

# **WEST VIRGINIA LEGISLATURE**

**2022 REGULAR SESSION**

**ENROLLED**

**Committee Substitute**

**for**

**House Bill 4353**

By DELEGATES SMITH, SUMMERS, MALLOW, ELLINGTON,

STEELE, HARDY, PHILLIPS, SYPOLT, HOWELL, FAST, AND

MARTIN

[Passed March 12, 2022; in effect ninety days from passage.]



1 AN ACT to repeal §18-9-1, §18-9-2, and §18-9-2a of the Code of West Virginia, 1931, as  
2 amended; to amend and reenact §3-1-30 and §3-1-31 of said code; to amend and reenact  
3 §3-2-19 of said code; to amend and reenact §7-1-1a of said code; to amend and reenact  
4 §7-4-1 of said code; to amend and reenact §7-14B-21 of said code; to amend and reenact  
5 §7-17-12 of said code; to amend and reenact §7-20-7 and §7-20-12 of said code; to amend  
6 and reenact §8-1-2 of said code; to amend and reenact §8-2-5 of said code; to amend and  
7 reenact §8-3-6 of said code; to amend and reenact §8-4-7, §8-4-8, and §8-4-10 of said  
8 code; to amend and reenact §8-5-5 of said code; to amend and reenact §8A-7-7, §8A-7-  
9 8a, and §8A-7-13 of said code; to amend and reenact §11-8-16, and §11-8-17 of said  
10 code; to amend and reenact §13-1-7, and §13-1-11 of said code; to amend and reenact  
11 §15-2-13 of said code; to amend and reenact §16-12-1 of said code; to amend and reenact  
12 §20-5K-3 of said code; to amend and reenact §22-15A-18 of said code; to amend and  
13 reenact §22C-4A-2, and §22C-4A-3 of said code; to amend and reenact §22C-6-3 of said  
14 code; to amend and reenact §47-20-26 of said code; to amend and reenact §47-21-24 of  
15 said code; and to amend and reenact §60-5-1, §60-5-3, and §60-5-4 of said code, all  
16 relating to synchronizing certain local elections with regular statewide primary or general  
17 elections; eliminating requirement that board of education serve as the governing body  
18 responsible for appointing election officials for certain special elections; authorizing poll  
19 clerks to work and be compensated for both full and half days worked during an election;  
20 authorizing local municipal elections to be held concurrently with a regularly scheduled  
21 statewide primary or general election; removing requirement to maintain separate  
22 municipal precinct books upon request of municipality; requiring question of reforming,  
23 altering, or modifying a county commission or council to be placed on primary or general  
24 election ballot; requiring question of civil service coverage for county correctional officers  
25 to be placed on primary or general election ballot; requiring certain questions regarding  
26 county fire service ordinances or fire fees to be placed on primary or general election

27 ballot; requiring certain questions regarding county taxes and fees to be placed on primary  
28 or general election ballot; requiring certain questions regarding countywide service fees  
29 to be placed on primary or general election ballot; updating references to county  
30 commissions; requiring certain questions regarding incorporation of new municipality to  
31 be placed on primary or general election ballot; providing for proposed municipal charter  
32 to be placed on ballot concurrent with primary or general election; providing for division of  
33 incorporated territory into temporary precincts for purpose of holding election; providing  
34 for municipal election date established by charter to be concurrent with primary or general  
35 election; providing for municipal election date established by charter to be within 25 days  
36 of primary or general election; authorizing municipality without previously adopted  
37 municipal charter to establish municipal election day concurrent with primary or general  
38 election by ordinance and providing requirements therefor; providing for extension or  
39 reduction in terms of office; authorizing agreement between municipality and county  
40 regarding certain concurrent election matters; providing for shared administrative costs of  
41 municipality and county commission holding elections concurrently with primary or general  
42 election; requiring certain questions regarding zoning ordinances to be placed on primary  
43 or general election ballot; requiring certain questions regarding additional levies to be  
44 placed on primary or general election ballot; authorizing one-time special levy elections  
45 on certain questions regarding levy renewal; requiring certain questions regarding levy  
46 renewal to be placed on primary or general election ballot; requiring certain questions  
47 regarding issuance of certain bonds to be placed on primary or general election ballot;  
48 clarifying limitations on members of State Police with respect to participation in elections;  
49 requiring certain questions regarding organization and establishment of proposed sanitary  
50 district to be placed on primary or general election ballot; repealing certain provisions  
51 regarding school levies and elections for same; repealing certain provisions regarding  
52 certain elections authorized for school purposes; requiring certain questions regarding

53 commercial infectious medical waste management facility siting to be placed on primary  
54 or general election ballot; requiring certain questions regarding county comprehensive  
55 recycling programs for solid waste to be placed on primary or general election ballot;  
56 requiring certain questions regarding certain solid waste facilities to be placed on primary  
57 or general election ballot; requiring certain questions regarding certain hazardous waste  
58 facilities to be placed on primary or general election ballot; requiring certain questions  
59 regarding charitable bingo to be placed on primary or general election ballot; requiring  
60 certain questions regarding charitable raffles to be placed on primary or general election  
61 ballot; requiring certain questions regarding sale of alcoholic liquors within the county to  
62 be placed on primary or general election ballot; and authorizing certain ballot questions  
63 rejected at primary election to be again submitted to the voters at the next succeeding  
64 general 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.**

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

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

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

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

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

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

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

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

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

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

32           (2) The municipal governing body for any primary, general or special municipal election  
33 ordered by the governing body.

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

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

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

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

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

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

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

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

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

58 (h) Within seven days following appointment, the clerk of the county commission shall  
59 notify, by first-class mail, all election commissioners, poll clerks and alternates of the fact of their

60 appointment and include with the notice a response notice form for the appointed person to return  
61 indicating whether or not he or she agrees to serve in the specified capacity in the election.

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

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

72 (k) On election day, if an appointed election official or a poll clerk working a full day fails  
73 to appear at the polling place by 5:45 a.m. or, for a poll clerk working a half day, later than a time  
74 designated by the clerk of the county commission, the election officials present shall contact the  
75 office of the clerk of the county commission for assistance in filling the vacancy. The clerk shall  
76 proceed as follows:

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

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

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



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

89 (m) Nothing in this section shall be construed to require any county executive committee  
90 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.**

1 (a) General elections shall be held in the several election precincts of the state on the  
2 Tuesday next after the first Monday in November of each even year. Primary and special elections  
3 shall be held on the days provided by law therefor: *Provided*, That beginning July 1, 2022, all local  
4 municipal elections may be held concurrently with a regularly scheduled statewide primary or  
5 general election. In exercising this right, a municipality may negotiate an agreement with the  
6 county commission to establish the election date, election officials, registration books to be used,  
7 and other matters pertaining to changing the municipal election to be held on the same day as a  
8 regularly scheduled statewide primary or general election: *Provided, however*, That a municipality  
9 which enters into an agreement with a county commission to hold elections at the same time as  
10 a regularly scheduled statewide primary or general election day pursuant to §8-5-5 of this code  
11 shall share in the administrative costs of holding the election, but which costs shall not exceed  
12 the municipality's pro rata share of voters registered in the municipality compared with the total  
13 voters registered in the county: *Provided further*, That the municipality shall also comply with the  
14 requirements of §8-5-5 of this code regarding an agreement with the county regarding use of  
15 county election officials in municipal elections.

16 (b) At every primary, general, or special election the polls shall be opened in each precinct  
17 on the day of the election at 6:30 in the morning and be closed at 7:30 in the evening.

**ARTICLE 2. REGISTRATION OF VOTERS.**

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

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

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

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

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

**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.**

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

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

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

8 (b) A county commission or county council seeking to make application to reform, alter, or  
9 modify its county government pursuant to the provisions of section 13, article IX of the West  
10 Virginia Constitution shall adopt a resolution containing the following information:

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

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

15 (3) The proposed name of the county government;

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

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

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

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

23 (C) The time frames for early and absentee voting provided in 3-3-1 *et seq.* of this code;

24 and

25 (6) When the new county government shall become effective.

