

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Enrolled

Committee Substitute

for

Senate Bill 695

BY SENATOR RUCKER

[Passed April 9, 2021; in effect from passage]

1 AN ACT to amend and reenact §8-6-4a and §8-6-5 of the Code of West Virginia, 1931, as
2 amended; and to amend and reenact §8-7-2 of said code, all relating to counties and
3 municipalities; and providing procedures for decreasing corporate limits or increasing
4 corporate limits by annexation and annexation by minor boundary adjustments.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. ANNEXATION.

**§8-6-4a. Annexation without election for municipalities in counties that have an adopted
countywide zoning ordinance which includes urban growth boundaries.**

1 (a) This section applies to municipalities in counties that have adopted a countywide
2 zoning ordinance with designated urban growth boundaries and, prior to January 1, 2009, have
3 adopted local impact fees pursuant to the provisions of §7-20-1 *et seq.* of this code that want to
4 annex additional property without an election.

5 (b) For purposes of this section only:

6 (1) "Contiguous" means property that is next to, abutting, and having a boundary that is
7 coterminous with the municipality's designated urban growth boundary. The length of a street,
8 highway, road, or other traffic or utility easement, streams, rivers, or other natural topography are
9 not to be used to determine if a property is contiguous: *Provided*, That the width of a street,
10 highway, road, or other traffic or utility easement, streams, rivers, or other natural topography may
11 be used to determine contiguous boundaries.

12 (2) "Urban growth boundary" means a site-specific line, delineated on a zoning map or a
13 written description in a zoning ordinance identifying an area around and outside the corporate
14 limits of a municipality within which there is a sufficient supply of developable land within the
15 boundary for at least a prospective 20-year period of municipal growth based on demographic
16 forecasts and the time reasonably required to effectively provide municipal services to the
17 identified area. The urban growth boundary may be called by any name chosen by the county
18 commission, but the word "boundary" shall be used in the name of the boundary. The boundary

19 shall be established by the county commission in agreement with each individual municipality
20 regarding that municipality's boundary. If the county commission and municipality cannot agree
21 upon the location or size of the boundary, either party may file for declaratory judgment relief in
22 the circuit court which shall submit the dispute to mediation or arbitration prior to final resolution
23 by the circuit court. Once a county has adopted an urban growth boundary by its designation on
24 an adopted county zoning map, the gross area inside the boundary may not be reduced without
25 written consent of the municipality. The county commission shall review each urban growth
26 boundary at a period not to exceed 10 years or upon request of the individual municipality.

27 *(c) Procedure for a municipality to annex property within an urban growth boundary. —*

28 (1) If the proposed property to be annexed by a municipality is entirely within the
29 municipality's designated urban growth boundary, then the municipality may annex without an
30 election the proposed property pursuant to the provisions of §8-6-4 of this code. Agreement with
31 the county commission is not required.

32 (2) If the proposed property to be annexed by minor boundary adjustment by a municipality
33 is entirely within the municipality's designated urban growth boundary, then the municipality may
34 annex without an election the proposed property if the provisions of §8-6-5 of this code are
35 followed, except that agreement with the county commission is not required.

36 *(d) Procedure for a municipality to annex property within urban growth boundaries of two
37 or more municipalities. —*

38 If the proposed property to be annexed by a municipality is partially or wholly within
39 another municipality's urban growth boundary, then the municipality may annex without an
40 election the proposed property pursuant to the provisions of §8-6-4 of this code if the two
41 municipalities have executed an intergovernmental agreement regarding the annexation of the
42 subject property. Agreement with the county commission is not required.

43 *(e) Procedure for a municipality to annex contiguous property outside an urban growth
44 boundary. —*

45 (1) If the proposed property to be annexed by a municipality is outside the municipality's
46 designated urban growth boundary, then the municipality may annex without an election the
47 proposed property pursuant to the provisions of §8-6-4 of this code, if:

48 (A) The proposed property to be annexed is contiguous to the municipality, as defined in
49 this section; and

50 (B) The municipality has the county commission's agreement.

51 (2) Prior to the agreement of the county commission to the annexation of the proposed
52 property, the county commission shall:

53 (A) Hold a public hearing;

54 (B) Place a notice on the subject property, which notice shall be the same as that required
55 for property to be rezoned; and

56 (C) At least 15 days prior to the public hearing, publish a notice of the date, time, and place
57 of the public hearing as a Class I legal advertisement in compliance with the provisions of §59-3-
58 1 *et seq.* of this code.

59 (f) *Procedure for a municipality to annex noncontiguous property outside an urban growth*
60 *boundary. —*

61 (1) If the proposed property to be annexed by a municipality is entirely outside the
62 municipality's designated urban growth boundary and is not contiguous to the municipality, as
63 defined in this section, then the municipality may annex without an election the proposed property
64 pursuant to the provisions of §8-6-4 of this code if the municipality has the county commission's
65 agreement and, prior to the agreement of the county commission to the annexation of the
66 proposed property, the county commission shall:

67 (A) Hold a public hearing;

68 (B) Place a notice on the subject property, which notice shall be the same as that required
69 for property to be rezoned; and

70 (C) At least 15 days prior to the public hearing, publish a notice of the date, time, and place
71 of the public hearing as a Class I legal advertisement in compliance with the provisions of §59-3-
72 1 *et seq.* of this code.

