amending A Charter.

§8-4-7. Revising or amending a charter — Generally.

A special legislative charter or a charter framed and adopted or revised as a whole under the provisions of former chapter eight-a of this code, under §8-3-1 *et seq.* of this code or under §8-4-1 *et seq.* of this code, as the case may be, may be revised as a whole in like manner as a charter may be framed and adopted under the provisions of §8-4-1 *et seq.* of this code, except that the question submitted shall be “Shall the charter be revised as a whole by representatives of the people?”, but no such revision as a whole shall be made within four years of the effective date of such a charter or of the last preceding revision as a whole, whichever be later, as the case may be. A revision as a whole may also be initiated in the manner specified in §8-3-9 of this code or in the manner specified in said section nine considered in pari materia with the provisions of §8-3-9 of this code. If a majority of the legal votes cast on the question be in the negative or if the proposed charter revised as a whole is rejected by a majority of the legal votes cast at the election thereon, the provisions of §8-4-2 and §8-4-3 of this code relating to a negative vote on the question of framing a charter and to rejection of a proposed charter shall govern and control.

The qualified voters of a city may amend a special legislative charter or a charter framed and adopted or revised as a whole under the provisions of former chapter eight-a of this code, under §8-3-1 *et seq.* of this code or under §8-4-1 *et seq.* of this code, as the case may be, but no amendment shall be made within one year of the effective date of such a charter or of the last preceding revision of such charter as a whole, whichever be later, as the case may be. An amendment or amendments may be initiated in the same manner provided in this article for the framing of a charter, in the manner specified in §8-3-9 of this code, or in the manner specified in said section nine considered in pari materia with the provisions of §8-4-3. The governing body of a city shall provide by ordinance for a special municipal election to pass upon a proposed charter amendment or amendments if (1) such governing body by the affirmative vote of two thirds of its members shall determine and specify that a special municipal election is necessary; or (2) a petition bearing the signatures, written in their own handwriting, of fifteen percent of the qualified voters of the city, if a Class I or Class II city, or ten percent of the qualified voters of the city, if a Class III city, expressly requesting that a special municipal election be called for the purpose has been filed with the governing body more than one hundred twenty days prior to the date of the next regular municipal election. In all other cases, a proposed charter amendment or amendments shall be submitted by ordinance at the next regular municipal election. Any proposed amendment or amendments shall be set out in full in the ordinance submitting same. The date of any special municipal election for the purpose shall be fixed by the ordinance providing for same, but any such special municipal election shall be held not less than thirty nor more than 60 days after such ordinance shall have been adopted. Notice of any election at which a proposed amendment or amendments shall be voted upon shall state the date and hours thereof, and shall set out the proposed amendment or amendments at length or state that copies may be obtained by any qualified voter or any freeholder of the city from a designated person at a stated place, upon request. Such notice shall be published as in the case of a notice of an election on the question of whether a charter shall be framed, as specified in §8-4-2 of this code. A charter amendment or amendments approved, or such of them as may be approved, by a majority of the legal votes cast at the election thereon shall take effect on the date that the declaration of the results showing approval by the voters has been made by the governing body and entered in the minutes of the governing body. One copy of the amendment or amendments, together with a certified copy of the declaration of results attached thereto, shall be certified forthwith by the recorder of the city to the Clerk of the House of Delegates, as keeper of the rolls, and another to the clerk of the county ~~court~~ commission for recording in the office of such clerk of the county ~~court~~ commission. The same shall be preserved by said Clerk of the House of Delegates as an authentic public record. After the effective date of an amendment or amendments so filed, all courts shall take judicial notice of such amendment or amendments.

If a majority of the legal votes cast at the election thereon be against any amendment, such proposed amendment shall not be submitted again, without a petition of the qualified voters as provided for in §8-4-1(b) of this code considered in pari materia with the provisions of this section, for at least one year.

§8-4-8. Same — An alternate plan.

Whenever the governing body of any city shall deem it expedient to amend the charter of any such city (whether such charter be a special legislative charter or a charter framed and adopted or revised as a whole under the provisions of former chapter eight-a of this code, under §8-3-1 *et seq.* of this code or under §8-4-1 of this code, as the case may be), it shall, by ordinance, set out in its proper record book the proposed amendment or amendments in full. The governing body shall set a date, time and place for a public hearing thereon, which date shall be not less than 30 days after the date of the first publication hereinafter required. The governing body shall cause the proposed amendment or amendments, together with a notice of the date, time and place fixed for the hearing thereon, to be published 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 city. The notice shall state that the proposed amendment or amendments will be considered on the date and at the time and place fixed by the governing body and that any qualified voter or any freeholder of the city may appear and file objections, in writing, and also that if no objections are filed the said amendment or amendments shall become operative on and after a date fixed in the notice, which date shall be not less than ten days after the date of the hearing. If no objections are filed, or if objections are filed and are withdrawn at the time of the hearing, or within ten days thereafter, the governing body shall, by ordinance, adopt the amendment or amendments as an amendment or amendments to the charter, and cause a copy of the amendment or amendments, ordinance and transcript of the proceedings to be certified to the Clerk of the House of Delegates, as keeper of the rolls, and to be recorded in the office of the clerk of the county ~~court~~ commission. The same shall be preserved by such Clerk of the House of Delegates as an authentic public record. The amendment or amendments shall take effect on the effective date specified in the notice as aforesaid. After the effective date, all courts shall take judicial notice of such amendment or amendments.

If, on the date and at the time and place set for the hearing, objections to the amendment or amendments are filed and are not withdrawn then or within ten days thereafter, the governing body may abandon the proposed amendment or amendments to which objections have been filed, or it may submit the proposed amendment or amendments, either as a unit or separately, at the next regular municipal election, or at a special municipal election if such governing body by the affirmative vote of two thirds of its members shall determine and specify that a special municipal election is necessary and if the date of such regular municipal election shall be more than six months from such date, for ratification or rejection. Notice of any election at which the proposed amendment or amendments shall be voted upon shall state the date and hours thereof and shall set out the proposed amendment or amendments at length or state that copies may be obtained by any qualified voter or any freeholder of the city from a designated person at a stated place, upon request. The governing body shall cause such notice to be published 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 city. The amendment or amendments approved, or such of them as may be approved, by a majority of the legal votes cast at the election thereon shall take effect on the date that the declaration of the results showing approval by the voters has been made by the governing body and entered in the minutes of the governing body. One copy of the amendment or amendments, together with a certified copy of the declaration of results attached thereto, shall be certified forthwith by the recorder of the city to the Clerk of the House of Delegates, as keeper of the rolls, and another to the clerk of the county ~~court~~ commission for recording in the office of such clerk of the county ~~court~~ commission. The same shall be preserved by said Clerk of the House of Delegates as an authentic public record. After the effective date of an amendment or amendments so filed, all courts shall take judicial notice of such amendment or amendments. If a majority of the legal votes cast at the election thereon be against any proposed amendment, the same shall not be proposed again under the provisions of this section for at least one year.

The method of charter amendment provided for in this section is not in lieu of but is in addition to the other methods prescribed in this chapter

Part III. Elections; Expenses.

§8-4-10. Conduct of elections; general provisions concerning canvass and declaration of results; election supplies; election officials.