26 (c) Prior to the adoption of a resolution seeking to reform, alter, or modify a county  
27 commission or county council, the governing body of the county shall publish by a Class II legal

28 advertisement in one or more newspapers of general circulation throughout the county, in  
29 compliance with the provisions of §59-3-1 *et seq.* of this code, notice of the proposed changes to  
30 the current form of county government. The publication area shall be the entire county. The notice  
31 shall summarize the proposed changes to the county government and include the date, time, and  
32 place for the meeting or meetings in which the resolution shall be considered.

33 (d) After the publication and adoption of the resolution, the following information shall be  
34 submitted by the county to the Clerk of the Senate and to the Clerk of the House of Delegates no  
35 later than the 10th day of a regular legislative session in which the request for reforming, altering,  
36 or modifying a county commission or county government is to be considered by the Legislature:

- 37 (1) A certified copy of the adopted resolution;
- 38 (2) A copy of the required public notice;
- 39 (3) The vote on the adoption of the resolution; and
- 40 (4) The date the resolution was adopted.

41 (e) Registered voters of a county seeking to reform, alter, or modify the county commission  
42 or county council pursuant to section 13, article IX of the West Virginia Constitution shall submit  
43 a petition, signed by 10 percent of the registered voters in the county, to the county commission  
44 or county council, setting forth the information required in subsection (b) of this section. Upon  
45 receipt of the petition, the county commission or county council shall verify that the signatures on  
46 the petition are: (1) Legally registered voters of the county; and (2) equal to 10 percent of the  
47 registered voters of the county.

48 (f) The county commission or county council shall, within 30 days of receipt of a  
49 constitutionally defective petition, return it to the petitioners with a written statement as to why the  
50 petition is defective. The petitioners may, within 90 days of receipt of the written statement from  
51 the county commission or council and after making the necessary changes, resubmit the petition  
52 to the county commission or county council.

53           (g) After verifying that the signatures on the petition meet the constitutional requirements,  
54 the county commission or council shall forward the petition to the Clerk of the Senate and to the  
55 Clerk of the House of Delegates no later than the 10th day of a regular legislative session in which  
56 the request for reforming, altering, or modifying a county commission or county government is to  
57 be considered by the Legislature.

58           (h) After receipt of a certified resolution or verified petition by the Clerk of the Senate and  
59 the Clerk of the House of Delegates, the Legislature shall determine whether all constitutional and  
60 statutory requirements have been met. If such requirements have not been met, the certified  
61 resolution or verified petition shall be returned with a written statement of the deficiencies. A  
62 certified resolution or verified petition may be revised following the procedures set forth in this  
63 section for an original submission and then may be resubmitted to the Clerk of the Senate and  
64 the Clerk of the House of Delegates for consideration by the Legislature. The requirement that  
65 the petition be submitted prior to the 10th day of the legislative session shall not apply to  
66 resubmitted resolutions or petitions.

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

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

78 (k) All elections required by this section shall be held in accordance with the provisions of  
79 §3-1-1 *et seq.* of this code.

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

81 (1) "*Chief executive - county commission plan*". — Under this plan:

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

84 (B) The commission shall be the governing body;

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

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

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

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

93 (2) "*County manager - county commission plan*". — Under this plan:

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

96 (B) The commission shall be the governing body;

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

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

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

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

105 (3) "*County administrator - county commission plan*". — Under this plan:

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

108 (B) The commission shall be the governing body;

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

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

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

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

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

119 (5) Any form of county government adopted pursuant to section 13, article IX of the West  
120 Virginia Constitution and this section may, by the methods set forth in this section, return to the  
121 traditional county commission or change to another form of county government, as set out in this  
122 section.

123 (m) The purpose of this section is to establish the basic requirements for reforming,  
124 altering, or modifying a county commission or county council pursuant to section 13, article IX of  
125 the West Virginia Constitution. The structure and organization of a county government may be  
126 specified in greater detail by resolution or ordinance so long as such provisions do not conflict  
127 with the purposes and provisions set forth in this section, §7A-1-1 *et seq.* of this code, or the  
128 Constitution.

**ARTICLE 4. PROSECUTING ATTORNEY, REWARDS, AND LEGAL ADVICE.**

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

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

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

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

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



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

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

31 (C) The office of the prosecuting attorney shall issue a photographic identification and  
32 certification card which identify the prosecuting attorney or assistant prosecuting attorneys as law-  
33 enforcement employees of the prosecuting attorney's office pursuant to the provisions of §30-29-  
34 12 of this code.

35 (4) Any policy instituted pursuant to paragraph (A), subdivision (3) of this subsection shall  
36 include provisions which: (i) Preclude or remove a person from participation in the concealed  
37 firearm program who is subject to any disciplinary or legal action which could result in the loss of  
38 the authority to participate in the program; (ii) preclude from participation persons prohibited by  
39 federal or state law from possessing or receiving a firearm and; (iii) prohibit persons from carrying  
40 a firearm pursuant to the provisions of this subsection while in an impaired state as defined in  
41 §17C-5-2 of this code.

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

45 (6) It is the intent of the Legislature in enacting the amendments to this section during the  
46 2017 regular session of the Legislature to authorize prosecuting attorney's offices wishing to do  
47 so to allow prosecuting attorneys and assistant prosecuting attorneys to meet the requirements  
48 of the federal Law-Enforcement Officer's Safety Act, 18 U.S.C. §926B.

49 (c) The prosecuting attorney shall keep his or her office open in the charge of a responsible  
50 person during the hours when polls are open during statewide general and primary election days,  
51 and the prosecuting attorney, or the prosecuting attorney's assistant, if any, shall be available for  
52 the purpose of advising election officials. The prosecuting attorney, when requested by the  
53 Attorney General, shall perform or assist the Attorney General in performing, in the county in  
54 which the prosecuting attorney is elected, any legal duties required to be performed by the  
55 Attorney General and which are not inconsistent with the duties of the prosecuting attorney as the  
56 legal representative of the county. The prosecuting attorney, when requested by the Attorney  
57 General, shall perform or assist the Attorney General in performing, any legal duties required to  
58 be performed by the Attorney General in any county other than that in which the prosecuting  
59 attorney is elected and for the performance of these duties in any county other than that in which  
60 the prosecuting attorney is elected, the prosecuting attorney shall be paid his or her actual  
61 expenses.

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

**ARTICLE 14B. CIVIL SERVICE FOR CORRECTIONAL OFFICERS.**

**§7-14B-21. County commission of counties with a population of less than 25,000 may place  
correctional officers under civil service; protest and election with respect thereto.**

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

6 as a Class II-0 legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this  
7 code, and the publication area for such publication shall be the county.

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

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

## **ARTICLE 17. COUNTY FIRE BOARDS.**

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

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

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

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

10           (1) Ten percent of the qualified voters shall present a petition duly signed by them in their  
11 own handwriting, and filed with the clerk of the county commission, directing that the county  
12 commission impose such a fee. The county commission shall not have a lien on any property as  
13 security for payments due under the ordinance. Any ordinance enacted under the provisions of  
14 this section shall be published as a Class II legal advertisement in compliance with the provisions  
15 of §59-3-1 *et seq.* of this code, and the publication area for such publication shall be the county  
16 in which the county fire board is located. In the event 30 percent of the qualified voters of the  
17 county by petition duly signed by them in their own handwriting and filed with the clerk of the  
18 county commission within 45 days after the expiration of such publication protest against such  
19 ordinance as enacted or amended, the ordinance may not become effective until it is ratified by a  
20 majority of the legal votes cast thereon by the qualified voters of such county at any primary  
21 or general election as the county commission directs. Voting thereon may not take place until after  
22 notice of the submission has been given by publication as above provided for the publication of  
23 the ordinance after it is adopted. The powers and authority hereby granted to county commissions  
24 are in addition to and supplemental to the powers and authority otherwise granted to them by  
25 other provisions of this code; or

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

31           (A) This referendum, to determine whether it is the will of the voters of a county that an  
32 amendment to the fire fee is necessary, may be held at any regular primary or general election,  
33 or, in conjunction with any other countywide election. Any election at which the question of  
34 amending the fire fee is voted upon shall be held at the voting precincts established for holding  
35 primary or general elections. All of the provisions of the election laws, when not in conflict with

36 the provisions of this article, shall apply to voting and elections hereunder, insofar as practicable.  
37 The county commission shall, not less than 90 days before the election, order that the issue be  
38 placed on the ballot and referendum held at the next primary or general election to determine  
39 whether it is the will of the voters of the county that a fire fee be amended: *Provided*, That prior to  
40 issuing the order, the county commission shall publish the ordinance which must contain the  
41 anticipated allocation of any fees or charges and which would be enacted should the referendum  
42 succeed as a Class II legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of  
43 this code, and the publication area for such publication shall be the county in which the county  
44 fire board is located.

