

# **WEST VIRGINIA LEGISLATURE**

## **2021 REGULAR SESSION**

### **Committee Substitute**

**for**

### **House Bill 2751**

BY DELEGATES WESTFALL AND HOTT

[BY REQUEST OF THE WEST VIRGINIA STATE AUDITOR]

[Introduced February 24, 2021; referred to the

Committee on Political Subdivisions then the

Judiciary]



1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
2 designated §6-9C-1, §6-9C-2, §6-9C-2A, §6-9C-3, §6-9C-4, §6-9C-5, §6-9C-6, §6-9C-7,  
3 §6-9C-8, §6-9C-9, §6-9C-10, and §6-9C-11; to amend and reenact §8-35-1 and §8-35-2  
4 of said code; and to amend said code by adding thereto new sections, designated §8-35-  
5 3, §8-35-4, §8-35-5 and §8-35-6; all relating generally to fiscal emergencies of local  
6 governments and dissolution of municipalities; establishing a system to remediate those  
7 fiscal emergencies; providing legislative findings; defining terms; allowing State Auditor or  
8 his or her designee to determine whether local governments are keeping accounts,  
9 records, files, or reports in compliance with §6-9-2 of this code; providing conditions  
10 constituting grounds for fiscal watch; providing for rulemaking; allowing for State Auditor  
11 or his or her designee to declare a local government is under fiscal watch; allowing the  
12 State Auditor or his or her designee to visit, inspect, and provide technical assistance to a  
13 local government under fiscal watch; allowing State Auditor or his or her designee to  
14 declare a local government to be in a state of fiscal emergency; providing process for  
15 initiating a fiscal watch review; providing a process for declaring and lifting a fiscal watch  
16 or elevating a fiscal watch to a fiscal emergency; establishing conditions that constitute a  
17 fiscal emergency; providing for rulemaking; establishing a process for determining whether  
18 fiscal emergency conditions exist and appeal process of such determination; providing  
19 that a local government for which a fiscal emergency is declared establish a financial  
20 planning and supervision committee; providing for rulemaking; mandating compliance by  
21 local government officials with recommendations of State Auditor or his or her designee  
22 and certain provisions of the article and providing appropriate State Auditor or his or her  
23 designee with recourse for failure to comply; providing for severability; providing a process  
24 for forfeiture of charter or certificate of incorporation, notice, and dissolution of  
25 municipality; providing that the State Auditor or his or her designee shall promptly conduct  
26 an exam under §6-9-1, *et seq.* of this code; providing a process for voluntary dissolution

27 of a municipality; providing that the State Auditor or his or her designee shall promptly  
28 conduct an exam under §6-9-1, *et seq.* of this code; providing a process for involuntary  
29 dissolution of a municipality; requiring that the State Auditor become special receiver of a  
30 dissolved municipality and establishing powers and authority of State Auditor as special  
31 receiver; establishing the “Municipal Dissolution Account”; providing for disposition of  
32 property belonging to a dissolved municipal corporation; and providing for sale and  
33 liquidation of dissolved municipal assets.

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

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

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

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

1 (a) The Legislature finds:

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

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

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

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

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

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

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

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

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

**§6-9C-2. Definitions.**

As used in this article:

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

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

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

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

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

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

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

28 “Fiscal emergency” means the existence of fiscal emergency conditions, including, but not  
29 limited to:

- 30 (1) The existence of a default on any debt obligation for more than 30 days;  
31 (2) The failure to make a payment of all payroll to employees;  
32 (3) The failure to make a payment of all employee benefits;  
33 (4) The existence of a condition where an account has been due and payable for either  
34 30 days, or to which a penalty for failure to timely pay has been added  
35 (5) An identified deficit amount in the general fund that exceeds estimated revenues; or  
36 (6) Another identified condition.

37 “Fiscal watch” means the existence of fiscal watch conditions including but not limited to:

38 (1) The existence of a condition where an account has been due and payable for either  
39 30 days, or to which a penalty for failure to timely pay has been added;

40 (2) An identified deficit amount in the general fund that exceeds estimated revenues;

41 (3) The failure to comply with debt covenants; or

42 (4) Another identified condition.

43 “General fund” means the fund used to account for and report the primary operating  
44 activities of the local government.

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

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

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

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

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

**§6-9C-3. Conditions constituting grounds for fiscal watch.**

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

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

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

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

13           (4) Any rule, as proposed by the State Auditor or his or her designee for legislative  
14 approval in accordance with the provisions of §29A-3-1 et seq. of this code, which identifies other  
15 indicators of financial watch conditions.