The governing body of a city shall canvass the returns within relatively the same time with reference to an election held under the provisions of this article and in the same manner as county ~~court~~ commissions are required to do with respect to general elections, and shall declare the results of any such election. This requirement shall apply to any election held under the provisions of this article, whether it be a special municipal election or voting conducted in conjunction with a general election or a regular municipal election. The canvass and declaration of results shall be entered in the minutes of the governing body on the date made. Unless otherwise provided by charter provision, any such special municipal election or voting conducted in conjunction with a general election or a regular municipal election shall be held and conducted under the supervision at each precinct of three commissioners of election and two clerks who shall be appointed by the governing body and shall be conducted as nearly as may be in accordance with the laws of this state governing general elections, subject, however, in the case of a special municipal election to the provisions of §8-4-11 of this code. For any special municipal election or voting conducted in conjunction with a general election or a regular municipal election, in accordance with the provisions of this article, the governing body shall arrange for and provide at its expense registration books, challenges and other election supplies as provided by law in general elections, and polling places in any such special municipal election or with respect to any such voting conducted in conjunction with a regular municipal election. In the event any commissioner or clerk appointed by the governing body shall fail or refuse to serve, such vacancy may be filled in like manner as such vacancies are filled in general elections under the laws of this state governing general elections, except that the governing body shall act in the place and stead of the county ~~court~~ commission. A recount may be had, as in general elections, upon the party or parties desiring such recount providing adequate assurance to the governing body that ~~he or they~~ the party or parties will pay all costs of such recount.

§8-5-5. Regular election of officers; establishment of longer terms.

(a) After the first election of officers of a city, town or village, the regular election of officers shall be held on the second Tuesday in June of the appropriate year, unless otherwise provided in the charter of the city or the special legislative charters of the towns or villages.

(b) A municipal election date established by a charter provision may fall on the same day as the county-state primary election or general election only when the voting precinct boundaries in the municipality coincide with the voting precinct boundaries established by the county commission or when the charter provides for separate registration books. If a municipal election falls on the same day as the county-state primary or general election, the municipality and county may agree to use the county election officials in the municipal elections, if practicable, or the municipality may provide for separate election officials.

(c) A municipal election date established by charter provision may fall within 25 days of a county-state primary or general election only where separate registration books are provided and maintained for the municipal election.

(d) Any municipality which establishes its election date by charter provision must comply with the provisions of this section or the election date shall be the second Tuesday of June. The language of this section may not be construed to prevent any city, town or village from amending the provisions of its charter or special legislative charter, to provide that its municipal election be held on some day other than the second Tuesday in June.

(e) Officers of a city may be elected for a four-year term at the same election at which a proposed charter, proposed charter revision or charter amendment providing for four-year terms is voted upon. The ballots or ballot labels used for the election of officers must indicate that the officers will be elected for four-year terms if the proposed charter, revision or amendment is approved. Officers of a town or village may be elected for a four-year term upon approval by a majority of the legal votes cast at a regular municipal election of a proposition calling for four-year terms. The ballots or ballot labels used for the election of officers must indicate that the officers will be elected for four-year terms if the proposition is approved.

(f) Municipalities are authorized to stagger and/or change the terms of elected municipal officers. Prior to any changes being made to the terms of elected municipal officers, the procedure to stagger and/or change the terms shall be set by ordinance and must be approved by a majority of the voters.

(g) Beginning on July 1, 2022, any municipality in the state that does not have a charter may pass an ordinance that establishes a new municipal election day upon agreement with its county commission to hold any local elections, including the regular election of local officers, municipal bond elections, and municipal levy elections, on the same day as the county-state primary or general election. The municipality shall publish notice of the public meeting during which the proposed ordinance will be considered by the municipal governing body via Class II-0 legal advertisement in a publication area sufficient to reach a majority of the municipal residents, which notice shall include the public meeting date, time, and location, any proposed extension or reduction of terms of office pursuant to paragraph (f) of this section, and the proposed election day change.

(f) The ordinance proposed under paragraph (g) of this section may call for an extension or reduction of the terms of office for the purpose of aligning the terms to coincide with the same day as the proposed county-state primary or general election day, which question shall be resolved by majority vote of the participating voters in the county: *Provided,* That the governing body shall not propose an extension of the terms of those offices by more than 18 months: *Provided, however,* That nothing in this section modifies a municipality’s authority to reduce current elected officials’ terms of office in any other manner provided by law.

(g) A municipality which enters into an agreement with the county commission to hold local elections at the same time as the county-state primary or general election day under this section is not required, but may agree, to share in the administrative costs of holding the election, but which costs shall not exceed the municipality’s pro rata share of voters registered in the municipality compared with the total voters registered in the county.

CHAPTER 8A. LAND USE PLANNING.

ARTICLE 7. ZONING ORDINANCE.

§8A-7-7. Election on a zoning ordinance.

(a) The governing body of a municipality or a county may submit a proposed zoning ordinance for approval or rejection at any primary election, or general election ~~or special election~~, to the qualified voters residing:

(1) Within the entire jurisdiction of the governing body, if the proposed zoning ordinance is for the entire jurisdiction; or

(2) In the specific area to be zoned by the proposed zoning ordinance, if the proposed zoning ordinance only applies to part of the governing body’s jurisdiction.

(b) The election laws of this state apply to any election on a proposed zoning ordinance.

(c) If a petition for an election on a zoning ordinance is filed with the clerk of a governing body within 90 days after the enactment of a zoning ordinance by a governing body without an election, then a zoning ordinance does not take effect until an election is held and a majority of the voters approves it. At least ten percent of the total eligible voters in the area to be affected by the proposed zoning ordinance must sign, in their own handwriting, the petition for an election on a zoning ordinance.

(d) Notice for an election on a proposed zoning ordinance must be published in a local newspaper of general circulation in the area affected by the proposed zoning ordinance, as a Class II-0 legal advertisement, in accordance with the provisions of §59-3-1 of this code.

(e) The ballots for an election on a zoning ordinance shall have the following:

/ / For Zoning

/ / Against Zoning

(f) The zoning ordinance is adopted if it is approved by a majority of the voters and is effective on the date the results of an election are declared. If a zoning ordinance is rejected, the zoning ordinance does not take effect. The governing body may submit the zoning ordinance to the voters again at the next primary or general election.

§8A-7-8a. Requirements for adopting an amendment to the zoning ordinance.

(a) After the enactment of the zoning ordinance, the governing body of the municipality may amend the zoning ordinance in accordance with §8A-7-8 of this code, without holding an election.

(b) After the enactment of the zoning ordinance, the governing body of the county may amend the zoning ordinance in accordance with §8A-7-8 of this code, as follows:

(1) Without holding an election;

(2) Holding an election on the proposed amendment; or

(3) Holding an election on the proposed amendment pursuant to a petition.

(c) If the governing body of the county chooses to hold an election on the proposed amendment, then it must:

(1) Publish notice of the election and the proposed amendment to the zoning ordinance in a local newspaper of general circulation in the area affected by the zoning ordinance, as a Class II-0 legal advertisement, in accordance with the provisions of §59-3-1 *et seq.* of this code; and

(2) Hold an election on the question of adopting or rejecting the proposed amendment to the zoning ordinance at any primary~~,~~ or general ~~or special~~ election for the qualified voters residing in:

(A) The entire jurisdiction of the county, if the zoning ordinance applies to the entire county; or

(B) The specific area to which the zoning ordinance applies, if the zoning ordinance only applies to a part of the county.

(d) The governing body of a county must hold an election on an amendment to a zoning ordinance if a petition, signed by at least ten percent of the eligible voters in the area to which the zoning ordinance applies, is filed:

(1) With the governing body of the county prior to enactment of an amendment to a zoning ordinance; or

(2) After the enactment of an amendment to a zoning ordinance without an election, if the petition for an election on the amendment to a zoning ordinance is filed with the governing body of the county within 90 days.