73 (2) After the public hearing and on-site notice, if the county commission finds, by a written
74 record, that the proposed annexation is for the good of the county as a whole, then the county
75 commission may agree to the annexation.

76 (g) Prior to the county commission entering an order for any annexation pursuant to this
77 section, the annexed property shall be surveyed by a licensed professional surveyor and a metes
78 and bounds description of the annexed property must be provided to the county commission of
79 the county in which the property is located.

80 (h) After a municipality has annexed property pursuant to this section and the property has
81 been surveyed, the county commission shall enter an order. After the order is entered, the
82 corporate limits of the municipality include the annexed property.

§8-6-5. Annexation by minor boundary adjustment.

1 (a) If a municipality desires to increase its corporate limits by making a minor boundary
2 adjustment, the governing body of the municipality may apply to the county commission of the
3 county wherein the municipality or the major portion of the territory thereof, including the territory
4 to be annexed, is located for permission to effect annexation by minor boundary adjustment. The
5 municipality shall pay the costs of all proceedings before the commission: *Provided, That:*

6 (1) A minor boundary adjustment may not exceed 105 percent of the existing total
7 municipal boundary;

8 (2) A minor boundary adjustment may not exceed 120 percent of the current area of the
9 municipality; and

10 (3) A minor boundary adjustment made in this manner is limited to one boundary
11 annexation within a two-year period, regardless of subdivisions (1) and (2) of this subsection.

12 (b) In addition to any other annexation configuration, a municipality may incorporate by
13 minor boundary adjustment: (i) Territory that consists of a street or highway as defined in §17C-
14 1-35 of this code and one or more freeholders; or (ii) territory that consists of a street or highway
15 as defined in §17C-1-35 of this code which does not include a freeholder, but which is necessary
16 for the provision of emergency services in the territory being annexed.

17 (c) A county commission may develop a form application for annexation for minor
18 boundary adjustment. An application for annexation by minor boundary adjustment shall include,
19 but not be limited to:

20 (1) The number of businesses located in and persons residing in the additional territory;

21 (2) An affidavit of each business located in, each person residing in, and each freeholder
22 of the additional territory stating that he, she, or it has consented to be included in the annexation,
23 in such form as the county commission deems sufficient. If the municipality cannot obtain an
24 affidavit from a business, resident, or freeholder within 90 days after sending the affidavit form
25 and a letter explaining the purpose of the affidavit via certified mail, return receipt requested, to
26 the best available address for the business, resident, or freeholder, such business, resident, or
27 freeholder shall be considered to have consented to the annexation;

28 (3) An accurate map showing the metes and bounds of the additional territory;

29 (4) A statement setting forth the municipality's plan for providing the additional territory
30 with all applicable public services such as police and fire protection, solid waste collection, public
31 water and sewer services, and street maintenance services, including to what extent the public
32 services are or will be provided by a private solid waste collection service or a public service
33 district;

34 (5) A statement of the impact of the annexation on any private solid waste collection
35 service or public service district currently doing business in the territory proposed for annexation
36 in the event the municipality should choose not to utilize the current service providers;

37 (6) A statement of the impact of the annexation on fire protection and fire insurance rates
38 in the territory proposed for annexation;

39 (7) A statement of how the proposed annexation will affect the municipality's finances and
40 services; and

41 (8) A statement that the proposed annexation meets the requirements of this section.

42 (d) Upon receipt of a complete application for annexation by minor boundary adjustment,
43 the county commission shall determine whether the application meets the threshold requirements
44 for consideration as a minor boundary adjustment including whether the annexation could be
45 efficiently and cost effectively accomplished under §8-6-2 or §8-6-4 of this code. If the county
46 commission determines that the annexation could be cost effectively and efficiently accomplished
47 under §8-6-2 or §8-6-4 of this code, that the application lacks sufficient evidence that all affected
48 parties of the additional territory consent to the annexation, or that the application otherwise fails
49 to meet the threshold requirements for consideration as a minor boundary adjustment, it shall
50 enter an order denying the application, which order shall include the reasons upon which it is
51 based.

52 (e) If the application meets the threshold requirements, the county commission shall order
53 publication of a notice of the proposed annexation to the corporate limits and of the date and time
54 set by the commission for a hearing on the proposal. Publication shall be as in the case of an
55 order calling for an election, as set forth in §8-6-2 of this code. A like notice shall be prominently
56 posted at not less than five public places within the area proposed to be annexed.