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

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

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

8           (c) The State Auditor or his or her designee, may visit and inspect any local government  
9 that is declared to be under a fiscal watch. The State Auditor or his or her designee may provide



10 technical assistance to the local government to implement proposals to eliminate the fiscal  
11 practices or budgetary conditions that prompted the declaration of fiscal watch and may make  
12 recommendations concerning those proposals.

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

**§6-9C-5. Initiating fiscal watch review.**

1 A local government may undergo a fiscal watch review to determine whether it is  
2 approaching a state of fiscal emergency. A fiscal watch review shall be initiated by a written  
3 request to the State Auditor or his or her designee from the governing body when duly authorized  
4 by a majority of the governing body; or may be initiated by the State Auditor or his or her designee  
5 if conditions for a fiscal watch have been determined to exist. Fiscal watch conditions include but  
6 are not limited to: (1) the inability of a local government to meet financial obligations; (2) the lack  
7 of adequate financial records necessary to conduct an examination pursuant to §6-9-1, et seq. of  
8 this code; or (3) an examination pursuant to §6-9-1, et seq. of this code would cause an undue  
9 financial burden to the local government. State Auditor or his or her designee shall notify the local  
10 government when a fiscal watch review may be conducted. The State Auditor's Office may  
11 perform the fiscal watch review, in lieu of an examination, as required by §6-9-1, et seq. of this  
12 code at the discretion of the State Auditor or his or her designee. Furthermore, all working papers  
13 acquired or created to produce the fiscal watch review shall be considered confidential pursuant  
14 to §6-9-9b of this code.

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

1 (a) Upon determining that one or more of the conditions constituting grounds for a fiscal  
2 watch are present, the State Auditor or his or her designee shall issue a written declaration of the

3 existence of a fiscal watch to the governing body of the local government. The fiscal watch shall  
4 be in effect until the State Auditor or his or her designee determines that the conditions have been  
5 satisfactorily addressed, cancels the watch, or until the State Auditor or his or her designee  
6 determines that a state of fiscal emergency exists. The State Auditor or his or her designee, shall  
7 provide such technical and support services to the municipal corporation, county or political  
8 subdivision after a fiscal watch has been declared to exist as State Auditor or his or her designee  
9 considers necessary and provide mandatory recommendations to the local government or  
10 governing body for implementation to address the fiscal watch conditions.

11 (b) Within 90 days after the date a written declaration identifying the existence of a fiscal  
12 watch is issued under this section, the governing body of the local government for which a fiscal  
13 watch was declared shall submit to the State Auditor or his or her designee, (1) a financial  
14 recovery plan that (A) shall identify actions to be taken to eliminate all of the conditions described  
15 in §6-9C-5 of this code and, (B) shall include a schedule detailing the approximate dates for  
16 beginning and completing the actions; and, (2) a five-year forecast reflecting the effects of the  
17 financial recovery plan. The financial recovery plan also shall evaluate the feasibility of entering  
18 into shared services agreements with other political subdivisions for the joint exercise of any  
19 power, performance of any function, or rendering of any service, if so authorized by statute. The  
20 financial recovery plan is subject to review and approval by the State Auditor or his or her  
21 designee. The State Auditor or his or her designee may extend the amount of time by which a  
22 financial recovery plan is required to be filed, for good cause shown.

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

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

29           (2) The State Auditor or his or her designee finds that a local government for which a fiscal  
30 watch has been declared has not made reasonable proposals or otherwise taken action to  
31 discontinue or correct the fiscal practices or budgetary conditions that prompted the declaration  
32 of fiscal watch, and the State Auditor or his or her designee determines a fiscal emergency  
33 declaration is necessary to prevent further decline.

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

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

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

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

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

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

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

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

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

21 (8) The State Auditor or his or her designee declares a fiscal emergency pursuant to §6-  
22 9C-6 of this code.

23 (b) Any condition described in subdivisions (4), (5), (6) or (7) of subsection (a) of this  
24 section shall not constitute a fiscal emergency condition if the local government clearly  
25 demonstrates, to the satisfaction of the State Auditor or his or her designee, that such condition  
26 no longer exists prior to the time of the determination.

