WEST VIRGINIA LEGISLATURE
Regular Session, 2001

ENROLLED
Committee Substitute for
SENATE BILL NO. 262

(By Senator Snyder)

PASSED April 12, 2001
In Effect 90 days from Passage
ENROLLED
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.

(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.

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, not less than twenty nor more than thirty days from the date thereof.

(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 such 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
(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:

□ 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 such 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 both in the municipality and 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.

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.

PART IV. ANNEXATION BY MINOR BOUNDARY ADJUSTMENT.

§8-6-5. Annexation by minor boundary adjustment.
(a) In the event 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.

(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 section thirty-five, article one, chapter seventeen-c of this code and one or more freeholders; or (ii) territory that consists of a street or highway as defined in section thirty-five, article one, chapter seventeen-c 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 accurate map showing the metes and bounds of the additional territory;

(3) 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;
(4) 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;

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

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

(7) 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 section two or four of this article.

(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 section two of this article. 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 corpora-
tion, or lands owned by the state or the federal govern-
ment;

(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 free-
holders, 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 section thirty-five, article one, chapter 
seventeen-c 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 section thirty-five, article one, 
chapter seventeen-c of this code and one or more freehold-
ers;

(5) Whether the proposed annexation consists of a street 
or highway as defined in section thirty-five, article one, 
chapter seventeen-c 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 commission's 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 section sixteen, article five of this chapter.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

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