(e) The governing body of the county holding an election on the proposed amendment pursuant to a petition must:

(1) Publish notice of the election and the proposed amendment to the zoning ordinance in a local newspaper of general circulation in the area affected by the zoning ordinance, as a Class II-0 legal advertisement, in accordance with the provisions of §59-3-1 *et seq.* of this code; and

(2) Hold an election on the question of adopting or rejecting the proposed amendment to the zoning ordinance at any primary~~,~~ or general ~~or special~~ election for the qualified voters residing in:

(A) The entire jurisdiction of the county, if the zoning ordinance applies to the entire county; or

(B) The specific area to which the zoning ordinance applies, if the zoning ordinance only applies to a part of the county.

(f) If an election is held, then the proposed amendment to the zoning ordinance does not take effect until a majority of the voters approve it.

(g) If an election is held and the proposed amendment to the zoning ordinance is rejected, then the proposed amendment does not take effect. The governing body of the county may resubmit the proposed amendment to the zoning ordinance to the voters at another election.

(h) ~~A special election may be held upon written request to the governing body of the county.~~

~~(i)~~ The election laws of this state apply to any election on a proposed amendment to a zoning ordinance.

§8A-7-13. Process to replace nontraditional zoning ordinance.

(a) A governing body that has adopted or enacted a nontraditional zoning ordinance may replace the nontraditional zoning ordinance with a zoning ordinance. A nontraditional zoning ordinance may be replaced with a zoning ordinance by:

(1) The governing body; or

(2) A petition by the voters in the affected area. If the voters petition to replace the nontraditional zoning ordinance with a zoning ordinance, then the provisions of this section and this chapter shall be followed.

(b) At least 10 percent of the total eligible voters in the affected area may petition the governing body to replace the nontraditional zoning ordinance with a zoning ordinance. The petition must include:

(1) The governing body’s name to which the petition is addressed;

(2) The reason for the petition, including:

(A) Replacing the nontraditional zoning ordinance with a zoning ordinance; and

(B) That the question of replacing the nontraditional zoning ordinance with a new zoning ordinance be put to the voters of the affected area; and

(3) Signatures in ink or permanent marker.

(c) Each person signing the petition must be a registered voter in the affected area and in the governing body’s jurisdiction. The petition must be delivered to the clerk of the affected governing body. There are no time constraints on the petition.

(d) Upon receipt of the petition with the required number of qualifying signatures, the governing body shall place the question on the next ~~special,~~ primary or general election ballot.

Notice for an election on replacing a zoning ordinance must be published in a local newspaper of general circulation in the area affected by the nontraditional zoning ordinance, as a Class II-0 legal advertisement, in accordance with the provisions of §59-3-1 *et seq.* of this code.

(e) The ballots for an election on replacing a zoning ordinance shall have the following:

“Shall \_\_\_\_\_\_\_\_\_\_ (name of governing body) replace \_\_\_\_\_\_\_\_\_ (name of commonly known nontraditional zoning ordinance) with a zoning ordinance?

\_\_\_ Yes \_\_\_ No”

(f) Upon a majority vote of the voters voting in favor of replacing a nontraditional zoning ordinance with a zoning ordinance, the governing body shall immediately begin the process of adopting and enacting a zoning ordinance, in accordance with the provisions of this chapter of this code. The governing body has a maximum of three years from the date of the election to adopt a zoning ordinance.

(g) The governing body may amend its nontraditional zoning ordinance during the process of adopting and enacting a zoning ordinance.

(h) If a majority of the voters reject replacing the nontraditional zoning ordinance with a zoning ordinance, the affected voters may not petition for a vote on the issue for at least two years from the date of the election.

(i) Nothing in this section shall prevent a governing body from amending its zoning ordinance in accordance with this chapter.

(j) If a governing body of a county chooses to replace a nontraditional zoning ordinance with a traditional zoning ordinance without holding an election, a petition, signed by at least ten percent of the eligible voters who reside in the area affected by the zoning ordinance, for an election on the question of adopting a traditional zoning ordinance may be filed with the governing body of the county within 90 days after the enactment of the traditional zoning ordinance by the governing body of the county. If a petition is timely filed, then the traditional zoning ordinance does not take effect until:

(1) Notice of the election and the zoning ordinance is published in a local newspaper of general circulation in the area affected by the zoning ordinance, as a Class II-0 legal advertisement, in accordance with the provisions of §59-3-1 *et seq.* of this code;

(2) An election is held; and

(3) A majority of the voters approve it.

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 regularly scheduled primary~~,~~ or general~~, or~~ ~~special~~ election in accordance with the requirements of §3-1-31 of this code. 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 §11-8-6g of this code 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 §13-1-3 and §13-1-4 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, 2022, and which will not be up for renewal at the next regularly scheduled primary or general election thereafter, the local levying body shall by ordinance choose to hold the election to renew that levy either at the next regularly scheduled primary or general election in accordance with §3-1-31 of this code: *Provided, however,* That notwithstanding any other provision of this code, a local levying body may enter an order authorizing a special election prior to the expiration of the existing or expiring levy for the purpose of presenting to the voters the question of synchronizing the renewal of an existing or expiring levy with a future regularly scheduled primary or general election, which question shall pass upon adoption by a majority of participating voters. ~~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 question on the special levy shall be placed on the ballot in accordance with the ballot placement order prescribed by §3-5-13a(a) of this code. The ~~ballot~~ question heading shall be entitled: “Special Levy Election” and the question shall be significantly in the following form: “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 13. PUBLIC BONDED INDEBTEDNESS.

ARTICLE 1. BOND ISSUES FOR ORIGINAL INDEBTEDNESS.

§13-1-7. When election to be held.

Elections for the purpose of voting upon questions of issuing bonds may be held at any genera~~l,~~ or primary, ~~or special~~ election which the fiscal body in its order submitting the same to a vote may designate, except that, when a petition is filed asking that bonds be issued, the fiscal body with which the same is filed, ~~if it be not designated in the petition that~~ shall order a special election and the election shall be held concurrently at ~~a~~ the next regularly scheduled general or primary election~~, shall order a special election to be held within sixty days from the date of the filing of such petition; or, if it be a petition for bonds for the construction of county-district roads or bridges thereon, the election shall be held within sixty days from the filing of the engineer’s report as provided for in section five of this article~~.

§13-1-11. General election laws to apply; recorders and secretaries to act in lieu of circuit clerks.

All the provisions of the general election laws of this state concerning genera~~l,~~ or primary, ~~or special~~ elections, when not in conflict with the provisions of this article, shall apply to bond elections hereunder, insofar as practicable: *Provided,* That in bond elections for municipalities, school or independent school districts, the recorders and secretaries, respectively, shall procure and furnish to the election commissioners at each voting precinct the ballots, pollbooks, tally sheets and other things necessary for conducting the election, and perform all duties imposed by law upon clerks of the circuit courts in relation to general elections.

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-13. Limitations upon members; exceptions.

(a) No member of the West Virginia state police may in any way interfere with the rights or property of any person except for the prevention of crime.

(b) No member of the West Virginia state police may in any way become active or take part in any political contest or at any time participate in any political party caucus, committee, ~~primary,~~ assembly or convention or in any primary, general, or special election while in uniform, except to cast his or her ballot.