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

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

49  For the fee amendment.

50  Against the fee amendment.

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

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

59 (d) In the event that a majority of the votes cast upon a question submitted pursuant to  
60 this section at any primary election be against the question, the question may again be submitted  
61 to the voters at the next succeeding general election.

**ARTICLE 20. FEES AND EXPENDITURES FOR COUNTY DEVELOPMENT.**

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

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

4 Notwithstanding any other provision of this code to the contrary, those counties that meet  
5 the requirements of §7-20-6 of this code are hereby authorized to assess, levy, collect, and  
6 administer any tax or fee as has been or may be specifically authorized by the Legislature by  
7 general law to the municipalities of this state: *Provided*, That any assessment, levy, or collection  
8 shall be delayed 60 days from its regular effective date: *Provided, however*, That in the event 15  
9 percent of the qualified voters of the county by petition duly signed by them in their own  
10 handwriting and filed with the county commission within 45 days after any impact fee or levy is  
11 imposed by the county commission pursuant to this article, the fee or levy protested may not  
12 become effective until it is ratified by a majority of the legal votes cast thereon by the qualified  
13 voters of such county at any primary or general election as the county commission directs. Voting  
14 thereon may not take place until after notice of the subcommission of the fee a levy on the ballot  
15 has been given by publication of Class II legal advertisement and publication area shall be the  
16 county where such fee or levy is imposed: *Provided further*, That counties may not “double tax”  
17 by applying a given tax within any corporate boundary in which that municipality has implemented  
18 such tax. Any such taxes or fees collected under this law may be used to fund a proportionate  
19 share of the cost of existing capital improvements and public services where it is shown that all  
20 or a portion of existing capital improvements and public services were provided in anticipation of  
21 the needs of new development.

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

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

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

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

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

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

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

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

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

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

55 (d) In the event that a majority of the votes cast upon a question submitted pursuant to  
56 this section at any primary election be against the question, the question may again be submitted  
57 to the voters at the next succeeding general election.

**§7-20-12. Countywide service fees.**

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

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

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

9 (3) The fee imposed pursuant to this section may not take effect until the first day of a  
10 calendar month, as set forth in the order of the county commission establishing the fee, that begins  
11 at least 30 days after a majority of the registered voters of the county voting on the question  
12 approve imposition of the service fee, in a primary or general election held in the county.

13 (4) The order of the county commission shall provide for the administration, collection, and  
14 enforcement of the service fee. Employers who have employees that work in the county imposing  
15 the service fee shall withhold the fee from compensation paid to the employee and pay it over to



16 the county as provided in the order of the county commission. Self-employed individuals shall pay  
17 the service fee to the county commission in accordance with the order establishing the fee.

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

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

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

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

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

40 (6) All revenues generated by the county service fee imposed pursuant to this section shall  
41 be dedicated to and shall be exclusively utilized for the purpose or purposes set forth in the

42 referendum approved by the voters, including, but not limited to, the payment of debt service on  
43 any bonds issued pursuant to §7-20-13 of this code and any costs related to the administration,  
44 collection, and enforcement of the service fee.

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

59 (c) In the event that a majority of the votes cast upon a question submitted pursuant to  
60 this section at any primary election be against the question, the question may again be submitted  
61 to the voters at the next succeeding general election.

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

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

#### **PART II. DEFINITIONS.**

##### **§8-1-2. Definitions of terms.**

1 (a) For the purpose of this chapter:

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

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

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

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

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

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

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

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

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

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

48           (7) “Charter” shall mean, except where specific reference is made to a particular type of  
49 charter, either a special legislative charter (whether or not amended under the provisions of former  
50 §8A-1-1 *et seq.* of this code, or under article four of this chapter, and although so amended, such  
51 special legislative charter shall, for the purposes of this chapter, remain a special legislative  
52 charter), or a home rule charter framed and adopted or revised as a whole or amended by a city

53 under the provisions of former §8A-1-1 *et seq.* of this code or under the provisions of article three  
54 or article four of this chapter;

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

58 (9) "Inconsistent or in conflict with" shall mean that a charter or ordinance provision is  
59 repugnant to the constitution of this state or to general law because such provision: (i) Permits  
60 or authorizes that which the constitution or general law forbids or prohibits; or (ii) forbids or  
61 prohibits that which the constitution or general law permits or authorizes;

62 (10) "Qualified elector," "elector," "qualified voter," or "legal voter" shall mean any individual  
63 who, at the time he or she offers to vote or at the time he or she participates in any event or activity  
64 (such as signing a petition) under the provisions of this chapter for which he or she must be a  
65 qualified elector, elector, qualified voter, or legal voter, is a resident within the corporate limits of  
66 the municipality or within the boundaries of a territory referred to in this chapter, as the case may  
67 be, and who: (i) Has been a resident of the state for one year and of the municipality or territory  
68 in question for at 60 sixty days next preceding such election or date pertinent to any such event  
69 or activity; and (ii) in the case of a regular municipal election, special municipal election, municipal  
70 public question election, or any such municipal event or activity, is duly registered on the municipal  
71 registration books set up in the office of the clerk of the county commission of the county in which  
72 the municipality or the major portion of the territory thereof is located under the integration of the  
73 municipal registration of voters with the "permanent registration system" of the state, or, in the  
74 event there be no such integration of the municipal registration of voters, is duly registered in the  
75 county in which he or she resides to vote in state-county elections; or (iii) in the case of a territory  
76 election, general election, or any such territory event or activity, is duly registered in the county in  
77 which he or she resides to vote in state-county elections; and any charter provision or ordinance  
78 establishing a voting residency requirement different than that in this definition provided shall be

79 of no force and effect; and in any case where a particular percentage of the qualified electors,  
80 electors, qualified voters, or legal voters is required under the provisions of this chapter in  
81 connection with any such event or activity as aforesaid, the percentage shall be determined on  
82 the basis of the number of qualified electors, electors, qualified voters, or legal voters, as of the  
83 time of such event or activity, unless it is impracticable to determine such percentage as of such  
84 time and it is provided by ordinance, resolution or order that the percentage shall be determined  
85 on the basis of the number of qualified electors, electors, qualified voters, or legal voters, as of  
86 the date of the last preceding election (whether a general election, regular municipal election, or  
87 special municipal election, and whether or not they voted at such election) held in such  
88 municipality or territory, as the case may be;

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

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

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

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

100 (15) "Freehold interest in real property" shall mean any fee, life, mineral, coal, or oil or gas  
101 interest in real property, whether legal or equitable, and whether as a joint tenant or a tenant in  
102 common, but shall not include a leasehold interest (other than a mineral, coal, or oil or gas  
103 leasehold interest), a dower interest, or an interest in a right-of-way or easement, and the freehold

104 interest of a church or other unincorporated association shall be considered as one interest and  
105 not as an individual interest of each member thereof;

106 (16) "County commission" shall mean the governmental body created by section 22, article  
107 eight of the Constitution of this state, or any existing tribunal created in lieu of a county  
108 commission;

109 (17) "Code" shall mean the Code of West Virginia, 1931, as heretofore and hereafter  
110 amended; and

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

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

118 (d) For the purpose of this chapter, unless the context clearly indicates to the contrary,  
119 words importing the masculine gender shall include both the masculine and feminine gender, and  
120 the phrase "charter-framed and adopted or revised as a whole or amended (or words of like  
121 import) under the provisions of former chapter eight-a of this code" shall include a charter-framed  
122 and adopted or revised as a whole or amended under the provisions of former article two of former  
123 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.**

1 Upon receiving such a report from said enumerators, the county commission shall  
2 forthwith fix a date for a special incorporation election, to be held concurrently with the next

