# WEST VIRGINIA CODE: §8-6-5

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

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

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

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

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

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

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

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

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

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

(4) A statement setting forth the municipality’s plan for providing the additional territory with all applicable public services such as police and fire protection, solid waste collection,

WV Legislature

public water and sewer services, and street maintenance services, including to what extent the public services are or will be provided by a private solid waste collection service or a public service district;

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

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

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

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

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

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

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

(1) Whether the territory proposed for annexation is contiguous to the corporate limits of the municipality. For purposes of this section, "contiguous" means that at the time the application for annexation is submitted, the territory proposed for annexation either abuts directly on the municipal boundary or is separated from the municipal boundary by an unincorporated street or highway, or street or highway right-of-way, a creek or river, or the right-of-way of a railroad or other public service corporation, or lands owned by the state or the federal government;

WV Legislature

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

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

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

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

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

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

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

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

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

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

WV Legislature