57 (f) In making its final decision on an application for annexation by minor boundary
58 adjustment, the county commission shall, at a minimum, consider the following factors:

59 (1) Whether the territory proposed for annexation is contiguous to the corporate limits of
60 the municipality. For purposes of this section, "contiguous" means that at the time the application
61 for annexation is submitted, the territory proposed for annexation either abuts directly on the
62 municipal boundary or is separated from the municipal boundary by an unincorporated street or

63 highway, or street or highway right-of-way, a creek or river, or the right-of-way of a railroad or
64 other public service corporation, or lands owned by the state or the federal government;

65 (2) Whether the proposed annexation is limited solely to a Division of Highways right-of-
66 way or whether the Division of Highways holds title to the property in fee;

67 (3) Whether affected parties of the territory to be annexed oppose or support the proposed
68 annexation. For purposes of this section, "affected parties" means freeholders, firms,
69 corporations, and qualified voters in the territory proposed for annexation and in the municipality,
70 and a freeholder whose property abuts a street or highway, as defined in §17C-1-35 of this code,
71 when: (i) The street or highway is being annexed to provide emergency services; or (ii) the
72 annexation includes one or more freeholders at the end of the street or highway proposed for
73 annexation;

74 (4) Whether the proposed annexation consists of a street or highway as defined in §17C-
75 1-35 of this code and one or more freeholders;

76 (5) Whether the proposed annexation consists of a street or highway as defined in §17C-
77 1-35 of this code which does not include a freeholder, but which is necessary for the provision of
78 emergency services in the territory being annexed;

79 (6) Whether another municipality has made application to annex the same or substantially
80 the same territory; and

81 (7) Whether the proposed annexation is in the best interest of the county as a whole.

82 (g) If the county commission denies the application for annexation by minor boundary
83 adjustment, the commission may allow the municipality to modify the proposed annexation to
84 meet the commissions objections. The commission must order another public hearing if significant
85 modifications are proposed.

86 (h) The final order of the commission shall include the reasons for the grant or denial of
87 the application.

88 (i) The municipality applying for annexation or any affected party may appeal the
89 commission's final order to the circuit court of the county in which the municipality or the major
90 portion thereof, including the area proposed to be annexed, is located. The county commission
91 may participate in any appeal taken from its order in the same manner and to the same extent as
92 a party to the appeal. The order may be reviewed by the circuit court as an order of a county
93 commission ordering an election may be reviewed under §8-5-16 of this code.

94 (j) If the final order of the county commission is a denial of the application for annexation,
95 the municipality may appeal as set forth in this section, but the municipality may not present the
96 commission with another application for annexation relating to the same proposed change or any
97 part thereof for a period of two years after issuance of the final order of the commission, unless
98 such application is directed by the circuit court as the result of an appeal.

ARTICLE 7. DECREASE OF CORPORATE LIMITS.

PART II. DECREASE OF CORPORATE LIMITS BY ELECTION.

§8-7-2. Procedure to decrease corporate limits.

1 A petition to decrease the corporate limits of a municipality may be filed with the governing
2 body thereof by five percent or more of the freeholders in the territory proposed for elimination,
3 setting forth the change proposed in the metes and bounds of the municipality, and asking that a
4 vote be taken upon the proposed change. The petition shall be verified and shall be accompanied
5 by an accurate survey map showing the territory which would be eliminated from the corporate
6 limits by the proposed change: *Provided*, That within 90 days after notice of the petition shall have
7 been given by publication of a Class II-0 legal advertisement pursuant to §59-3-1 *et seq.* of this
8 code, cost to be paid by the petitioners each business and freeholder within the territory proposed
9 for elimination may file a sworn statement objecting to the change to the metes and bounds of the
10 municipality. If a business or freeholder files a timely objection, that property shall remain within
11 the territory or the municipality and shall be removed from the metes and bounds description and

12 survey map submitted to the qualified voters as provided in this section. The governing body,
13 upon bond in penalty prescribed by the governing body with good and sufficient surety being given
14 by petitioners, and conditioned to pay the costs of such election if a majority of the legal votes
15 cast are against the proposed change in boundary, shall thereupon order a vote of the qualified
16 voters of such municipality to be taken upon the proposed change on a date and at a time and
17 place therein to be named in the order, not less than 20 nor more than 30 days from the date
18 thereof. The governing body shall cause the order to be published, at the cost of the municipality,
19 as a Class II-0 legal advertisement in compliance with §59-3-1 *et seq.* of this code, and the
20 publication area for such publication shall be the municipality. The first publication shall be at least
21 14 days prior to the date upon which the vote is to be taken. The order so published shall contain
22 an accurate description by metes and bounds of the territory which would be eliminated from the
23 corporate limits by the proposed change, and, if practicable, shall also contain a popular
24 description of the territory.

25 The election shall be held, superintended, and conducted, and the results thereof
26 ascertained, certified, returned, and canvassed in the same manner and by the same individuals
27 as elections for municipal officers. The ballots, or ballot labels where voting machines are used,
28 shall have written, or printed on them the words:

29 For Decrease of Corporate Limits

30 Against Decrease of Corporate Limits

31 When an election is held in any municipality in accordance with the provisions of this
32 section, another such election relating to the same proposed change or any part thereof shall not
33 be held for a period of one year.

34 If a majority of all of the legal votes cast within such municipality are in favor of the
35 proposed change, then the governing body shall proceed as specified in the immediately
36 succeeding section of this article.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman, Senate Committee

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Chairman, House Committee

Originated in the Senate.

In effect from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

The within this the.....
Day of, 2021.

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Governor