(c) No member of the West Virginia state police may be detailed or ordered to duty at or near any voting precinct where any election or convention is held on the day of an election or convention; nor may any member thereof remain in, about or near the voting precinct or place of convention, except to cast his or her vote. After voting he or she shall forthwith retire from the voting precinct. No member may act as an election official. If any member of the West Virginia state police is found guilty of violating any of the provisions of this section, he or she shall be dismissed by the superintendent as hereinafter provided.

(d) While out of uniform and off duty, no member of the West Virginia state police may participate in any political activity except to:

(1) Campaign for and hold office in political clubs and organizations;

(2) Actively campaign for candidates for public office in partisan and nonpartisan elections; and

(3) Contribute money to political organizations and attend political fund-raising functions.

(e) No member of the West Virginia state police may at any time:

(1) Be a candidate for public office in a nonpartisan or partisan election;

(2) Use official authority or influence to interfere with or affect the results of an election or nomination; or

(3) Directly or indirectly coerce contributions from subordinates in support of a political party or candidate.

(f) No officer or member of the West Virginia state police may, in any labor trouble or dispute between employer and employee, aid or assist either party thereto, but shall in these cases see that the statutes and laws of this state are enforced in a legal way and manner.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 12. SANITARY DISTRICTS FOR SEWAGE DISPOSAL.

§16-12-1. Incorporation as sanitary district for sewage disposal; petition, notice and hearing; election; form of ballot; expenses of election.

That whenever any area of contiguous territory shall contain one or more incorporated cities, towns and/or villages, and shall be so situated that the construction and maintenance of a plant or plants for the purification and treatment of sewage and the maintenance of one or more outlets for the drainage thereof, after having been so treated and purified by and through such plant or plants will conduce to the preservation of the public health, comfort and convenience, the same may be incorporated as a sanitary district under this article in the manner following, to wit:

Any 400 legal voters, residents within the limits of such proposed sanitary district, may petition the county ~~court~~ commission of the county in which the proposed sanitary district, or the major portion thereof, is located, to cause the question to be submitted to the legal voters of such proposed sanitary district, whether such proposed territory shall be organized as a sanitary district under this article; such petition shall be addressed to the county ~~court~~ commission and shall contain a definite description of the boundaries of the territory to be embraced in the such sanitary district, and the name of such proposed sanitary district: *Provided, however,* That no territory shall be included within more than one sanitary district organized under this article.

Notice shall be given by such county ~~court~~ commission within ten days after receiving the petition, of the time and place when a hearing on the petition for a sanitary district will be held, by publication of such notice as a Class II 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 area of the sanitary district. The first publication shall be made at least 20 days prior to such hearing. The hearing on the petition for a sanitary district shall be held not later than 30 days after the county ~~court~~ commission receives the said petition. At such hearing the president of the county ~~court~~ commission shall preside, and all persons resident within the limits of such proposed sanitary district shall have an opportunity to be heard upon the question of the location and boundary of such proposed sanitary district, and to make suggestions regarding the same, and the said county ~~court~~ commission, after hearing statements, evidence and suggestions, shall fix and determine the limits and boundaries of such proposed sanitary district as stated in the original petition unless by a vote of the majority of the legal voters resident within the limits of such proposed sanitary district, present at the said hearing, it should be decided to alter and amend such petition to change and redetermine the limits and boundaries of such proposed sanitary district.

After such determination by the county ~~court~~ commission~~,~~ the same shall be incorporated in an order which shall be spread at length upon the records of the county ~~court~~ commission. Upon the entering of such order, the county ~~court~~ commission shall submit to the legal voters of the proposed sanitary district, the question of organization and establishment of the proposed sanitary district as determined by said county ~~court~~ commission, at ~~a special~~ an election, to be held ~~within sixty days after the entering of such order~~ concurrently with the next regularly scheduled primary or general election, notice whereof shall be given by the county ~~court~~ commissionat least 20 days prior thereto by publication of such notice as a Class II-O 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 area of the proposed sanitary district. Such notice shall specify briefly the purpose of such election, with the description of such proposed sanitary district, and the time and place for holding such election.

Each legal voter resident within such proposed sanitary district shall have the right to cast a ballot at such election. Ballots at elections held under this section shall be in substantially the following form, to wit:

/ / For sanitary district.

/ / Against sanitary district.

The ballots so cast shall be issued, received, returned and canvassed in the same manner and by the same officers as is provided by law in the case of ballots cast for county officers, except as herein modified. The county ~~court~~ commission shall cause a statement of the result of such election to be spread on the records of the county ~~court~~ commission. If a majority of the votes cast upon the question of the incorporation of the proposed sanitary district shall be in favor of the proposed sanitary district, such proposed sanitary district shall thenceforth be deemed an organized sanitary district under this article. All courts in this state shall take judicial notice of the existence of all sanitary districts organized under this article.

The expenses of holding said special election shall be paid by the county ~~court~~ commission of said county, in which said proposed sanitary district, or the major portion thereof, is located, out of the General Funds of said county: *Provided, however*, That in the event such sanitary district is established and incorporated under this article, then said sanitary district shall repay to said county the expenses incurred in holding said special election within two years from the date of incorporating said sanitary district.

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 40 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 regularly scheduled primary or 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~~ commission 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~~ shall 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, 2022, 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 ~~sections nine and thirteen, article eight, chapter eleven~~ §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.

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 5K. COMMERCIAL INFECTIOUS MEDICAL WASTE FACILITY SITING APPROVAL.

§20-5K-3. Procedure for public participation.

(a) From and after the effective date of this article, in order to obtain approval to locate a commercial infectious medical waste facility, currently not under permit to operate, an applicant shall:

(1) File a presiting notice with the county commission and local solid waste authority of the county or counties in which the facility is to be located or proposed. Such notice shall be submitted on forms prescribed by the secretary;

(2) File a presiting notice with the secretary; and

(3) File a presiting notice with the Division of Environmental Protection.

(b) If a presiting notice is filed in accordance with subsection (a) of this section, the county commission shall publish a Class II legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code, in a newspaper of general circulation in the counties wherein the commercial infectious medical waste facility is to be located. Upon an affirmative vote of the majority of the county commissioners or upon the written petition of registered voters residing in the county equal to not less than 15 percent of the number of votes cast within the county for Governor at the preceding gubernatorial election, which petition shall be filed with the county commission within 60 days after the last date of publication of the notice provided in this section, the county commission shall, upon verification of the required number of signatures on the petition, and not less than 56 days before the election, order a referendum be placed upon the ballot. Any referendum conducted pursuant to this section shall be held at the next primary~~,~~ or general ~~or other county-wide~~ election:

(1) Such referendum is to determine whether it is the will of the voters of the county that a commercial infectious medical waste management facility be located in the county. Any election at which such question of locating a commercial infectious medical waste management facility is voted upon shall be held at the voting precincts established for holding primary or general elections. All of the provisions of the general election laws, when not in conflict with the provisions of this article, apply to voting and elections hereunder, insofar as practicable. The Secretary of State shall prescribe the form of the petition which shall include the printed name, address and date of birth of each person whose signature appears on the petition.

(2) The ballot, or the ballot labels where voting machines are used, shall have printed thereon substantially the following depending upon the type of facility to be located within the county:

Shall a commercial infectious medical waste management facility be located within \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ County.

[ ] For the facility

[ ] Against the facility

(Place a cross mark in the square opposite your choice.)