3 regularly scheduled primary or general election if there are more than 90 days preceding such  
4 election, and, if not, then, at the next succeeding regularly scheduled primary or general election,  
5 and at which election all qualified electors of the territory shall vote upon the question of  
6 incorporation between such hours as may be fixed by order of said commission. For the purpose  
7 of holding and conducting said election, the county commission shall divide the territory into one  
8 or more precincts, consisting of not more than 500 qualified voters in each precinct; shall arrange  
9 for and provide at its expense polling places, registration books, challenges, and other election  
10 supplies as provided for by law in general elections; shall appoint three commissioners of election  
11 and two clerks from the qualified electors of said territory for each precinct so established, dividing  
12 the election officials as nearly as possible equally between those favoring incorporation and those  
13 opposed to incorporation; and shall give notice of the date and place or places of election and  
14 hours for voting by publication of such notice as a Class II-0 legal advertisement in compliance  
15 with the provisions of §59-3-1 *et seq.* of this code, and the publication area for such publication  
16 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 —Time for election; notice; voting precincts; supplies; officials; certification;  
canvass; declaration of results; recount.**

1 The proposed charter shall be submitted to the qualified voters of the incorporated territory  
2 for approval or rejection at a special election ordered by the county commission to be held  
3 concurrently with the next regularly scheduled primary or general election if there are more than  
4 90 days preceding such election, and, if not, then, at the next succeeding regularly scheduled  
5 primary or general election, and at which election the officers provided for by said proposed  
6 charter and to be elected shall be voted upon in the manner provided in said proposed charter.



7 The county commission shall cause notice of the date, hours, place, and purpose of such election  
8 to be given by publication thereof as a Class II-0 legal advertisement in compliance with the  
9 provisions of §59-3-1 *et seq.* of this code, and the publication area for such publication shall be  
10 the incorporated territory. The first of said publications shall be made not less than 30 days prior  
11 to the date fixed for the election. Each such notice of election shall state that upon request any  
12 qualified voter and any freeholder of the incorporated territory may obtain a copy of the proposed  
13 charter from a designated person at a designated place.

14 For the purpose of holding and conducting said election, the county commission shall  
15 divide the incorporated territory into one or more temporary precincts, consisting of not more than  
16 500 qualified voters in each temporary precinct; shall arrange for and provide at its expense  
17 polling places, registration books, challenges, and other election supplies as provided for by law  
18 in general elections; and shall appoint three commissioners of election and two clerks from the  
19 qualified voters of said incorporated territory for each temporary precinct so established, subject,  
20 however, to the provisions of §8-4-11 of this code. Such election shall be held and conducted  
21 under the supervision of the commissioners and clerks of election appointed by the county  
22 commission as aforesaid and shall be conducted as nearly as may be in accordance with the laws  
23 of this state governing general elections. The results of such election, both as to approval or  
24 rejection of the proposed charter and the election of officers, shall be certified as in general  
25 elections, and the returns shall be canvassed and the results declared by the county commission.  
26 In the event any commissioner or clerk designated to serve in said election shall fail or refuse to  
27 serve, such vacancy may be filled in like manner as such vacancies are filled in general elections  
28 under the laws of this state governing general elections. A recount may be had, as in general  
29 elections, upon the party or parties desiring such recount providing adequate assurance to the  
30 county commission that the party or parties shall 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.**

1           A special legislative charter or a charter framed and adopted or revised as a whole under  
2 the provisions of former §8A-1-1 *et seq.*, §8-3-1 *et seq.*, or §8-4-1 *et seq.* of this code, as the case  
3 may be, may be revised as a whole in like manner as a charter may be framed and adopted under  
4 the provisions of §8-4-1 *et seq.* of this code, except that the question submitted shall be “Shall  
5 the charter be revised as a whole by representatives of the people?”, but no such revision as a  
6 whole shall be made within four years of the effective date of such a charter or of the last preceding  
7 revision as a whole, whichever be later, as the case may be. A revision as a whole may also be  
8 initiated in the manner specified in §8-3-9 of this code or in the manner specified in said section  
9 nine considered in *pari materia* with the provisions of §8-3-9 of this code. If a majority of the legal  
10 votes cast on the question be in the negative or if the proposed charter revised as a whole is  
11 rejected by a majority of the legal votes cast at the election thereon, the provisions of §8-4-2 and  
12 §8-4-3 of this code relating to a negative vote on the question of framing a charter and to rejection  
13 of a proposed charter shall govern and control.

14           The qualified voters of a city may amend a special legislative charter or a charter framed  
15 and adopted or revised as a whole under the provisions of former §8A-1-1 *et seq.* of this code,  
16 §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  
17 amendment shall be made within one year of the effective date of such a charter or of the last  
18 preceding revision of such charter as a whole, whichever be later, as the case may be. An  
19 amendment or amendments may be initiated in the same manner provided in this article for the  
20 framing of a charter, in the manner specified in §8-3-9 of this code, or in the manner specified in

21 said section nine considered in pari materia with the provisions of §8-4-3 of this code. The  
22 governing body of a city shall provide by ordinance for a special municipal election to pass upon  
23 a proposed charter amendment or amendments if: (1) Such governing body by the affirmative  
24 vote of two-thirds of its members shall determine and specify that a special municipal election is  
25 necessary; or (2) a petition bearing the signatures, written in their own handwriting, of 15 percent  
26 of the qualified voters of the city, if a Class I or Class II city, or 10 percent of the qualified voters  
27 of the city, if a Class III city, expressly requesting that a special municipal election be called for  
28 the purpose has been filed with the governing body more than 120 days prior to the date of the  
29 next regular municipal election. In all other cases, a proposed charter amendment or amendments  
30 shall be submitted by ordinance at the next regular municipal election. Any proposed amendment  
31 or amendments shall be set out in full in the ordinance submitting same. The date of any special  
32 municipal election for the purpose shall be fixed by the ordinance providing for same, but any  
33 such special municipal election shall be held not less than 30 nor more than 60 days after such  
34 ordinance shall have been adopted. Notice of any election at which a proposed amendment or  
35 amendments shall be voted upon shall state the date and hours thereof, and shall set out the  
36 proposed amendment or amendments at length or state that copies may be obtained by any  
37 qualified voter or any freeholder of the city from a designated person at a stated place, upon  
38 request. Such notice shall be published as in the case of a notice of an election on the question  
39 of whether a charter shall be framed, as specified in §8-4-2 of this code. A charter amendment or  
40 amendments approved, or such of them as may be approved, by a majority of the legal votes cast  
41 at the election thereon shall take effect on the date that the declaration of the results showing  
42 approval by the voters has been made by the governing body and entered in the minutes of the  
43 governing body. One copy of the amendment or amendments, together with a certified copy of  
44 the declaration of results attached thereto, shall be certified forthwith by the recorder of the city to  
45 the Clerk of the House of Delegates, as keeper of the rolls, and another to the clerk of the county  
46 commission for recording in the office of such clerk of the county commission. The same shall be

47 preserved by said Clerk of the House of Delegates as an authentic public record. After the  
48 effective date of an amendment or amendments so filed, all courts shall take judicial notice of  
49 such amendment or amendments.

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

**§8-4-8. Same — An alternate plan.**

1 Whenever the governing body of any city shall deem it expedient to amend the charter of  
2 any such city (whether such charter be a special legislative charter or a charter framed and  
3 adopted or revised as a whole under the provisions of former §8A-1-1 *et seq.*, of this code, under  
4 §8-3-1 *et seq.*, of this code, or §8-4-1 of this code, as the case may be), it shall, by ordinance, set  
5 out in its proper record book the proposed amendment or amendments in full. The governing body  
6 shall set a date, time, and place for a public hearing thereon, which date shall be not less than 30  
7 days after the date of the first publication hereinafter required. The governing body shall cause  
8 the proposed amendment or amendments, together with a notice of the date, time and place fixed  
9 for the hearing thereon, to be published as a Class II-0 legal advertisement in compliance with  
10 the provisions of §59-3-1 *et seq.* of this code, and the publication area for such publication shall  
11 be the city. The notice shall state that the proposed amendment or amendments shall be  
12 considered on the date and at the time and place fixed by the governing body and that any  
13 qualified voter or any freeholder of the city may appear and file objections, in writing, and also  
14 that if no objections are filed the said amendment or amendments shall become operative on and  
15 after a date fixed in the notice, which date shall be not less than 10 days after the date of the  
16 hearing. If no objections are filed, or if objections are filed and are withdrawn at the time of the  
17 hearing, or within 10 days thereafter, the governing body shall, by ordinance, adopt the  
18 amendment or amendments as an amendment or amendments to the charter, and cause a copy

19 of the amendment or amendments, ordinance, and transcript of the proceedings to be certified to  
20 the Clerk of the House of Delegates, as keeper of the rolls, and to be recorded in the office of the  
21 clerk of the county commission. The same shall be preserved by such Clerk of the House of  
22 Delegates as an authentic public record. The amendment or amendments shall take effect on the  
23 effective date specified in the notice as aforesaid. After the effective date, all courts shall take  
24 judicial notice of such amendment or amendments.

