

HB 4511

FILED

2008 MAR 28 PM 4: 29

OFFICE OF THE  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**  
SECOND REGULAR SESSION, 2008



**ENROLLED**

**COMMITTEE SUBSTITUTE  
FOR  
House Bill No. 4511**

(By Delegates Wysong, Tabb, Blair, J. Miller, Cowles, Michael,  
Duke, Williams, Barker, Shaver and Long)



Passed March 7, 2008

In Effect from Passage

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COMMITTEE SUBSTITUTE

FOR

## H. B. 4511

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CLERK OF THE HOUSE  
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(BY DELEGATES WYSONG, TABB, BLAIR, J. MILLER, COWLES,  
MICHAEL, DUKE, WILLIAMS, BARKER, SHAVER AND LONG)

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[Passed March 7, 2008; in effect from passage.]

AN ACT to amend and reenact §8A-7-7, §8A-7-8 and §8A-7-13 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §8A-7-8a, all relating to zoning ordinances; reducing the threshold for triggering a zoning ordinance election by petition; setting forth procedures for amending a zoning ordinance; requirements for adopting an amendment to a zoning ordinance; requiring specific notice requirements to affected owners of affected parcels when a proposed zoning ordinance modification would change the zoning classification of a parcel of land; clarifying the relevant notice and adoption procedures as they pertain to adoption or modification of a nontraditional zoning ordinance.

*Be it enacted by the Legislature of West Virginia:*

That §8A-7-7, §8A-7-8 and §8A-7-13 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §8A-7-8a, all to read as follows:

**ARTICLE 7. ZONING ORDINANCE.**

**§8A-7-7. Election on a zoning ordinance.**

1 (a) The governing body of a municipality or a county  
2 may submit a proposed zoning ordinance for approval or  
3 rejection at any primary election, general election or special  
4 election, to the qualified voters residing:

5 (1) Within the entire jurisdiction of the governing body,  
6 if the proposed zoning ordinance is for the entire jurisdiction;  
7 or

8 (2) In the specific area to be zoned by the proposed  
9 zoning ordinance, if the proposed zoning ordinance only  
10 applies to part of the governing body's jurisdiction.

11 (b) The election laws of this state apply to any election on  
12 a proposed zoning ordinance.

13 (c) If a petition for an election on a zoning ordinance is  
14 filed with the clerk of a governing body within ninety days  
15 after the enactment of a zoning ordinance by a governing  
16 body without an election, then a zoning ordinance does not  
17 take effect until an election is held and a majority of the  
18 voters approves it. At least ten percent of the total eligible  
19 voters in the area to be affected by the proposed zoning  
20 ordinance must sign, in their own handwriting, the petition  
21 for an election on a zoning ordinance.

22 (d) Notice for an election on a proposed zoning ordinance  
23 must be published in a local newspaper of general circulation  
24 in the area affected by the proposed zoning ordinance, as a  
25 Class II-0 legal advertisement, in accordance with the  
26 provisions of article three, chapter fifty-nine of this code.

27 (e) The ballots for an election on a zoning ordinance shall  
28 have the following:

29 // For Zoning

30 // Against Zoning

31 (f) The zoning ordinance is adopted if it is approved by  
32 a majority of the voters and is effective on the date the results  
33 of an election are declared. If a zoning ordinance is rejected,  
34 the zoning ordinance does not take effect. The governing  
35 body may submit the zoning ordinance to the voters again at  
36 the next primary or general election.

**§8A-7-8. Amendments to the zoning ordinance by the governing  
body.**

1 (a) Before amending the zoning ordinance, the governing  
2 body with the advice of the planning commission, must find  
3 that the amendment is consistent with the adopted  
4 comprehensive plan. If the amendment is inconsistent, then  
5 the governing body with the advice of the planning  
6 commission, must find that there have been major changes of  
7 an economic, physical or social nature within the area  
8 involved which were not anticipated when the comprehensive  
9 plan was adopted and those changes have substantially  
10 altered the basic characteristics of the area.