(3) If a majority of the legal votes cast upon the question is against the facility, then the county commission shall notify the local solid waste authority, the Division of Environmental Protection and the secretary of the Department of Health and Human Resources of the result and the commercial infectious medical waste management facility may not proceed any further with the application. If a majority of the legal votes cast upon the question is for the facility, then the application process as set forth in §20-5j-1 *et seq.* of this code may proceed: *Provided,* That such vote is not binding on nor does it require the secretary to issue the permit. If the majority of the legal votes cast is against the question, the question may be submitted to a vote at any subsequent election in the manner herein specified: *Provided, however,* That the question may not be resubmitted to a vote until two years after the date of the previous referendum.

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 15A. THE A. JAMES MANCHIN REHABILITATION ENVIRONMENTAL ACTION PLAN.

§22-15A-18. Establishment of county recycling programs for solid waste; petition for referendum; ballot contents; election procedure; effect of such election.

(a) On or before October 18, 1992, each municipality described in subsection (b) of this section shall submit a proposal to the Solid Waste Management Board, consistent with the provisions of this section, describing the establishment and implementation of the mandatory recycling program. The Solid Waste Management Board shall review the submitted plans for consistency with the criteria provided in this section, the county or regional solid waste management plan and the statewide management plan. The Solid Waste Management Board may make suggested changes to the plan and shall provide technical assistance to the municipalities in the development of the plans.

(b) On or before October 18, 1993, each municipality with a population of 10,000 or more people, as determined by the most recent decennial census by the Bureau of the Census of the United States Department of Commerce, shall establish and commence implementation of a source separation and curbside collection program for recyclable materials. Implementation shall be phased in by July 1, 1995. Such program shall include, at a minimum, the following:

(1) An ordinance adopted by the governing body of the municipality requiring that each person, partnership, corporation or other entity in the municipality shall separate at least three recyclable materials, as deemed appropriate by the municipality, from other solid waste: *Provided,* That the list of recyclables to be separated may be adjusted according to whether the generator is residential, commercial or other type of establishment.

(2) A scheduled day, at least one per month, during which separated materials are to be placed at the curbside, or similar location, for collection.

(3) A system that collects recyclable materials from the curbside, or similar location, at least once per month: *Provided,* That to encourage full participation, the program shall, to the maximum extent possible, provide for the collection of recyclables at the same rate of frequency, and simultaneous with, the regular collection of solid waste.

(4) Provisions to ensure compliance with the ordinance, including incentives and penalties.

(5) A comprehensive public information and education program covering the importance and benefits of recycling, as well as the specific features and requirements of the recycling program. As part of the education program, each municipality shall, at a minimum, notify all persons occupying residential, commercial, institutional or other premises within its boundaries of the requirements of the program, including how the system will operate, the dates of collection, the responsibilities of persons within the municipality and incentives and penalties.

(6) Consultation with the county or regional solid waste authority in which the municipality is located to avoid duplication, ensure coordination of solid waste programs and maximize the market for recyclables.

(c) Notwithstanding the provisions of subsection (b) of this section, a comprehensive recycling program for solid waste may be established in any county of this state by action of a county commission in accordance with the provisions of this section. Such program shall require:

(1) That, prior to collection at its source, all solid waste shall be segregated into separate identifiable recyclable materials by each person, partnership, corporation and governmental agency subscribing to a solid waste collection service in the county or transporting solid waste to a commercial solid waste facility in the county;

(2) Each person engaged in the commercial collection, transportation, processing or disposal of solid waste within the county shall accept only solid waste from which recyclable materials in accordance with the county’s comprehensive recycling program have been segregated; and

(3) That the provisions of the recycling plan prepared pursuant to §22-15A-17 section seventeen of this article shall, to the extent practicable, be incorporated in the county’s comprehensive recycling program.

(d) For the purposes of this article, recyclable materials shall include, but not be limited to, steel and bimetallic cans, aluminum, glass, paper and such other solid waste materials as may be specified by either the municipality or county commission with the advice of the county or regional solid waste authority.

(e) A comprehensive recycling program for solid waste may be established in any county of this state by: (1) A petition filed with the county commission bearing the signatures of registered voters of the county equal to not less than five percent of the number of votes cast within the county for Governor at the preceding gubernatorial election; and (2) approval by a majority of the voters in a subsequent referendum on the issue. A referendum to determine whether it is the will of the voters of a county that a comprehensive recycling program for solid waste be established in the county may be held at any regular primary or general election ~~or in conjunction with any other countywide election~~. Any election at which the question of establishing a policy of comprehensive recycling for solid waste is voted upon shall be held at the voting precincts established for holding primary or general elections. All of the provisions of the general election laws, when not in conflict with the provisions of this article, shall apply to voting and elections hereunder, insofar as practicable. The Secretary of State shall prescribe the form of the petition which shall include the printed name, address and date of birth of each person whose signature appears on the petition. Upon verification of the required number of signatures on the petition, the county commission shall, not less than 70 days before the election, order that the issue be placed on the ballot and referendum held at the next primary~~,~~ or general ~~or special~~ election to determine whether it is the will of the voters of the county that a policy of comprehensive recycling of solid waste be established in the county: *Provided,* That the petition bearing the necessary signatures has been filed with the county commission at least 100 days prior to the election.

The ballot, or the ballot labels where voting machines are used, shall have printed thereon substantially the following:

“Shall the county commission be required to establish a comprehensive recycling program for solid waste in \_\_\_\_\_\_\_\_\_\_ County, West Virginia?

For Recycling

Against Recycling

(Place a cross mark in the square opposite your choice.)”

If a majority of legal votes cast upon the question be for the establishment of a policy of comprehensive recycling of solid waste, the county commission shall, after the certification of the results of the referendum, thereafter adopt an ordinance, within 180 days of certification, establishing a comprehensive recycling program for solid waste in the county: *Provided,* That such program shall be implemented and operational no later than 12 months following certification. If a majority of the legal votes cast upon the question be against the establishment of a policy of comprehensive recycling of solid waste, the policy shall not take effect, but the question may again be submitted to a vote at any subsequent election in the manner herein provided.

(f) A comprehensive recycling program for solid waste established by petition and referendum may be rescinded only pursuant to the procedures set out herein to establish the program.

To rescind the program, the ballot, or the ballot labels where voting machines are used, shall have printed thereon substantially the following:

“Shall the county commission be required to terminate the comprehensive recycling program for solid waste in \_\_\_\_\_\_\_\_\_\_\_ County, West Virginia?

Continue Recycling

End Recycling

(Place a cross mark in the square opposite your choice.)”

(g) If a majority of legal votes cast upon the question be for the termination of a policy of comprehensive recycling of solid waste previously established in the county, the county commission shall, after the certification of the results of the referendum, thereafter rescind by ordinance the comprehensive recycling program for solid waste in the county within 90 days of certification. If a majority of the legal votes cast upon the question be for the continuation of the policy of comprehensive recycling of solid waste, the ordinance shall not be rescinded, but the question may again be submitted to a vote at any subsequent election in the manner herein provided.

(h) In the case of any municipality having a population greater than 30,000 persons, as indicated by the most recent decennial census conducted by the United States, the governing body of such municipality may by ordinance establish a materials recovery facility in lieu of or in addition to the mandatory recycling program required under the provisions of this section: *Provided,* That a materials recovery facility shall be subject to approval by both the Public Service Commission and the Solid Waste Management Board upon a finding by both the Public Service Commission and the Solid Waste Management Board that the establishment of a materials recovery facility will not hinder, and will be consistent with, the purposes of this article.

CHAPTER 22C. ENVIRONMENTAL RESOURCES; BOARDS, AUTHORITIES, COMMISSIONS AND COMPACTS.

ARTICLE 4A. LOCAL PARTICIPATION; REFERENDUM.

