WEST VIRGINIA CODE CHAPTER 8 ARTICLE 6

WV Legislature

PART I. GENERAL.

§8-6-1. Annexation of unincorporated territory.

(a) Unincorporated territory may be annexed to and become part of a municipality contiguous thereto only in accordance with the provisions of this article.

(b) Any farmlands or operations as described in article nineteen, chapter nineteen of this code which may be annexed into a municipality shall be protected in the continuation of agricultural use after being annexed.

(c) Any new imposition of a tax or any increase in the rate of tax upon any business, occupation or privilege following annexation shall be applied in accordance with the provisions of section five, article thirteen, chapter eight of this code.

WV Legislature

PART II. ANNEXATION BY ELECTION.

§8-6-2. Petition for annexation.

(a) Five percent or more of the freeholders of a municipality desiring to have territory annexed thereto may file a petition in writing with the governing body thereof setting forth the change proposed in the metes and bounds of the municipality and asking that a vote be taken upon the proposed change. The petition shall be verified and shall be accompanied by an accurate survey map showing the territory to be annexed to the corporate limits by the proposed change.

(b) The petitioners shall obtain a surety bond in an amount set by the governing body sufficient to cover the cost of the election. The bond shall be forfeited if a majority of the votes cast are against the proposed annexation.

(c) The governing body shall, upon receipt of the bond, order a vote of the qualified voters of the municipality to be taken upon the proposed annexation on a date and at a time and place to be named in the order.

(d) The governing body shall, at the same time, order a vote of all of the qualified voters of the additional territory and of all of the freeholders of the additional territory whether they reside or have a place of business therein or not, to be taken upon the question on the same day at some convenient place in or near the additional territory.

(e) The governing body shall cause the order for the election to be published, at the cost of the municipality, as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code. The publication area is the municipality and the additional territory. The first publication must be at least fourteen days prior to the date upon which the vote is to be taken. The order for the election shall contain an accurate description by metes and bounds of the additional territory proposed to be annexed to the corporate limits by the proposed change, a summary of the municipality's plan for providing services to the additional territory and, if practicable, shall also contain a popular description of the additional territory.

(f) The election shall be held, superintended and conducted and the results thereof ascertained, certified, returned and canvassed in the same manner by the same individuals as elections for municipal officers. The election is reviewable by 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 order may be reviewed by the circuit court as an order of a county commission ordering an election may be reviewed under section sixteen, article five of this chapter.

(g) The ballots, or ballot labels where voting machines are used, shall have written or printed on them the words:

WV Legislature

/ / For Annexation

/ / Against Annexation

(h) Any freeholder which is a firm or corporation may vote by its manager, president or executive officer duly designated in writing by the firm or corporation.

(i) An individual who is a qualified voter and freeholder of the municipality or the additional territory shall be entitled to vote only once.

(j) For purposes of this section, the term "qualified voter of the additional territory" includes a firm or corporation in the additional territory regardless of whether the firm or corporation is a freeholder. A firm or corporation may vote by its manager, president, or executive officer duly designated in writing by the firm or corporation. In any instance where a freeholder leases or rents real property to a firm or corporation the freeholder and the firm or corporation shall determine which entity will be entitled to vote in the annexation election.

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

(l) If a majority of all of the legal votes cast in the municipality and a majority of all the legal votes cast in the territory are in favor of the proposed annexation, then the governing body shall proceed as specified in the immediately succeeding section of this article.

WV Legislature

§8-6-3. Governing body of municipality to certify annexation; order.

The governing body of such municipality shall enter the results of such election in its minutes, and, when the annexation proposed is adopted, as provided in the immediately preceding section of this article, shall forward a certificate to such effect to the county court of the county wherein the municipality or the major portion of the territory thereof, including the annexed territory, is located; and such court shall thereupon enter an order in substance as follows:

"A certificate of the governing body of the municipality of ..... was this day filed showing that an annexation has been made, in the manner required by law, to the corporate limits thereof, and that by such annexation the said corporate limits are as follows:

"Beginning at (here recite the boundaries as changed). It is, therefore, ordered that such annexation to said corporate limits be, and the same is hereby approved and confirmed, and the clerk of this court is directed to deliver to the said governing body a certified copy of this order as soon as practicable after the rising of this court."

After the date of such order, the corporate limits of the municipality shall be as set forth therein.