25         If, on the date and at the time and place set for the hearing, objections to the amendment  
26 or amendments are filed and are not withdrawn then or within 10 days thereafter, the governing  
27 body may abandon the proposed amendment or amendments to which objections have been  
28 filed, or it may submit the proposed amendment or amendments, either as a unit or separately, at  
29 the next regular municipal election, or at a special municipal election if such governing body by  
30 the affirmative vote of two-thirds of its members shall determine and specify that a special  
31 municipal election is necessary and if the date of such regular municipal election shall be more  
32 than six months from such date, for ratification or rejection. Notice of any election at which the  
33 proposed amendment or amendments shall be voted upon shall state the date and hours thereof  
34 and shall set out the proposed amendment or amendments at length or state that copies may be  
35 obtained by any qualified voter or any freeholder of the city from a designated person at a stated  
36 place, upon request. The governing body shall cause such notice to be published as a Class II-0  
37 legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code, and the  
38 publication area for such publication shall be the city. The amendment or amendments approved,  
39 or such of them as may be approved, by a majority of the legal votes cast at the election thereon  
40 shall take effect on the date that the declaration of the results showing approval by the voters has  
41 been made by the governing body and entered in the minutes of the governing body. One copy  
42 of the amendment or amendments, together with a certified copy of the declaration of results  
43 attached thereto, shall be certified forthwith by the recorder of the city to the Clerk of the House  
44 of Delegates, as keeper of the rolls, and another to the clerk of the county commission for

45 recording in the office of such clerk of the county commission. The same shall be preserved by  
46 said Clerk of the House of Delegates as an authentic public record. After the effective date of an  
47 amendment or amendments so filed, all courts shall take judicial notice of such amendment or  
48 amendments. If a majority of the legal votes cast at the election thereon be against any proposed  
49 amendment, the same shall not be proposed again under the provisions of this section for at least  
50 one year.

51 The method of charter amendment provided for in this section is not in lieu of but is in  
52 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.**

1 The governing body of a city shall canvass the returns within relatively the same time with  
2 reference to an election held under the provisions of this article and in the same manner as county  
3 commissions are required to do with respect to general elections, and shall declare the results of  
4 any such election. This requirement shall apply to any election held under the provisions of this  
5 article, whether it be a special municipal election or voting conducted in conjunction with a general  
6 election or a regular municipal election. The canvass and declaration of results shall be entered  
7 in the minutes of the governing body on the date made. Unless otherwise provided by charter  
8 provision, any such special municipal election or voting conducted in conjunction with a general  
9 election or a regular municipal election shall be held and conducted under the supervision at each  
10 precinct of three commissioners of election and two clerks who shall be appointed by the  
11 governing body and shall be conducted as nearly as may be in accordance with the laws of this  
12 state governing general elections, subject, however, in the case of a special municipal election to  
13 the provisions of §8-4-11 of this code. For any special municipal election or voting conducted in  
14 conjunction with a general election or a regular municipal election, in accordance with the  
15 provisions of this article, the governing body shall arrange for and provide at its expense

16 registration books, challenges and other election supplies as provided by law in general elections,  
17 and polling places in any such special municipal election or with respect to any such voting  
18 conducted in conjunction with a regular municipal election. In the event any commissioner or clerk  
19 appointed by the governing body shall fail or refuse to serve, such vacancy may be filled in like  
20 manner as such vacancies are filled in general elections under the laws of this state governing  
21 general elections, except that the governing body shall act in the place and stead of the county  
22 commission. A recount may be had, as in general elections, upon the party or parties desiring  
23 such recount providing adequate assurance to the governing body that the party or parties shall  
24 pay all costs of such recount.

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

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

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

11 (c) A municipal election date established by charter provision may fall within 25 days of a  
12 regularly scheduled statewide primary or general election only where separate registration books  
13 are provided and maintained for the municipal election.

14 (d) Any municipality which establishes its election date by charter provision must comply  
15 with the provisions of this section or the election date shall be the second Tuesday of June. The  
16 language of this section may not be construed to prevent any city, town, or village from amending

17 the provisions of its charter or special legislative charter, to provide that its municipal election be  
18 held on some day other than the second Tuesday in June.

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

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

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

41 (h) The ordinance proposed pursuant to paragraph (g) of this section may call for an  
42 extension or reduction of the terms of office for the purpose of aligning the terms to coincide with



43 the same date as a regularly scheduled statewide primary or general election day, which question  
44 shall be resolved by majority vote of the participating voters in the county: *Provided*, That the  
45 governing body shall not propose an extension of the terms of those offices by more than 18  
46 months: *Provided, however*, That nothing in this section modifies a municipality's authority to  
47 reduce current elected officials' terms of office in any other manner provided by law.

48 (i) A municipality which enters into an agreement with the county commission to hold  
49 elections at the same time as a regularly scheduled statewide primary or general election day  
50 pursuant to this section is required to share in the administrative costs of holding the election, but  
51 which costs shall not exceed the municipality's pro rata share of voters registered in the  
52 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.**

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

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

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

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

9 (c) If a petition for an election on a zoning ordinance is filed with the clerk of a governing  
10 body within 90 days after the enactment of a zoning ordinance by a governing body without an  
11 election, then a zoning ordinance does not take effect until an election is held and a majority of  
12 the voters approves it. At least 10 percent of the total eligible voters in the area to be affected by

13 the proposed zoning ordinance must sign, in their own handwriting, the petition for an election on  
14 a zoning ordinance.

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

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

19 // For Zoning

20 // Against Zoning

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

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

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

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

6 (1) Without holding an election;

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

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

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

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

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

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

17 or

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

20 (d) The governing body of a county must hold an election on an amendment to a zoning  
21 ordinance if a petition, signed by at least 10 percent of the eligible voters in the area to which the  
22 zoning ordinance applies, is filed:

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

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

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

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

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

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

36 or

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

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

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

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

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

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

4 (1) The governing body; or

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

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

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

12 (2) The reason for the petition, including:

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

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

16 (3) Signatures in ink or permanent marker.

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

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

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

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

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

28  Yes  No"

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

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

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

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

41 (j) If a governing body of a county chooses to replace a nontraditional zoning ordinance  
42 with a traditional zoning ordinance without holding an election, a petition, signed by at least 10

43 percent of the eligible voters who reside in the area affected by the zoning ordinance, for an  
44 election on the question of adopting a traditional zoning ordinance may be filed with the governing  
45 body of the county within 90 days after the enactment of the traditional zoning ordinance by the  
46 governing body of the county. If a petition is timely filed, then the traditional zoning ordinance  
47 does not take effect until:

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

51 (2) An election is held; and

52 (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.**

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

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

4 (2) The amount for each purpose;

5 (3) The total amount needed;

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

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

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

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

12           The local levying body shall submit to the voters within their political subdivision the  
13 question of the additional levy at either a regularly scheduled primary or general election in  
14 accordance with the requirements of §3-1-31 of this code. If at least 60 percent of the voters cast  
15 their ballots in favor of the additional levy, the county commission or municipality may impose the  
16 additional levy. If at least a majority of voters cast their ballot in favor of the additional levy, the  
17 county board of education may impose the additional levy: *Provided*, That any additional levy  
18 adopted by the voters, including any additional levy adopted prior to the effective date of this  
19 section, shall be the actual number of cents per each \$100 of value set forth in the ballot provision,  
20 which number shall not exceed the maximum amounts prescribed in this section, regardless of  
21 the rate of regular levy then or currently in effect, unless such rate of additional special levy is  
22 reduced in accordance with the provisions of §11-8-6g of this code or otherwise changed in  
23 accordance with the applicable ballot provisions. For county commissions, this levy shall not  
24 exceed a rate greater than seven and fifteen hundredths cents for each \$100 of value for Class I  
25 properties, and for Class II properties a rate greater than twice the rate for Class I properties, and  
26 for Class III and IV properties a rate greater than twice the rate for Class II properties. For  
27 municipalities, this levy shall not exceed a rate greater than six and twenty-five hundredths cents  
28 for each \$100 of value for Class I properties, and for Class II properties a rate greater than twice  
29 the rate for Class I properties, and for Class III and IV properties a rate greater than twice the rate  
30 for Class II properties. For county boards of education, this levy shall not exceed a rate greater  
31 than twenty-two and ninety-five hundredths cents for each \$100 of value for Class I properties,  
32 and for Class II properties a rate greater than twice the rate for Class I properties, and for Class  
33 III and IV properties a rate greater than twice the rate for Class II properties.