§22C-4A-2. Approval of new Class A facility.

(a) The purpose of the mandatory referendum for approval of new Class A facilities is to verify for the local community that the local infrastructure and environment are appropriate for a new Class A facility and to assure that the local community accepts the associated benefits and detriments of having a new Class A facility located in their county.

(b) Following receipt of a certificate of need from the Public Service Commission as required by §24-2-1c of this code, and local solid waste approval as required in §22C-4-6 of this code for a new Class A facility, the county commission shall cause a referendum to be placed on the ballot not less than 56 days before the next primary~~,~~ or general ~~or other countywide~~ election:

(1) Such referendum is to determine whether it is the will of the voters of the county that a new Class A facility be constructed. Any election at which such question of locating a solid waste facility is voted upon shall be held at the voting precincts established for holding primary or general elections. All of the provisions of the general election laws, when not in conflict with the provisions of this article, apply to voting and elections hereunder, insofar as practicable.

(2) The ballot, or the ballot labels where voting machines are used, shall have printed thereon substantially the following:

“The West Virginia Legislature has found that the location of a Class A solid waste facility has impact upon the county in which it will be located, and further that local citizens should be given the opportunity to participate in the decision of locating a new Class A facility in their community. A Class A facility is authorized to receive between ten and thirty thousand tons of solid waste per month.

The \_\_\_\_\_\_\_\_ county commission finds the following:

I. The \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (name of applicant) has obtained site approval for a Class A commercial facility from the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (name of the county or regional solid waste authority). The authority has determined that the proposed landfill meets all local siting plan requirements. The local siting plan evaluates local environmental conditions and other factors and authorizes commercial landfills in areas of a county where a commercial landfill can be appropriately located.

II. The West Virginia Public Service Commission has issued a certificate of need, and has approved the operation of the Class A landfill. The Public Service Commission has determined that the landfill complies with the state solid waste management plan and based on the anticipated volume of garbage expected to be received at the landfill, that the proposal is consistent with public convenience and necessity.

Please vote whether to approve construction of the facility by responding to the following question:

Shall the \_\_\_\_\_\_\_\_\_\_ commercial solid waste facility located within \_\_\_\_\_\_\_\_\_\_\_\_\_\_ County, be permitted to handle between ten and thirty thousand tons of solid waste per month?

/ / For the facility

/ / Against the facility

(Place a cross mark in the square opposite your choice.)”

(3) If a majority of the legal votes cast upon the question is against the facility, the Division of Environmental Protection shall not proceed any further with the application. If a majority of the legal votes cast upon the question be for the facility, then the application process as set forth in this article and §22-15-1 *et seq.* of this code may proceed: *Provided,* That such vote is not binding on nor does it require the Division of Environmental Protection to issue the permit. If the majority of the legal votes cast is against the question, the question may be submitted to a vote at any subsequent election in the manner herein specified: *Provided, however,* That the question may not be resubmitted to a vote until two years after the date of the previous referendum.

§22C-4A-3. Referendum for approval of conversion of a Class B facility to a Class A facility.

(a) The purpose of the petition and referendum for approval of conversions of Class B facilities to Class A facilities is to allow the local community an opportunity to participate in the decision of whether the local infrastructure and environment are appropriate for expansion of a Class B facility to a Class A facility, and to assure that the local community accepts the associated benefits and detriments of having a Class A facility located in their county.

(b) Within 21 following receipt of a certificate of need from the Public Service Commission as required by §24-2-1c of this code, and local solid waste authority approval as required in §22C-4-26 of this code, the county commission shall complete publication of a Class II legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code, in the qualified newspaper of general circulation in the county wherein the solid waste facility is located. Registered voters residing in the county may petition the county commission to place the issue of whether a Class B facility be expanded to a Class A facility be placed on the ballot at the next primary~~,~~ or general ~~or other~~ ~~countywide~~ election held not less than one hundred days after the deadline for filing the petition. The petition shall be in writing, in the form prescribed by the Secretary of State, and shall include the printed name, residence address and date of birth of each person whose signature appears on the petition. The petition shall be filed with the county commission not less than 60 days after the last date of publication of the notice provided in this section. Upon receipt of completed petition forms, the county commission shall immediately forward those forms to the clerk of the county commission for verification of the signatures and the voter registration of the persons named on the petition. If a primary~~,~~ or general ~~or other~~ ~~countywide~~ election is scheduled not more than 120 days and not less than 100 days following the deadline for filing the petitions, the clerk of the county commission shall complete the verification of the signatures within 30 days and shall report the number of valid signatures to the county commission. In all other cases, the clerk of the county commission shall complete verification in a timely manner. Upon verification of the signatures of registered voters residing in the county equal to not less than 15 percent of the number of votes cast within the county for Governor at the preceding gubernatorial election, and not less than 70 days before the election, the county commission shall order a referendum be placed upon the ballot:

(1) Such referendum is to determine whether it is the will of the voters of the county that the Class B facility be converted to a Class A facility. Any election at which such question of locating a solid waste facility is voted upon shall be held at the voting precincts established for holding primary or general elections. All of the provisions of the general election laws, when not in conflict with the provisions of this article, apply to voting and elections hereunder, insofar as practicable. The Secretary of State shall prescribe the form of the petition which shall include the printed name, address and date of birth of each person whose signature appears on the petition. Should the petition fail to meet the requirements set forth above, the application process as set forth in this article and §22-15-1 *et seq.* of this code, may proceed.

(2) The ballot, or the ballot labels where voting machines are used, shall have printed thereon substantially the following:

“The West Virginia Legislature finds that expansion of a Class B solid waste facility to a Class A solid waste facility has impact to the county in which it will be located, and further that local citizens should be afforded the opportunity to participate in the decision of locating a Class A facility in their community. A Class A facility is authorized to receive between ten and thirty thousand tons of solid waste per month. Fifteen percent of the registered voters in \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ county have signed a petition to cause a referendum to determine the following question:

The \_\_\_\_\_\_\_\_ county commission finds the following:

I. The \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (name of applicant) has obtained site approval for a Class A commercial facility from the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (name of the county or regional solid waste authority). The authority has determined that the proposed landfill meets all local siting plan requirements. The local siting plan evaluates local environmental conditions and other factors and authorizes commercial landfills where a commercial landfill can be appropriately located.

II. The West Virginia Public Service Commission has issued a certificate of need, and has approved the operation of the Class A landfill. The Public Service Commission has determined that the landfill complies with the state solid waste management plan and that based on the anticipated volume of garbage expected to be received at the landfill, that the proposal is consistent with public convenience and necessity.

Please vote whether to approve construction of the facility by responding to the following question:

Shall the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ solid waste facility, located within \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ County, West Virginia, be permitted to handle between ten and thirty thousand tons of solid waste per month?

/ / For conversion of the facility

/ / Against conversion of the facility

(Place a cross mark in the square opposite your choice.)”

(3) If a majority of the legal votes cast upon the question is against the facility, then the Division of Environmental Protection shall not proceed any further with the application. If a majority of the legal votes cast upon the question be for the facility, then the application process as set forth in this article and §22-15-1 *et seq.* of this code may proceed: *Provided,* That such vote is not binding on nor does it require the Division of Environmental Protection to modify the permit. If the majority of the legal votes cast is against the question, the question may be submitted to a vote at any subsequent election in the manner herein specified: *Provided, however,* That the question may not be resubmitted to a vote until two years after the date of the previous referendum.

ARTICLE 6. HAZARDOUS WASTE FACILITY SITING APPROVAL.

