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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

Regular Session, 2001



ENROLLED

Committee Substitute for
SENATE BILL NO. 202

(By Senator Snyder)



PASSED April 12, 2001

In Effect 90 days from Passage

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COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 202

(SENATORS SNYDER, BURNETTE, OLIVERIO, MCKENZIE,
KESSLER AND EDGELL, *original sponsors*)

[Passed April 12, 2001; in effect ninety days from passage.]

AN ACT to amend and reenact sections one, two, four and five, article six, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to modifying procedures allowing municipal incorporation by annexation; prohibiting retroactive taxation of businesses being annexed; requiring additional information to be submitted by municipalities to county commissions relating to proposed annexations; modifying eligibility to participate in annexation election as a qualified voter; allowing firms and corporations to sign petitions and vote on annexation; revising procedure for annexation by minor boundary adjustment; altering certain population requirements for annexations; revising areas eligible to be annexed by minor boundary adjustment; altering requirements and responsibil-

ities of county commissions' review of annexation by minor boundary adjustment; modifying application requirements for annexation by minor boundary adjustment; requiring municipalities to provide an analysis of impact of proposed annexation on businesses and the municipality; establishing minimum criteria to be considered by county commission when making a determination regarding an annexation by minor boundary adjustment; allowing modification of a denied annexation application to be resubmitted to the county commission; requiring explanation of decision by county commission; and providing for judicial review of annexation decisions.

Be it enacted by the Legislature of West Virginia:

That sections one, two, four and five, article six, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 6. ANNEXATION.

PART I. GENERAL.

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

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

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

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

PART II. ANNEXATION BY ELECTION.

§8-6-2. Petition for annexation.

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

10 (b) The petitioners shall obtain a surety bond in an
11 amount set by the governing body sufficient to cover the
12 cost of the election. The bond shall be forfeited if a
13 majority of the votes cast are against the proposed annex-
14 ation.

15 (c) The governing body shall, upon receipt of the bond,
16 order a vote of the qualified voters of the municipality to
17 be taken upon the proposed annexation on a date and at a
18 time and place to be named in the order, not less than
19 twenty nor more than thirty days from the date thereof.

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

27 (e) The governing body shall cause the order for the
28 election to be published, at the cost of the municipality, as
29 a Class II-0 legal advertisement in compliance with the
30 provisions of article three, chapter fifty-nine of this code.
31 The publication area is the municipality and the additional
32 territory. The first publication must be at least fourteen
33 days prior to the date upon which the vote is to be taken.
34 The order for the election shall contain an accurate

35 description by metes and bounds of the additional terri-
36 tory proposed to be annexed to the corporate limits by the
37 proposed change, a summary of the municipality's plan for
38 providing services to the additional territory and, if
39 practicable, shall also contain a popular description of the
40 additional territory.

41 (f) The election shall be held, superintended and con-
42 ducted and the results thereof ascertained, certified,
43 returned and canvassed in the same manner by the same
44 individuals as elections for municipal officers. The
45 election is reviewable by the circuit court of the county in
46 which the municipality or the major portion thereof,
47 including the area proposed to be annexed, is located. The
48 order may be reviewed by the circuit court as an order of
49 a county commission ordering an election may be reviewed
50 under section sixteen, article five of this chapter.

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

53 For Annexation

54 Against Annexation

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

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

61 (j) For purposes of this section, the term "qualified voter
62 of the additional territory" includes a firm or corporation
63 in the additional territory regardless of whether the firm
64 or corporation is a freeholder. A firm or corporation may
65 vote by its manager, president, or executive officer duly
66 designated in writing by the firm or corporation. In any
67 instance where a freeholder leases or rents real property to

68 a firm or corporation the freeholder and the firm or
69 corporation shall determine which entity will be entitled
70 to vote in the annexation election.

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

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

PART III. ANNEXATION WITHOUT ELECTION.

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

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

9 (b) For purposes of this section, the term “qualified
10 voter of the additional territory” includes firms and
11 corporations in the additional territory regardless of
12 whether the firm or corporation is a freeholder. A firm or
13 corporation may sign a petition by its manager, president
14 or executive officer duly designated in writing by the firm
15 or corporation. In any instance where a freeholder leases
16 or rents real property to a firm or corporation the free-
17 holder and the firm or corporation shall determine which
18 entity will be entitled to sign a petition relating to the
19 proposed annexation.

20 (c) The determination that the requisite number of
21 petitioners have filed the required petitions shall be

22 reviewable by the circuit court of the county in which the
23 municipality or the major portion of the territory thereof,
24 including the area proposed to be annexed is located, upon
25 certiorari to the governing body in accordance with the
26 provisions of article three, chapter fifty-three of this code.

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

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

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

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

PART IV. ANNEXATION BY MINOR
BOUNDARY ADJUSTMENT.