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

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

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

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

10 (c) A determination by the State Auditor or his or her designee under this section that a  
11 fiscal emergency condition does not exist is final and conclusive and not appealable. A  
12 determination by the State Auditor or his or her designee under this section that a fiscal  
13 emergency exists is final, except that the governing body affected by a determination of the  
14 existence of a fiscal emergency condition under this section, when authorized by a majority of the  
15 members of their governing body, may appeal the determination of the existence of a fiscal  
16 emergency condition to the circuit court of the county in which the local government of the majority

17 of the local government is situated and such court shall have jurisdiction. The appeal shall be  
18 heard expeditiously by the circuit court for good cause shown shall take precedence over all other  
19 civil matters except earlier matters of the same character. Notice of such appeal must be filed  
20 with the State Auditor or his or her designee and such court within 30 days after the notification  
21 of a fiscal emergency determination by the State Auditor or his or her designee pursuant to  
22 subsection (a) of this section.

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

33 (e) The pendency of any appeal shall not affect or impede the operations of this article.  
34 No restraining order, temporary injunction, or other similar restraint upon actions consistent with  
35 this article may be imposed by the court or any court pending determination of such appeal; and  
36 all actions may be taken under this article to prevent the further decline of the financial conditions  
37 of the local government that may be taken regardless of the pendency of any appeal. Any action  
38 taken or contract executed pursuant to this article during the pendency of an appeal is valid and  
39 enforceable among all parties: *Provided*, That if the circuit court reverses the determination of the  
40 existence of a fiscal emergency condition by the State Auditor or his or her designee, the  
41 determination no longer has any effect, and any procedures taken as a result of the determination  
42 shall be terminated.

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

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

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

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

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

12 (2) The rules of governance for the committee;

13 (3) Requirements for the detailed financial recovery plan to be submitted by the local  
14 government or submitted by the committee on behalf of the local government;

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

16 (5) The payment of expenses and obligations;

17 (6) The establishment of enhanced financial reporting;

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

19 (8) Recourse for a noncompliant local government;

20 (9) Limitations for appropriations;

21 (10) Communications of the committee;

22 (11) The approval of debt obligations;

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

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

**§6-9C-10. Compliance.**

1 (a) Local government officials shall:

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

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

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

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

10 (5) Comply with the financial recovery plan instituted by a local governing body or a  
11 committee created pursuant to §6-9C-9 of this code.

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

**§6-9C-11. Severability.**

1 (a) In case any section or provision of this article, including any condition or prerequisite  
2 to any action or determination, or in case any act or action, or part thereof, made, or taken under  
3 this article, or any application thereof, is for any reason held to be illegal or invalid, such illegality  
4 or invalidity shall not affect the remaining sections or provisions or any other section or provision  
5 of this article, including any condition or prerequisite to any action or determination, or any

6 agreement, act or action, or part thereof, made, entered into, or taken under such article, which  
7 shall be construed and enforced and applied as if such illegal or invalid portion were not contained  
8 in this article, nor shall such illegality or invalidity or any application affect any legal and valid  
9 application, and each such section, provision, agreement, act, or action, or part thereof, shall be  
10 deemed to be effective, operative, made, and entered into or taken in the manner and to the full  
11 extent permitted by law.

12 (b) Any action or proceeding bringing into question the interpretation, legality, or validity  
13 of any provision of this article, the existence or authority, or the legality or validity of any act, of  
14 the committee or the State Auditor or his or her designee of any action taken under this article, is  
15 a matter of great public interest to the state and shall be advanced on the docket of the court and  
16 expedited to final determination.

## **CHAPTER 8. MUNICIPAL CORPORATIONS.**

### **ARTICLE 35. DISSOLUTION OF MUNICIPALITIES.**

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

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

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

8 (b) The county ~~court~~ commission of the county wherein any such municipality or the major  
9 portion of the territory thereof is located shall have jurisdiction to hear and determine all matters



10 relating to the forfeiture of such charter or certificate of incorporation, upon the petition of one or  
11 more of its ~~inhabitants~~ qualified voters, or the State Auditor or his or her designee, and to dissolve  
12 such municipal corporation. Ten days' notice of the filing of such petition with the clerk of the  
13 county ~~court~~ commission of such county, served upon the mayor and recorder, or on the last  
14 mayor or recorder thereof, under subsection (c) of this section, shall be sufficient notice upon  
15 which such county ~~court~~ commission shall so act, and upon the proper proof of the allegations of  
16 such petition, any such charter or certificate of incorporation shall be declared forfeited and the  
17 municipal corporation dissolved and all debts of such municipality shall be ordered paid and the  
18 forfeiture and dissolution shall not become effective until such debts have been paid or until the  
19 State Auditor or his or her designee has wound up the municipal corporation under §8-35-4 of  
20 this code. Upon such forfeiture and dissolution all interest of such municipality in corporate funds,  
21 if any, in excess of the amounts required to pay corporate debts shall be and the same is hereby  
22 transferred to and vested in the State of West Virginia, to be controlled by the State Auditor. If the  
23 territory so incorporated, or a major part thereof, either in area or in population, shall, however,  
24 within one year next after such declaration of forfeiture and dissolution by the county ~~court~~  
25 commission be reincorporated under this chapter, then the Auditor of the State of West Virginia  
26 shall convey unto such new municipality all of the rights of the State of West Virginia in and to the  
27 corporate property, moneys, claims, demands and taxes collected or uncollected, of the former  
28 municipal corporation so dissolved.