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

36           Upon approval of an increased levy as provided by this section, a local levying body may  
37 immediately issue bonds in an amount not exceeding the amount of the increased levy plus the

38 total interest thereon, but the term of the bonds shall not extend beyond the period of the  
39 increased levy.

40 Insofar as they might concern the issuance of bonds as provided in this section, the  
41 provisions of §13-1-3 and §13-1-4 of this code shall not apply.

42 In the event that a majority of the votes cast upon a question submitted pursuant to this  
43 section at any primary election be against the question, the question may again be submitted to  
44 the voters at the next succeeding general election.

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

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

5 (b) All the provisions of the law concerning general elections shall apply so far as they are  
6 practicable: *Provided*, That notwithstanding any provision of this code to the contrary, in the case  
7 of a levy which expires at a time after July 1, 2022, and which shall not be up for renewal at the  
8 next regularly scheduled primary or general election thereafter, the local levying body shall by  
9 ordinance choose to hold the election to renew that levy either at the next regularly scheduled  
10 primary or general election in accordance with §3-1-31 of this code: *Provided, however*, That  
11 notwithstanding any other provision of this code, a local levying body may enter an order  
12 authorizing a special election prior to the expiration of the existing or expiring levy for the purpose  
13 of presenting to the voters the question of synchronizing the renewal of an existing or expiring  
14 levy with a future regularly scheduled primary or general election, which question shall pass upon  
15 adoption by a majority of participating voters.

16 (c) The question on the special levy shall be placed on the ballot in accordance with the  
17 ballot placement order prescribed by §3-5-13a(a) of this code. The question heading shall be



18 entitled: "Special Levy Election" and the question shall be significantly in the following form:  
19 "Special election to authorize additional levies for the year(s) \_\_\_\_\_ and for the purpose  
20 of \_\_\_\_\_ according to the order of the \_\_\_\_\_ entered on the \_\_\_\_\_  
21 day of \_\_\_\_\_."

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

25 (d) In the event that a majority of the votes cast upon a question submitted pursuant to  
26 this section at any primary election be against the question, the question may again be submitted  
27 to the voters at the next succeeding general election.

## **CHAPTER 13. PUBLIC BONDED INDEBTEDNESS.**

### **ARTICLE 1. BOND ISSUES FOR ORIGINAL INDEBTEDNESS.**

#### **§13-1-7. When election to be held.**

1 Elections for the purpose of voting upon questions of issuing bonds may be held at any  
2 general or primary election which the fiscal body in its order submitting the same to a vote may  
3 designate, except that, when a petition is filed asking that bonds be issued, the fiscal body with  
4 which the same is filed, shall order a special election and the election shall be held concurrently  
5 at the next regularly scheduled general or primary election.

6 In the event that a majority of the votes cast upon a question submitted pursuant to this  
7 section at any primary election be against the question, the question may again be submitted to  
8 the voters at the next succeeding general election.

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

1 All the provisions of the general election laws of this state concerning general or primary  
2 elections, when not in conflict with the provisions of this article, shall apply to bond elections

3 hereunder, insofar as practicable: *Provided*, That in bond elections for municipalities, school, or  
4 independent school districts, the recorders and secretaries, respectively, shall procure and furnish  
5 to the election commissioners at each voting precinct the ballots, pollbooks, tally sheets, and other  
6 things necessary for conducting the election, and perform all duties imposed by law upon clerks  
7 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.**

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

3 (b) No member of the State Police may in any way become active or take part in any  
4 political contest or at any time participate in any political party caucus, committee, assembly or  
5 convention or in any primary, general, or special election while in uniform, except to cast his or  
6 her ballot.

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

14 (d) While out of uniform and off duty, no member of the State Police may participate in any  
15 political activity except to:

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

- 17 (2) Actively campaign for candidates for public office in partisan and nonpartisan elections;  
18 and  
19 (3) Contribute money to political organizations and attend political fund-raising functions.  
20 (e) No member of the State Police may at any time:  
21 (1) Be a candidate for public office in a nonpartisan or partisan election;  
22 (2) Use official authority or influence to interfere with or affect the results of an election or  
23 nomination; or  
24 (3) Directly or indirectly coerce contributions from subordinates in support of a political  
25 party or candidate.  
26 (f) No officer or member of the State Police may, in any labor trouble or dispute between  
27 employer and employee, aid or assist either party thereto, but shall in these cases see that the  
28 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.**

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

7 Any 400 legal voters, residents within the limits of such proposed sanitary district, may  
8 petition the county commission of the county in which the proposed sanitary district, or the major  
9 portion thereof, is located, to cause the question to be submitted to the legal voters of such

10 proposed sanitary district, whether such proposed territory shall be organized as a sanitary district  
11 under this article; such petition shall be addressed to the county commission and shall contain a  
12 definite description of the boundaries of the territory to be embraced in the such sanitary district,  
13 and the name of such proposed sanitary district: *Provided*, That no territory shall be included  
14 within more than one sanitary district organized under this article.

15 Notice shall be given by such county commission within 10 days after receiving the  
16 petition, of the time and place when a hearing on the petition for a sanitary district shall be held,  
17 by publication of such notice as a Class II legal advertisement in compliance with the provisions  
18 of §59-3-1 *et seq.* of this code, and the publication area for such publication shall be the area of  
19 the sanitary district. The first publication shall be made at least 20 days prior to such hearing. The  
20 hearing on the petition for a sanitary district shall be held not later than 30 days after the county  
21 commission receives the said petition. At such hearing the president of the county commission  
22 shall preside, and all persons resident within the limits of such proposed sanitary district shall  
23 have an opportunity to be heard upon the question of the location and boundary of such proposed  
24 sanitary district, and to make suggestions regarding the same, and the said county commission,  
25 after hearing statements, evidence, and suggestions, shall fix and determine the limits and  
26 boundaries of such proposed sanitary district as stated in the original petition unless by a vote of  
27 the majority of the legal voters resident within the limits of such proposed sanitary district, present  
28 at the said hearing, it should be decided to alter and amend such petition to change and  
29 redetermine the limits and boundaries of such proposed sanitary district.

30 After such determination by the county commission the same shall be incorporated in an  
31 order which shall be spread at length upon the records of the county commission. Upon the  
32 entering of such order, the county commission shall submit to the legal voters of the proposed  
33 sanitary district, the question of organization and establishment of the proposed sanitary district  
34 as determined by said county commission, at an election, to be held concurrently with the next

35 regularly scheduled primary or general election, notice whereof shall be given by the county  
36 commission at least 20 days prior thereto by publication of such notice as a Class II-O legal  
37 advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code, and the  
38 publication area for such publication shall be the area of the proposed sanitary district. Such  
39 notice shall specify briefly the purpose of such election, with the description of such proposed  
40 sanitary district, and the time and place for holding such election.

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

44 // For sanitary district.

45 // Against sanitary district.