WV Legislature

PART III. ANNEXATION WITHOUT ELECTION.

§8-6-4. Annexation without an election.

(a) The governing body of a municipality may, by ordinance, provide for the annexation of additional territory without ordering a vote on the question if: (1) A majority of the qualified voters of the additional territory file with the governing body a petition to be annexed; and (2) a majority of all freeholders of the additional territory, whether they reside or have a place of business therein or not, file with the governing body a petition to be annexed.

(b) For purposes of this section, the term "qualified voter of the additional territory" includes firms and corporations in the additional territory regardless of whether the firm or corporation is a freeholder. A firm or corporation may sign a petition by its manager, president or executive officer duly designated in writing by the firm or corporation. In any instance where a freeholder leases or rents real property to a firm or corporation the freeholder and the firm or corporation shall determine which entity will be entitled to sign a petition relating to the proposed annexation.

(c) The determination that the requisite number of petitioners have filed the required petitions shall be reviewable by the circuit court of the county in which the municipality or the major portion of the territory thereof, including the area proposed to be annexed is located, upon certiorari to the governing body in accordance with the provisions of article three, chapter fifty-three of this code.

(d) A qualified voter of the additional territory who is also a freeholder of the additional territory may join only one petition of the additional territory.

(e) It shall be the responsibility of the governing body to enumerate and verify the total number of eligible petitioners, in each category, from the additional territory. In determining the total number of eligible petitioners, in each category, a freeholder or any other entity that is a freeholder shall be limited to one signature on a petition as provided in this section. There shall be allowed only one signature on a petition per parcel of property and any freehold interest that is held by more than one individual or entity shall be allowed to sign a petition only upon the approval by the majority of the individuals or entities that have an interest in the parcel of property.

(f) If all of the eligible petitioners are qualified voters, only a voters' petition is required.

(g) If satisfied that the petition is sufficient in every respect, the governing body shall enter that fact upon its journal and forward a certificate to that effect to the county commission of the county wherein the municipality or the major portion of the territory thereof, including the additional territory, is located. The county commission shall thereupon enter an order as described in the immediately preceding section of this article. After the date of the order, the corporate limits of the municipality shall be as set forth therein.

WV Legislature

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

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

(b) For purposes of this section only:

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

(2) "Urban growth boundary" means a site-specific line, delineated on a zoning map or a written description in a zoning ordinance identifying an area around and outside the corporate limits of a municipality within which there is a sufficient supply of developable land within the boundary for at least a prospective 20-year period of municipal growth based on demographic forecasts and the time reasonably required to effectively provide municipal services to the identified area. The urban growth boundary may be called by any name chosen by the county commission, but the word "boundary" shall be used in the name of the boundary. The boundary shall be established by the county commission in agreement with each individual municipality regarding that municipality's boundary. If the county commission and municipality cannot agree upon the location or size of the boundary, either party may file for declaratory judgment relief in the circuit court which shall submit the dispute to mediation or arbitration prior to final resolution by the circuit court. Once a county has adopted an urban growth boundary by its designation on an adopted county zoning map, the gross area inside the boundary may not be reduced without written consent of the municipality. The county commission shall review each urban growth boundary at a period not to exceed 10 years or upon request of the individual municipality.

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

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

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

WV Legislature

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

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

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

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

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

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

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

(A) Hold a public hearing;

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

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

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

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

(A) Hold a public hearing;

(B) Place a notice on the subject property, which notice shall be the same as that required

WV Legislature

for property to be rezoned; and

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

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

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

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

WV Legislature

§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, 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;

WV Legislature

(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;

(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

WV Legislature

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

PART V. DUTIES AS TO AD VALOREM TAXES FOR MUNICIPAL PURPOSES

ON PROPERTIES IN NEWLY ANNEXED AREAS.

§8-6-6. Duties as to ad valorem taxes for municipal purposes on properties in newly annexed areas.

Upon the effective date of any annexation under the provisions of this article, it shall be the duty of the governing body of the municipality to notify the county assessor of such annexation, and upon being so notified, it shall be the duty of such assessor to see to it that the properties situate within the newly annexed area are assessed with the municipal ad valorem taxes for the current fiscal year and subsequent fiscal years or the ensuing and subsequent fiscal years, depending upon the date of notification to such assessor.

WV Legislature