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

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

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

**§8-35-2. Voluntary dissolution of ~~Class III city or Class IV town or village~~ a municipality.**

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

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

16        ~~/For Continuance of Municipal Corporation~~

17        ~~/For Dissolution of Municipal Corporation~~

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

20        ( ) Yes.

21        ( ) No.

22        (c) The dissolution election shall be conducted in accordance with applicable election laws  
23 pursuant to chapter three of this code and any properly promulgated rules or regulations.

24 (d) If a majority of the legal votes cast be for dissolution, then such municipal corporation  
25 municipality shall, by operation of law, be dissolved upon termination of the term of the governing  
26 body then in office: *Provided*, That all debts or other obligations outstanding against such  
27 municipal corporation shall be settled in full at the expiration of six months from the date of the  
28 election on the question. The State Auditor or his or her designee shall promptly conduct an  
29 examination under the authority granted under §6-9-1, *et seq.* of this code, to determine the  
30 financial condition of the municipality. If a majority of the legal votes cast be for continuance, then  
31 such municipal corporation shall continue in existence unless and until dissolved at some later  
32 date under the provisions of ~~section one~~ of this article. ~~or this section two: *Provided, however,*~~  
33 ~~That another election under the provisions of this section two shall not be held within two years~~  
34 ~~of the last such election. Any election under the provisions of this section two shall be held,~~  
35 ~~conducted and superintended and the result thereof ascertained, certified, returned and~~  
36 ~~canvassed in the same manner and by the same persons as an election for municipal officers of~~  
37 ~~such municipal corporation.~~

PART III. INVOLUNTARY DISSOLUTION OF MUNICIPAL CORPORATION.

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

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

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

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

9 (b) The petition requesting involuntary dissolution shall be filed in the circuit court in the  
10 county in which such municipality or the major portion of the territory thereof is located. The

11 petition shall state the facts which justify the request and shall set forth a detailed statement of  
12 the assets and liabilities of the municipality as they can be ascertained. The petition shall state  
13 the facts which justify the request as they can be ascertained.

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

24 (d) The State Auditor or his or her designee shall promptly conduct an examination under  
25 the authority granted under §6-9-1, et seq. of this code, to determine the financial condition of the  
26 municipality.

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

34 (f) The order of dissolution shall be filed with the clerk of the county commission and the  
35 office of the Secretary of State.

PART IV. DISPOSITION OF PROPERTY, DEBTS AND LIABILITIES.

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

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

5           (b) The State Auditor or his or her designee, acting as special receiver of the dissolved  
6 municipality, shall have the power and authority to:

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

9           (2) Protect assets;

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

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

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

17          (c) Any excess of amounts required to pay corporate debts shall be maintained in a  
18 special fund titled "Municipal Dissolution Account" to be controlled by the State Auditor or his or  
19 her designee to offset the costs associated with conducting examinations and legal expenses  
20 pursuant to the provisions of this article.

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

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

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

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

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

1 (a) If the State Auditor or his or her designee, as special receiver, makes a determination  
2 that a dissolved municipality's real and/or personal property must be liquidated to satisfy its debts  
3 and liabilities then a public auction may be conducted. The property shall be sold either at an on-  
4 site public auction, by utilizing an internet-based public auction service, or at a suitable location  
5 within the county wherein the dissolved municipality or a majority of the territory of the municipality  
6 is located and such auction shall be conducted by the State Auditor or his or her designee. Before  
7 making such sale, notice of the time, terms, manner, and either the location of the sale or the  
8 internet-based public auction service to be utilized, together with a brief description of the property  
9 to be sold, shall be published as a Class II legal advertisement in compliance with the provisions  
10 of §59-3-1, et seq. of this code, and the publication area for such publication shall be the county  
11 where the municipality or the majority of the municipality is located.

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

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

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

18 (3) Any authority, commission, instrumentality, or agency established by act of the  
19 Legislature, governor, or other representative that may act on behalf of this state.

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

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

NOTE: The purpose of this bill is to establish a system to remediate fiscal emergencies of local governments, and to modernize the process for dissolution of municipal corporations in this State.

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