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

54 The expenses of holding said special election shall be paid by the county commission of  
55 said county, in which said proposed sanitary district, or the major portion thereof, is located, out  
56 of the general funds of said county: *Provided*, That in the event such sanitary district is established  
57 and incorporated under this article, then said sanitary district shall repay to said county the  
58 expenses incurred in holding said special election within two years from the date of incorporating  
59 said sanitary district.

## CHAPTER 18. EDUCATION.

### ARTICLE 9. SCHOOL FINANCES.

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

1 [Repealed.]

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

1 [Repealed.]

#### §18-9-2a. Levies.

1 [Repealed.]

## CHAPTER 20. NATURAL RESOURCES.

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

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

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

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

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

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

9 (b) If a presiting notice is filed in accordance with subsection (a) of this section, the county  
10 commission shall publish a Class II legal advertisement in compliance with the provisions of §59-  
11 3-1 *et seq.* of this code, in a newspaper of general circulation in the counties wherein the  
12 commercial infectious medical waste facility is to be located. Upon an affirmative vote of the

13 majority of the county commissioners or upon the written petition of registered voters residing in  
14 the county equal to not less than 15 percent of the number of votes cast within the county for  
15 Governor at the preceding gubernatorial election, which petition shall be filed with the county  
16 commission within 60 days after the last date of publication of the notice provided in this section,  
17 the county commission shall, upon verification of the required number of signatures on the  
18 petition, and not less than 56 days before the election, order a referendum be placed upon the  
19 ballot. Any referendum conducted pursuant to this section shall be held at the next primary or  
20 general election:

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

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

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

34  For the facility

35  Against the facility

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

37 (3) If a majority of the legal votes cast upon the question is against the facility, then the  
38 county commission shall notify the local solid waste authority, the Division of Environmental

39 Protection, and the Secretary of the Department of Health and Human Resources of the result  
40 and the commercial infectious medical waste management facility may not proceed any further  
41 with the application. If a majority of the legal votes cast upon the question is for the facility, then  
42 the application process as set forth in §20-5j-1 *et seq.* of this code may proceed: *Provided*, That  
43 such vote is not binding on nor does it require the secretary to issue the permit. If the majority of  
44 the legal votes cast is against the question, the question may be submitted to a vote at any  
45 subsequent election in the manner herein specified: *Provided, however*, That the question may  
46 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.**

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

9 (b) On or before October 18, 1993, each municipality with a population of 10,000 or more  
10 people, as determined by the most recent decennial census by the Bureau of the Census of the  
11 United States Department of Commerce, shall establish and commence implementation of a



12 source separation and curbside collection program for recyclable materials. Implementation shall  
13 be phased in by July 1, 1995. Such program shall include, at a minimum, the following:

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

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

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

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

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

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

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

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

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

46           (3) That the provisions of the recycling plan prepared pursuant to §22-15A-17 of this code  
47 shall, to the extent practicable, be incorporated in the county's comprehensive recycling program.

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

52           (e) A comprehensive recycling program for solid waste may be established in any county  
53 of this state by: (1) A petition filed with the county commission bearing the signatures of registered  
54 voters of the county equal to not less than five percent of the number of votes cast within the  
55 county for Governor at the preceding gubernatorial election; and (2) approval by a majority of the  
56 voters in a subsequent referendum on the issue. A referendum to determine whether it is the will  
57 of the voters of a county that a comprehensive recycling program for solid waste be established  
58 in the county may be held at any regular primary or general election. Any election at which the  
59 question of establishing a policy of comprehensive recycling for solid waste is voted upon shall  
60 be held at the voting precincts established for holding primary or general elections. All of the  
61 provisions of the general election laws, when not in conflict with the provisions of this article, shall  
62 apply to voting and elections hereunder, insofar as practicable. The Secretary of State shall  
63 prescribe the form of the petition which shall include the printed name, address, and date of birth

64 of each person whose signature appears on the petition. Upon verification of the required number  
65 of signatures on the petition, the county commission shall, not less than 70 days before the  
66 election, order that the issue be placed on the ballot and referendum held at the next primary or  
67 general election to determine whether it is the will of the voters of the county that a policy of  
68 comprehensive recycling of solid waste be established in the county: *Provided*, That the petition  
69 bearing the necessary signatures has been filed with the county commission at least 100 days  
70 prior to the election.

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

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

75 For Recycling

76 Against Recycling

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

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

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

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

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

94 Continue Recycling

95 End Recycling

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

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

105 (h) In the case of any municipality having a population greater than 30,000 persons, as  
106 indicated by the most recent decennial census conducted by the United States, the governing  
107 body of such municipality may by ordinance establish a materials recovery facility in lieu of or in  
108 addition to the mandatory recycling program required under the provisions of this section:  
109 *Provided*, That a materials recovery facility shall be subject to approval by both the Public Service  
110 Commission and the Solid Waste Management Board upon a finding by both the Public Service  
111 Commission and the Solid Waste Management Board that the establishment of a materials  
112 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.**

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

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

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

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

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

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

22 I. The \_\_\_\_\_ (name of applicant) has obtained site  
23 approval for a Class A commercial facility from the \_\_\_\_\_ (name of the county  
24 or regional solid waste authority). The authority has determined that the proposed landfill meets

25 all local siting plan requirements. The local siting plan evaluates local environmental conditions  
26 and other factors and authorizes commercial landfills in areas of a county where a commercial  
27 landfill can be appropriately located.

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

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

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

37 / / For the facility

38 / / Against the facility

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

40 (3) If a majority of the legal votes cast upon the question is against the facility, the Division  
41 of Environmental Protection shall not proceed any further with the application. If a majority of the  
42 legal votes cast upon the question be for the facility, then the application process as set forth in  
43 this article and §22-15-1 *et seq.* of this code may proceed: *Provided*, That such vote is not binding  
44 on nor does it require the Division of Environmental Protection to issue the permit. If the majority  
45 of the legal votes cast is against the question, the question may be submitted to a vote at any  
46 subsequent election in the manner herein specified: *Provided, however*, That the question may  
47 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.**

1 (a) The purpose of the petition and referendum for approval of conversions of Class B  
2 facilities to Class A facilities is to allow the local community an opportunity to participate in the

3 decision of whether the local infrastructure and environment are appropriate for expansion of a  
4 Class B facility to a Class A facility, and to assure that the local community accepts the associated  
5 benefits and detriments of having a Class A facility located in their county.

6 (b) Within 21 following receipt of a certificate of need from the Public Service Commission  
7 as required by §24-2-1c of this code, and local solid waste authority approval as required in §22C-  
8 4-26 of this code, the county commission shall complete publication of a Class II legal  
9 advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code, in the qualified  
10 newspaper of general circulation in the county wherein the solid waste facility is located.  
11 Registered voters residing in the county may petition the county commission to place the issue of  
12 whether a Class B facility be expanded to a Class A facility be placed on the ballot at the next  
13 primary or general election held not less than 100 days after the deadline for filing the petition.  
14 The petition shall be in writing, in the form prescribed by the Secretary of State, and shall include  
15 the printed name, residence address, and date of birth of each person whose signature appears  
16 on the petition. The petition shall be filed with the county commission not less than 60 days after  
17 the last date of publication of the notice provided in this section. Upon receipt of completed petition  
18 forms, the county commission shall immediately forward those forms to the clerk of the county  
19 commission for verification of the signatures and the voter registration of the persons named on  
20 the petition. If a primary or general election is scheduled not more than 120 days and not less  
21 than 100 days following the deadline for filing the petitions, the clerk of the county commission  
22 shall complete the verification of the signatures within 30 days and shall report the number of valid  
23 signatures to the county commission. In all other cases, the clerk of the county commission shall  
24 complete verification in a timely manner. Upon verification of the signatures of registered voters  
25 residing in the county equal to not less than 15 percent of the number of votes cast within the  
26 county for Governor at the preceding gubernatorial election, and not less than 70 days before the  
27 election, the county commission shall order a referendum be placed upon the ballot:

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

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

39           “The West Virginia Legislature finds that expansion of a Class B solid waste facility to a  
40 Class A solid waste facility has impact to the county in which it will be located, and further that  
41 local citizens should be afforded the opportunity to participate in the decision of locating a Class  
42 A facility in their community. A Class A facility is authorized to receive between 10 and 30  
43 thousand tons of solid waste per month. Fifteen percent of the registered voters in  
44 \_\_\_\_\_ county have signed a petition to cause a referendum to determine the  
45 following question:

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

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

52           II. The West Virginia Public Service Commission has issued a certificate of need, and has  
53 approved the operation of the Class A landfill. The Public Service Commission has determined



54 that the landfill complies with the state solid waste management plan and that based on the  
55 anticipated volume of garbage expected to be received at the landfill, that the proposal is  
56 consistent with public convenience and necessity.