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

1 (a) In the event a municipality desires to increase its
2 corporate limits by making a minor boundary adjustment,
3 the governing body of the municipality may apply to the
4 county commission of the county wherein the municipality
5 or the major portion of the territory thereof, including the
6 territory to be annexed, is located for permission to effect
7 annexation by minor boundary adjustment. The municipi-
8 pality shall pay the costs of all proceedings before the
9 commission.

10 (b) In addition to any other annexation configuration, a
11 municipality may incorporate by minor boundary adjust-
12 ment: (i) Territory that consists of a street or highway as
13 defined in section thirty-five, article one, chapter
14 seventeen-c of this code and one or more freeholders; or (ii)
15 territory that consists of a street or highway as defined in
16 section thirty-five, article one, chapter seventeen-c of this
17 code which does not include a freeholder but which is
18 necessary for the provision of emergency services in the
19 territory being annexed.

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

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

26 (2) An accurate map showing the metes and bounds of
27 the additional territory;

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

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

40 (5) A statement of the impact of the annexation on fire
41 protection and fire insurance rates in the territory pro-
42 posed for annexation;

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

45 (7) A statement that the proposed annexation meets the
46 requirements of this section.

47 (d) Upon receipt of a complete application for annex-
48 ation by minor boundary adjustment, the county commis-
49 sion shall determine whether the application meets the
50 threshold requirements for consideration as a minor
51 boundary adjustment including whether the annexation
52 could be efficiently and cost effectively accomplished
53 under section two or four of this article.

54 (e) If the application meets the threshold requirements,
55 the county commission shall order publication of a notice
56 of the proposed annexation to the corporate limits and of
57 the date and time set by the commission for a hearing on
58 the proposal. Publication shall be as in the case of an
59 order calling for an election, as set forth in section two of
60 this article. A like notice shall be prominently posted at
61 not less than five public places within the area proposed to
62 be annexed.

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

67 (1) Whether the territory proposed for annexation is
68 contiguous to the corporate limits of the municipality. For

69 purposes of this section, “contiguous” means that at the
70 time the application for annexation is submitted, the
71 territory proposed for annexation either abuts directly on
72 the municipal boundary or is separated from the municipal
73 boundary by an unincorporated street or highway, or
74 street or highway right-of-way, a creek or river, or the
75 right-of-way of a railroad or other public service corpora-
76 tion, or lands owned by the state or the federal govern-
77 ment;

78 (2) Whether the proposed annexation is limited solely to
79 a division of highways right-of-way or whether the
80 division of highways holds title to the property in fee;

81 (3) Whether affected parties of the territory to be
82 annexed oppose or support the proposed annexation. For
83 purposes of this section, “affected parties” means free-
84 holders, firms, corporations and qualified voters in the
85 territory proposed for annexation and in the municipality
86 and a freeholder whose property abuts a street or highway,
87 as defined in section thirty-five, article one, chapter
88 seventeen-c of this code, when: (i) The street or highway is
89 being annexed to provide emergency services; or (ii) the
90 annexation includes one or more freeholders at the end of
91 the street or highway proposed for annexation;

92 (4) Whether the proposed annexation consists of a street
93 or highway as defined in section thirty-five, article one,
94 chapter seventeen-c of this code and one or more freehold-
95 ers;

96 (5) Whether the proposed annexation consists of a street
97 or highway as defined in section thirty-five, article one,
98 chapter seventeen-c of this code which does not include a
99 freeholder but which is necessary for the provision of
100 emergency services in the territory being annexed;

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

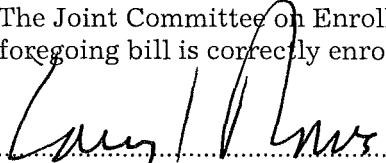
103 (7) Whether the proposed annexation is in the best
104 interest of the county as a whole.

105 (g) If the county commission denies the application for
106 annexation by minor boundary adjustment, the commis-
107 sion may allow the municipality to modify the proposed
108 annexation to meet the commissions objections. The
109 commission must order another public hearing if signifi-
110 cant modifications are proposed.

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

113 (i) The municipality applying for annexation or any
114 affected party may appeal the commission's final order to
115 the circuit court of the county in which the municipality or
116 the major portion thereof, including the area proposed to
117 be annexed, is located. The county commission may
118 participate in any appeal taken from its order in the same
119 manner and to the same extent as a party to the appeal.
120 The order may be reviewed by the circuit court as an order
121 of a county commission ordering an election may be
122 reviewed under section sixteen, article five of this chapter.

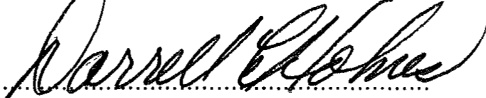
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

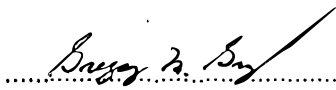

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Chairman Senate Committee


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Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.



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Clerk of the Senate


.....
Clerk of the House of Delegates


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President of the Senate


.....
Speaker House of Delegates

The within is approved this the 30th
Day of April, 2001.


.....
Governor

PRESENTED TO THE

GOVERNOR

Date 4/24/01

Time 11:08 am