11 (b) When a proposed amendment to the zoning ordinance  
12 involves a change in the zoning map classification of any  
13 parcel of land, or a change to the applicable zoning ordinance  
14 text regulations that changes the allowed dwelling unit  
15 density of any parcel of land, the governing body shall, at  
16 least thirty days prior to the enactment of the proposed  
17 amendment if there is not an election, or at least thirty days  
18 prior to an election on the proposed amendment to the zoning  
19 ordinance:

20 (1) Give written notice by certified mail to the  
21 landowner(s) whose property is directly involved in the  
22 proposed amendment to the zoning ordinance; and

23 (2) Publish notice of the proposed amendment to the  
24 zoning ordinance in a local newspaper of general circulation  
25 in the area affected by the zoning ordinance, as a Class II-0  
26 legal advertisement, in accordance with the provisions of  
27 article three, chapter fifty-nine of this code.

**§8A-7-8a. Requirements for adopting an amendment to the  
zoning ordinance.**

1 (a) After the enactment of the zoning ordinance, the  
2 governing body of the municipality may amend the zoning  
3 ordinance in accordance with section eight of this article,  
4 without holding an election.

5 (b) After the enactment of the zoning ordinance, the  
6 governing body of the county may amend the zoning  
7 ordinance in accordance with section eight of this article, as  
8 follows:

9 (1) Without holding an election;

10 (2) Holding an election on the proposed amendment; or

11 (3) Holding an election on the proposed amendment  
12 pursuant to a petition.

13 (c) If the governing body of the county chooses to hold  
14 an election on the proposed amendment, then it must:

15 (1) Publish notice of the election and the proposed  
16 amendment to the zoning ordinance in a local newspaper of  
17 general circulation in the area affected by the zoning

18 ordinance, as a Class II-0 legal advertisement, in accordance  
19 with the provisions of article three, chapter fifty-nine of this  
20 code; and

21 (2) Hold an election on the question of adopting or  
22 rejecting the proposed amendment to the zoning ordinance at  
23 any primary, general or special election for the qualified  
24 voters residing in:

25 (A) The entire jurisdiction of the county, if the zoning  
26 ordinance applies to the entire county; or

27 (B) The specific area to which the zoning ordinance  
28 applies, if the zoning ordinance only applies to a part of the  
29 county.

30 (d) The governing body of a county must hold an election  
31 on an amendment to a zoning ordinance if a petition, signed  
32 by at least ten percent of the eligible voters in the area to  
33 which the zoning ordinance applies, is filed:

34 (1) With the governing body of the county prior to  
35 enactment of an amendment to a zoning ordinance; or

36 (2) After the enactment of an amendment to a zoning  
37 ordinance without an election, if the petition for an election  
38 on the amendment to a zoning ordinance is filed with the  
39 governing body of the county within ninety days.

40 (e) The governing body of the county holding an election  
41 on the proposed amendment pursuant to a petition must:

42 (1) Publish notice of the election and the proposed  
43 amendment to the zoning ordinance in a local newspaper of  
44 general circulation in the area affected by the zoning  
45 ordinance, as a Class II-0 legal advertisement, in accordance

46 with the provisions of article three, chapter fifty-nine of this  
47 code; and

48 (2) Hold an election on the question of adopting or  
49 rejecting the proposed amendment to the zoning ordinance at  
50 any primary, general or special election for the qualified  
51 voters residing in:

52 (A) The entire jurisdiction of the county, if the zoning  
53 ordinance applies to the entire county; or

54 (B) The specific area to which the zoning ordinance  
55 applies, if the zoning ordinance only applies to a part of the  
56 county.

57 (f) If an election is held, then the proposed amendment to  
58 the zoning ordinance does not take effect until a majority of  
59 the voters approve it.

60 (g) If an election is held and the proposed amendment to  
61 the zoning ordinance is rejected, then the proposed  
62 amendment does not take effect. The governing body of the  
63 county may re-submit the proposed amendment to the zoning  
64 ordinance to the voters at another election.

65 (h) A special election may be held upon written request  
66 to the governing body of the county.

67 (i) The election laws of this state apply to any election on  
68 a proposed amendment to a zoning ordinance.

**§8A-7-13. Process to replace nontraditional zoning ordinance.**

1 (a) A governing body that has adopted or enacted a  
2 nontraditional zoning ordinance may replace the  
3 nontraditional zoning ordinance with a zoning ordinance. A

4 nontraditional zoning ordinance may be replaced with a  
5 zoning ordinance by:

6 (1) The governing body; or

7 (2) A petition by the voters in the affected area. If the  
8 voters petition to replace the nontraditional zoning ordinance  
9 with a zoning ordinance, then the provisions of this section  
10 and this chapter shall be followed.