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

59 Shall the \_\_\_\_\_ solid waste facility, located within  
60 \_\_\_\_\_ County, West Virginia, be permitted to handle between 10 and 30  
61 thousand tons of solid waste per month?

62 / / For conversion of the facility

63 / / Against conversion of the facility

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

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

**ARTICLE 6. HAZARDOUS WASTE FACILITY SITING APPROVAL.**

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

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

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

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

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

10           (b) If a presiting notice is filed in accordance with subsection (a) of this section, the county  
11 commission shall publish a Class II legal advertisement in compliance with the provisions of §59-  
12 3-1 *et seq.* of this code, in a newspaper of general circulation in the counties wherein the  
13 hazardous waste management facility is to be located. Upon an affirmative vote of the majority of  
14 the county commissioners or upon the written petition of registered voters residing in the county  
15 equal to not less than 15 percent of the number of votes cast within the county for Governor at  
16 the preceding gubernatorial election, which petition shall be filed with the county commission  
17 within 60 days after the last date of publication of the notice provided in this section, the county  
18 commission shall, upon verification of the required number of signatures on the petition, and not  
19 less than 56 days before the election, order a referendum be placed upon the ballot: *Provided,*  
20 That such a referendum is not required for a hazardous waste management facility for which at  
21 least 90 percent of the capacity is designated for hazardous waste generated at the site of  
22 disposal. Any referendum conducted pursuant to this section shall be held at the next primary or  
23 general election.

24           (1) Such referendum is to determine whether it is the will of the voters of the county that a  
25 commercial hazardous waste management facility be located in the county or that a hazardous  
26 waste management facility disposing of greater than 10,000 tons of hazardous waste per annum  
27 on site be located in the county. Any election at which such question of locating a hazardous  
28 waste management facility is voted upon shall be held at the voting precincts established for  
29 holding primary or general elections. All of the provisions of the general election laws, when not

30 in conflict with the provisions of this article, apply to voting and elections hereunder, insofar as  
31 practicable. The Secretary of State shall prescribe the form of the petition which shall include the  
32 printed name, address and date of birth of each person whose signature appears on the petition.

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

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

38 / / For the facility

39 / / Against the facility

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

41 "Shall a hazardous waste management facility disposing of greater than 10,000 tons per  
42 annum on site be located within \_\_\_\_\_ County, West Virginia?

43 / / For the facility

44 / / Against the facility

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

46 (3) If a majority of the legal votes cast upon the question is against the facility, then the  
47 county commission shall notify the Division of Environmental Protection and the commercial  
48 hazardous waste management facility siting board, in the case of a commercial facility, of the  
49 result and the commercial hazardous waste management facility siting board or Division of  
50 Environmental Protection, as the case may be, shall not proceed any further with the application.  
51 If a majority of the legal votes cast upon the question is for the facility, then the application process  
52 as set forth in §22-18-1 *et seq.* of this code and §22C-5-1 *et seq.* in the case of a commercial  
53 hazardous waste management facility, may proceed: *Provided*, That such vote is not binding on  
54 nor does it require the commercial hazardous waste management facility siting board to grant a  
55 certificate of site approval or the Division of Environmental Protection to issue the permit, as the

56 case may be. If the majority of the legal votes cast is against the question, the question may be  
57 submitted to a vote at any subsequent election in the manner herein specified: *Provided, however,*  
58 That the question may not be resubmitted to a vote until two years after the date of the previous  
59 referendum.

## **CHAPTER 47. REGULATION OF TRADE.**

### **ARTICLE 20. CHARITABLE BINGO.**

#### **§47-20-26. County option election.**

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

6           A petition for local option election shall be in the form specified in this section and shall be  
7 signed by qualified voters residing within said county equal to at least 10 percent of the persons  
8 qualified to vote within said county at the last general election. The petition may be in any number  
9 of counterparts and is sufficient if substantially in the following form:

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

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

15           The undersigned petition the county commission to call and hold a local option election at  
16 concurrent with the next primary or general election upon the following question: Shall the  
17 provisions of Article Twenty, Chapter Forty-Seven of the Code of West Virginia, 1931, as  
18 amended, continue in effect in ..... County, West Virginia?

19	Name	Address	Date
20	.....	.....	.....

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

23 Upon the filing of a petition for a local option election in accordance with the provisions of  
24 this section, the county commission shall enter an order calling a local option election as specified  
25 in the petition. The county commission shall give notice of such local option election by publication  
26 thereof as a Class II-0 legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of  
27 this code, and the publication area for such publication is the county. The notice shall be so  
28 published within 14 consecutive days next preceding the election.

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

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

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

43 // Yes // No

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

45 If a majority of the voters voting at any local option election vote no on the foregoing  
46 question, the provisions of §47-20-1 *et seq.* of this code, no longer continue in effect in said  
47 county.

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

**ARTICLE 21. CHARITABLE RAFFLES.**

**§47-21-24. County option election.**

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

4 A petition for a local option election shall be in the form specified in this section and shall  
5 be signed by qualified voters residing within such county equal to at least 10 percent of the  
6 individuals qualified to vote within such county at the last general election. The petition may be in  
7 any number of counterparts and is sufficient if substantially in the following form:

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

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

13 The undersigned petition the county commission to call and hold a local option election at  
14 the next primary or general election: Shall the provisions of article twenty-one, chapter forty-seven  
15 of the Code of West Virginia, 1931, as amended, continue in effect in \_\_\_\_\_ County,  
16 West Virginia?

17	Name	Address	Date
18	_____	_____	_____

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

21 Upon the filing of a petition for a local option election in accordance with the provisions of  
22 this section, the county commission shall enter an order calling a local option election as specified  
23 in the petition. The county commission shall give notice of such local option election by publication  
24 thereof as a Class II-0 legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of  
25 this code, and the publication area for such publication shall be the county. The notice shall be  
26 so published within 14 consecutive days next preceding the election.

27 Each individual qualified to vote in the county at any primary, general, or special election,  
28 shall likewise be qualified to vote at the local option election. The election officers appointed and  
29 qualified to serve as such at any primary, general, or special election shall conduct the local option  
30 election. If the local option election is to be held at the same time as a primary or general election,  
31 it shall be held in connection with and as a part of that primary or general election. The ballots in  
32 the local option election shall be counted and returns made by the election officers and the results  
33 certified by the commissioners of election to such county commission which shall canvass the  
34 ballots, all in accordance with the laws of the State of West Virginia relating to primary and general  
35 elections insofar as the same are applicable. The county commission shall, without delay,  
36 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.**

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

4 A local option election shall be held at the same time as the next regularly scheduled  
5 primary or general election.

**§60-5-3. Form of petition.**

1 The petition shall be in the following form:

2 Petition for Local Option Election

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

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

9 Name Address Date

10 (Post office or street and number)

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

1 The county commission or governing body of the municipality shall give notice of the  
2 special local option election by publication thereof as a Class II-0 legal advertisement in  
3 compliance with the provisions of §59-3-1 *et seq.* of this code, and the publication area for such  
4 publication shall be the area in which the election is to be held. Such notice shall be so published  
5 within 14 consecutive days next preceding the election. The election shall be held at the same  
6 time as the next regularly scheduled primary or general election. The regular election officers of  
7 the county or municipal corporation shall open the polls and conduct the election in the same  
8 manner provided for general elections.



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

.....  
*Chairman, House Committee*

.....  
*Chairman, Senate Committee*

Originating in the House.

In effect ninety days from passage.

.....  
*Clerk of the House of Delegates*

.....  
*Clerk of the Senate*

.....  
*Speaker of the House of Delegates*

.....  
*President of the Senate*

\_\_\_\_\_

The within ..... this the.....  
day of ....., 2022.

.....  
*Governor*