§22C-6-3. Procedure for public participation.

(a) From and after June 5, 1992, in order to obtain approval to locate either a commercial hazardous waste management facility or a hazardous waste management facility which disposes of greater than 10,000 tons per annum on site in this state, an applicant shall:

(1) File a presiting notice with the county or counties in which the facility is to be located or proposed. Such notice shall be submitted on forms prescribed by the commercial hazardous waste management facility siting board;

(2) File a presiting notice with the commercial hazardous waste management facility siting board; and

(3) File a presiting notice with the Division of Environmental Protection.

(b) If a presiting notice is filed in accordance with subsection (a) of this section, the county commission shall publish a Class II legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code, in a newspaper of general circulation in the counties wherein the hazardous waste management facility is to be located. Upon an affirmative vote of the majority of the county commissioners or upon the written petition of registered voters residing in the county equal to not less than 15 percent of the number of votes cast within the county for Governor at the preceding gubernatorial election, which petition shall be filed with the county commission within 60 days after the last date of publication of the notice provided in this section, the county commission shall, upon verification of the required number of signatures on the petition, and not less than 56 days before the election, order a referendum be placed upon the ballot: *Provided,* That such a referendum is not required for a hazardous waste management facility for which at least 90 percent of the capacity is designated for hazardous waste generated at the site of disposal. Any referendum conducted pursuant to this section shall be held at the next primary~~,~~ or general ~~or other~~ ~~countywide~~ election.

(1) Such referendum is to determine whether it is the will of the voters of the county that a commercial hazardous waste management facility be located in the county or that a hazardous waste management facility disposing of greater than 10,000 tons of hazardous waste per annum on site be located in the county. Any election at which such question of locating a hazardous waste management facility is voted upon shall be held at the voting precincts established for holding primary or general elections. All of the provisions of the general election laws, when not in conflict with the provisions of this article, apply to voting and elections hereunder, insofar as practicable. The Secretary of State shall prescribe the form of the petition which shall include the printed name, address and date of birth of each person whose signature appears on the petition.

(2) The ballot, or the ballot labels where voting machines are used, shall have printed thereon substantially the following depending upon the type of facility to be located with the county:

“Shall a commercial hazardous waste management facility be located within \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ County, West Virginia?

/ / For the facility

/ / Against the facility

(Place a cross mark in the square opposite your choice.)” or,

“Shall a hazardous waste management facility disposing of greater than ten thousand tons per annum on site be located within \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ County, West Virginia?

/ / For the facility

/ / Against the facility

(Place a cross mark in the square opposite your choice.)”

(3) If a majority of the legal votes cast upon the question is against the facility, then the county commission shall notify the Division of Environmental Protection and the commercial hazardous waste management facility siting board, in the case of a commercial facility, of the result and the commercial hazardous waste management facility siting board or Division of Environmental Protection, as the case may be, shall not proceed any further with the application. If a majority of the legal votes cast upon the question is for the facility, then the application process as set forth in §22-18-1 *et seq.* of this code and §22C-5-1 *et seq.* of this code, in the case of a commercial hazardous waste management facility, may proceed: *Provided,* That such vote is not binding on nor does it require the commercial hazardous waste management facility siting board to grant a certificate of site approval or the Division of Environmental Protection to issue the permit, as the case may be. If the majority of the legal votes cast is against the question, the question may be submitted to a vote at any subsequent election in the manner herein specified: *Provided, however*, That the question may not be resubmitted to a vote until two years after the date of the previous referendum.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 22C. WEST VIRGINIA LOTTERY RACETRACK TABLE GAMES ACT.

§29-22C-7. Local option election.

(a) No racetrack may be licensed under this article to operate West Virginia Lottery table games until a local option election is held in the county in which pari-mutuel wagers are received at a racetrack licensed under §19-23-1 *et seq.* of this code and the voters of that county voting on the question approve having West Virginia Lottery table games at the racetrack.

(b) The county commission shall place the question on the ballot upon the receipt of a written notice from a licensed racetrack located within that county requesting that the question be placed on the ballot.

(c) The county commission of the county in which table games would be located shall give notice to the public of the election by publication of the notice 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 the publication shall be the county in which the election is to be held. The date of the last publication of the notice shall fall on a date at least 30 days preceding the day of the election. A local option election shall be effective even though the date of the order of the county commission setting the election or the date of publication of notice of the election is prior to the effective date of this article if the election is otherwise held in accordance with the provisions of this section.

(d) On the local option election ballot shall be printed the following:

Shall West Virginia Lottery table games be permitted at the [name of licensed racetrack]?

[ ] Yes[ ] No

(Place a cross mark in the square next to your choice.)

(e) The local option election shall be held in conjunction with the next primary or general election scheduled more than 90 days following receipt by the county commission of the notice required by this section ~~or at a special election:~~ *~~Provided,~~* ~~That upon written request by the licensed racetrack that a special election be called, the county commission shall order a special election to be held on the question within ninety days after the receipt by the county commission of that request. The county commission may require the licensed racetrack to pay the entire cost incurred by the county to hold the special election~~. Approval shall be by a majority of the voters casting votes at the election on the question of approval or disapproval of West Virginia Lottery table games at a licensed racetrack.

(f) If the majority votes against allowing table games at a licensed racetrack, no election on the issue shall be held for a period of 104 weeks. A local option election may thereafter be held in the manner provided in this section. The process to hold another election on the question shall start anew, as if no prior request for an election on the question had been filed with county commission and as if there had been no prior election on the question.

(g) If the majority votes for allowing West Virginia Lottery table games at a licensed racetrack facility in a county, another local option election on the issue shall not be held for a period of five years. A local option election may thereafter be held if a written petition of qualified voters residing within the county equal to at least five percent of the number of persons who were registered to vote in the next preceding general election is received by the county commission of the county in which the horse or dog racetrack is located. The petition may be in any number of counterparts. The petition shall be in the following form:

Petition For Local Option Election

We, the undersigned legally qualified voters, resident within the County of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, do hereby petition that a special election be held within the County of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ upon the following question: Shall West Virginia Lottery table games be permitted at the [name of racetrack]?

Name Address Date

(Post office or street address)

ARTICLE 25. AUTHORIZED GAMING FACILITY.

§29-25-7. Local option.

(a) No gaming facility may be licensed to operate in a county until the county commission of the county holds an election on the question of whether a gaming facility may be operated within the county and the voters approve the operation of a gaming facility in the county. The election shall be determined by a vote of the resident voters of the county in which the facility is proposed to be located.

The county commission of the county in which the proposed facility is located shall give notice to the public of the election by publication of the notice 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 the publication shall be the county in which the election is to be held. The date of the last publication of the notice shall fall on a date within the period of the 14 consecutive days next preceding the election.

On the local option election ballot shall be printed the following:

Shall West Virginia Lottery Commission video lottery games and authorized games of chance be permitted within an area at the [name of qualified historic resort hotel]?

[ ] Yes [ ] No

(Place a cross mark in the square opposite your choice.)

Any local option election to approve or disapprove of the proposed authorization of a gaming facility within a county shall be in accordance with procedures adopted by the commission. The local option election may be held in conjunction with a primary or general election~~, or at a special election~~. Approval shall be by a majority of the voters casting votes on the question of approval or disapproval of gaming facility operations at the election.

