WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2004

ENROLLED

House Bill No. 4119
(By Delegates Caputo, Coleman, Morgan, Pethtel, Ellem, Overington and Smirl)

Passed March 13, 2004
In Effect Ninety Days from Passage
ENROLLED

H. B. 4119

(BY DELEGATES CAPUTO, COLEMAN, MORGAN, PETHTEL, ELLEM, OVERINGTON AND SMIRL)

[Passed March 13, 2004; in effect ninety days from passage.]

AN ACT to amend and reenact §7-18-1 of the code of West Virginia, 1931, as amended; and to amend and reenact §8–6-4 of said code, all relating to annexation generally; limiting imposition and collection of hotel tax by municipality after annexation under certain circumstances; providing for a phase out of collection and imposition of hotel tax by county commission in certain circumstances; requiring county commission to provide hotel tax information to annexing municipality upon request; requiring municipality considering annexation without an election to provide notice to county commission; requiring municipality considering annexation without an election to hold a public hearing, and requiring all voters and freeholders to agree to annexation without election.

Be it enacted by the Legislature of West Virginia:

That §7-18-1 of the code of West Virginia, 1931, as amended, be amended and reenacted; and that §8-6-4 of said code be amended and reenacted, all to read as follows:

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CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 18. HOTEL OCCUPANCY TAX

§7-18-1. Hotel occupancy tax.

1. (a) Authority to impose.—On and after the first day of July, one thousand nine hundred eighty-five, any county or municipality may impose and collect a privilege tax upon the occupancy of hotel rooms located within its taxing jurisdiction. The tax shall be imposed and collected as provided in this article.

2. (b) Municipal tax.—A municipal hotel tax shall be imposed by ordinance enacted by the governing body of the municipality, in accordance with the provisions of article eleven, chapter eight of this code. The tax shall be imposed uniformly throughout the municipality; and the tax shall apply to all hotels located within the corporate limits of the municipality, including hotels owned by the state or by any political subdivision of this state:

Provided, That a municipality may only impose the tax on a hotel located within its corporate limits upon which a county was imposing a hotel tax immediately preceding annexation of the territory pursuant to article six, chapter eight of this code within the following limitations: (1) If the county commission had previously pledged the revenue specified for a term to a particular project or projects, then the hotel tax may be retained by the county for the sole purpose of retiring this obligation; or (2) if the county commission has not pledged the revenue to a project or projects prior to the time a petition for annexation is filed, the tax collected from the hotel shall be amortized over a six-year period as follows: Beginning on the first day of July of the fiscal year following the annexation, the county shall remit twenty percent of the taxes collected on the annexed hotel to the municipality, and shall increase the amount remitted to the municipality by twenty percent for each year thereafter until one hundred percent of the taxes collected are remitted to the
Upon reaching the one hundred percent threshold, the county shall cease assessment and collection of the hotel tax and the municipality shall assess and collect its own hotel tax. The county at any point during the six year-period may relinquish its authority to assess and collect the hotel tax.

(c) County tax.—A county hotel tax shall be imposed by order of the county commission duly entered of record. The tax shall be imposed uniformly throughout the county: Provided, That a county commission may not impose its tax on hotels located within the corporate limits of any municipality situated, in whole or in part, within the county, except as provided in the preceding subsection: Provided, however, That the tax collected by a hotel owned by a municipality but located outside the corporate limits of the municipality pursuant to this article shall be remitted to the municipality owning the hotel for expenditure pursuant to the provisions of section fourteen of this article. The tax shall apply to all hotels located outside the corporate limits of a municipality, including hotels owned by the state or any political subdivision of this state. Any county commission pledging hotel taxes to retire debt and pay the interest on revenue bonds shall make information relating to the revenue bonds available to the annexing municipality upon request of the municipality.

(d) The tax shall be imposed on the consumer and shall be collected by the hotel operator as part of the consideration paid for the occupancy of a hotel room: Provided, That the tax shall not be imposed on any consumer occupying a hotel room for thirty or more consecutive days.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 6. ANNEXATION.

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) All of the qualified voters of the additional territory file with the governing body a petition to be annexed; and (2) 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. The governing body must provide notice, by certified mail, return receipt requested, to each member of the county commission in the county where the proposed annexation will occur.

(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) Upon receipt of a petition, the governing body shall conduct a public hearing to receive public comments on the petition.

(h) 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.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originating in the House.

In effect ninety days from passage.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker of the House of Delegates

The within-disapproved this the 60th day of April, 2004.

[Signature]
Governor