11 (b) At least ten percent of the total eligible voters in the  
12 affected area may petition the governing body to replace the  
13 nontraditional zoning ordinance with a zoning ordinance.  
14 The petition must include:

15 (1) The governing body's name to which the petition is  
16 addressed;

17 (2) The reason for the petition, including:

18 (A) Replacing the nontraditional zoning ordinance with  
19 a zoning ordinance; and

20 (B) That the question of replacing the nontraditional  
21 zoning ordinance with a new zoning ordinance be put to the  
22 voters of the affected area; and

23 (3) Signatures in ink or permanent marker.

24 (c) Each person signing the petition must be a registered  
25 voter in the affected area and in the governing body's  
26 jurisdiction. The petition must be delivered to the clerk of  
27 the affected governing body. There are no time constraints  
28 on the petition.



29 (d) Upon receipt of the petition with the required number  
30 of qualifying signatures, the governing body shall place the  
31 question on the next special, primary or general election  
32 ballot. Notice for an election on replacing a zoning  
33 ordinance must be published in a local newspaper of general  
34 circulation in the area affected by the nontraditional zoning  
35 ordinance, as a Class II-0 legal advertisement, in accordance  
36 with the provisions of article three, chapter fifty-nine of this  
37 code.

38 (e) The ballots for an election on replacing a zoning  
39 ordinance shall have the following:

40 "Shall \_\_\_\_\_ (name of governing body) replace  
41 \_\_\_\_\_ (name of commonly known nontraditional zoning  
42 ordinance) with a zoning ordinance?

43 \_\_\_\_\_ Yes \_\_\_\_\_ No"

44 (f) Upon a majority vote of the voters voting in favor of  
45 replacing a non-traditional zoning ordinance with a zoning  
46 ordinance, the governing body shall immediately begin the  
47 process of adopting and enacting a zoning ordinance, in  
48 accordance with the provisions of chapter eight-a of this  
49 code. The governing body has a maximum of three years  
50 from the date of the election to adopt a zoning ordinance.

51 (g) The governing body may amend its nontraditional  
52 zoning ordinance during the process of adopting and enacting  
53 a zoning ordinance.

54 (h) If a majority of the voters reject replacing the  
55 nontraditional zoning ordinance with a zoning ordinance, the  
56 affected voters may not petition for a vote on the issue for at  
57 least two years from the date of the election.

58 (i) Nothing in this section shall prevent a governing body  
59 from amending its zoning ordinance in accordance with this  
60 chapter.

61 (j) If a governing body of a county chooses to replace a  
62 nontraditional zoning ordinance with a traditional zoning  
63 ordinance without holding an election, a petition, signed by  
64 at least ten percent of the eligible voters who reside in the  
65 area affected by the zoning ordinance, for an election on the  
66 question of adopting a traditional zoning ordinance may be  
67 filed with the governing body of the county within ninety  
68 days after the enactment of the traditional zoning ordinance  
69 by the governing body of the county. If a petition is timely  
70 filed, then the traditional zoning ordinance does not take  
71 effect until:

72 (1) Notice of the election and the zoning ordinance is  
73 published in a local newspaper of general circulation in the  
74 area affected by the zoning ordinance, as a Class II-0 legal  
75 advertisement, in accordance with the provisions of article  
76 three, chapter fifty-nine of this code;

77 (2) An election is held; and

78 (3) A majority of the voters approve it.

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

  
Chairman Senate Committee

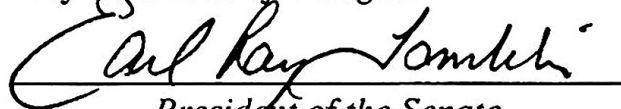
  
Chairman House Committee

Originating in the House.

In effect from passage.

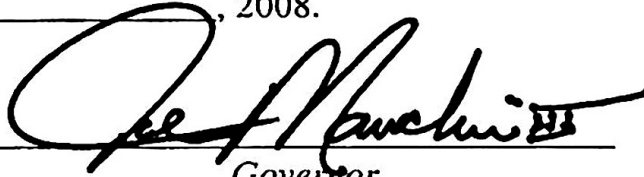
  
Clerk of the Senate

  
Clerk of the House of Delegates

  
President of the Senate

  
Speaker of the House of Delegates

The within is approved this the 28th  
day of March, 2008.

  
Governor

PRESENTED TO THE  
GOVERNOR

MAR 19 2008

Time 10:15 AM