If a majority votes against allowing a gaming facility, no election on the issue shall be held for a period of 104 weeks. If a majority votes “yes” no election reconsidering the action may be held for a period of five years. A local option election may thereafter be held if a written petition of qualified voters residing within the county equal to at least five percent of the number of persons who were registered to vote in the next preceding general election is received by the county commission of the county in which the gaming facility is to be located. The petition may be in any number of counterparts. The election shall take place at the next primary or general election scheduled more than 90 days following receipt by the county commission of the petition required by this subsection: *Provided,* That the issue may not be placed on the ballot until all statutory notice requirements have been met: *Provided, however,* That no subsequent disapproval may take effect until after the expiration of the five-year licensing period in effect at the time of the referendum.

(b) No local law or regulation providing any penalty, disability, restriction, regulation or prohibition for operating a gaming facility or supplying a gaming facility may be enacted, and the provisions of this article preempt all regulations, rules, ordinances and laws of any county or municipality in conflict with this article.

(c) Except as specifically provided in this article, no other fees or taxes may be imposed by a local governing body.

CHAPTER 47. REGULATION OF TRADE.

ARTICLE 20. CHARITABLE BINGO.

§47-20-26. County option election.

The county commission of any county is authorized to call a local option election for the purpose of determining the will of the voters as to whether the provisions of this article shall continue in effect in said county: *Provided,* That no local option election may be called to disapprove the playing of bingo games at the state fair in accordance with the provisions of this article.

A petition for local option election shall be in the form specified in this section and shall be signed by qualified voters residing within said county equal to at least ten percent of the persons qualified to vote within said county at the last general election. The petition may be in any number of counterparts and is sufficient if substantially in the following form:

PETITION ON LOCAL OPTION ELECTION RESPECTING THE CONDUCT OF BINGO GAMES FOR CHARITABLE PURPOSES IN ............ COUNTY, WEST VIRGINIA

Each of the undersigned certifies that he or she is a person residing in ............. County, West Virginia, and is duly qualified to vote in that county under the laws of the state, and that his or her name, address, and the date of signing this petition are correctly set forth below.

The undersigned petition the county commission to call and hold a local option election at ~~(1) a special or (2)~~ the next primary~~,~~ or general ~~or special~~ election ~~(the petition shall specify (1) or (2))~~ upon the following question: Shall the provisions of Article Twenty, Chapter Forty-Seven of the Code of West Virginia, 1931, as amended, continue in effect in ............ County, West Virginia?

Name Address Date

.......................................................

(Each person signing must specify either his or her post-office address or his or her street number.)

Upon the filing of a petition for a local option election in accordance with the provisions of this section, the county commission shall enter an order calling a local option election as specified in the petition. The county commission shall give notice of such local option election by publication thereof 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 county. The notice shall be so published within 14 consecutive days next preceding the election.

Each person qualified to vote in the county at any primary, general or special election shall likewise be qualified to vote at the local option election. The election officers appointed and qualified to serve as such at any primary, general or special election shall conduct the local option election. If the local option election is to be held at the same time as a primary~~,~~ or general ~~or special~~ election, it shall be held in connection with and as a part of that primary~~,~~ or general ~~or special~~ election. The ballots in the local option election shall be counted and returns made by the election officers and the results certified by the commissioners of election to said county commission which shall canvass the ballots, all in accordance with the laws of the State of West Virginia relating to primary and general elections insofar as the same are applicable. The county commission shall, without delay, canvass the ballots cast at said local option election and certify the result thereof.

The ballot to be used in said local option election shall have printed thereon substantially the following:

“Shall the playing of bingo to raise money for charitable or public service organizations continue in effect in .............. County of West Virginia?

/ / Yes / / No

(Place a cross mark in the square opposite your choice.)”

If a majority of the voters voting at any local option election vote no on the foregoing question, the provisions of article twenty, chapter forty-seven of the Code of West Virginia, 1931, as amended, no longer continue in effect in said county.

No local option election may be called in a county to resubmit said question to the voters of that county, whether the question was approved or disapproved at the previous local option election, sooner than five years after the last local option election.

ARTICLE 21. CHARITABLE RAFFLES.

§47-21-24. County option election.

The county commission of any county is authorized to call a local option election for the purpose of determining the will of the voters as to whether the provisions of this article shall continue in effect in such county.

A petition for a local option election shall be in the form specified in this section and shall be signed by qualified voters residing within such county equal to at least ten percent of the individuals qualified to vote within such county at the last general election. The petition may be in any number of counterparts and is sufficient if substantially in the following form:

PETITION ON LOCAL OPTION ELECTION RESPECTING THE CONDUCT OF RAFFLES FOR CHARITABLE PURPOSES IN \_\_\_\_\_\_\_\_\_\_\_\_\_ COUNTY, WEST VIRGINIA

Each of the undersigned certifies that he or she is an individual residing in \_\_\_\_\_\_\_\_\_\_\_\_\_ County, West Virginia, and is duly qualified to vote in that county under the laws of the state, and that his or her name, address and the date of signing this petition are correctly set forth below.

The undersigned petition the county commission to call and hold a local option election at ~~(1) a special or (2)~~ the next primary~~,~~ or general ~~or special~~ election ~~(the petition shall specify (1) or (2)) upon the following question~~: Shall the provisions of article twenty-one, chapter forty-seven of the Code of West Virginia, 1931, as amended, continue in effect in \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ County, West Virginia?

Name Address Date

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_

(Each individual signing must specify either his or her post-office address or his or her street number.)

Upon the filing of a petition for a local option election in accordance with the provisions of this section, the county commission shall enter an order calling a local option election as specified in the petition. The county commission shall give notice of such local option election by publication thereof 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 county. The notice shall be so published within 14 consecutive days next preceding the election.

Each individual qualified to vote in the county at any primary, general or special election, shall likewise be qualified to vote at the local option election. The election officers appointed and qualified to serve as such at any primary, general or special election shall conduct the local option election. If the local option election is to be held at the same time as a primary~~,~~ or general ~~or special~~ election, it shall be held in connection with and as a part of that primary~~,~~ or general ~~or special~~ election. The ballots in the local option election shall be counted and returns made by the election officers and the results certified by the commissioners of election to such county commission which shall canvass the ballots, all in accordance with the laws of the State of West Virginia relating to primary and general elections insofar as the same are applicable. The county commission shall, without delay, canvass the ballots cast at said local option election and certify the result thereof.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 5. LOCAL OPTION ELECTIONS.

§60-5-1. Election in county, magisterial district or municipality.

A county or any municipality may in an election held especially for the purpose, determine whether the sale of alcoholic liquors for beverage purposes shall be permitted within that county or municipality.

A local option election shall ~~not~~ be held ~~within 60 days of a general or municipal election~~ at the same time as the next regularly scheduled primary or general election.

§60-5-3. Form of petition.

The petition shall be in the following form:

Petition for Local Option Election

We, the undersigned legally qualified voters, resident within the county (municipality) of\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, do hereby petition that a special election be held within the county (city, town) of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ on the ~~\_\_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20 \_\_\_\_,~~ at the date of the next regularly scheduled primary or general election upon the following question:

Shall the sale of alcoholic beverages under the West Virginia Alcohol Beverage Control Commissioner be (permitted) (prohibited) in \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_?

Name Address Date

(Post office or street and number)

§60-5-4. Notice of election; when held; election officers.

The county commission or governing body of the municipality shall give notice of the special local option election by publication thereof 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 area in which the election is to be held. Such notice shall be so published within 14 consecutive days next preceding the election. The election shall be held ~~not more than 90 nor less than 60 days from the filing of the petition~~ at the same time as the next regularly scheduled primary or general election. The regular election officers of the county or municipal corporation shall open the polls and conduct the election in the same manner provided for general elections.

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.