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
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.

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

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

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

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

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

(d) Notice for an election on a proposed zoning ordinance must be published in a local newspaper of general circulation in the area affected by the proposed zoning ordinance, as a Class II-0 legal advertisement, in accordance with the provisions of article three, chapter fifty-nine of this code.
(e) The ballots for an election on a zoning ordinance shall have the following:

// For Zoning

// Against Zoning

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

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

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

(b) When a proposed amendment to the zoning ordinance involves a change in the zoning map classification of any parcel of land, or a change to the applicable zoning ordinance text regulations that changes the allowed dwelling unit density of any parcel of land, the governing body shall, at least thirty days prior to the enactment of the proposed amendment if there is not an election, or at least thirty days prior to an election on the proposed amendment to the zoning ordinance:
(1) Give written notice by certified mail to the landowner(s) whose property is directly involved in the proposed amendment to the zoning ordinance; and

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

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

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

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

(1) Without holding an election;

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

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

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

(1) Publish notice of the election and the proposed amendment to the zoning ordinance in a local newspaper of general circulation in the area affected by the zoning
ordinance, as a Class II-0 legal advertisement, in accordance with the provisions of article three, chapter fifty-nine of this code; and

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

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

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

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

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

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

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

(1) Publish notice of the election and the proposed amendment to the zoning ordinance in a local newspaper of general circulation in the area affected by the zoning ordinance, as a Class II-0 legal advertisement, in accordance
with the provisions of article three, chapter fifty-nine of this code: and

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

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

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

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

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

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

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


(a) A governing body that has adopted or enacted a nontraditional zoning ordinance may replace the nontraditional zoning ordinance with a zoning ordinance. A
nontraditional zoning ordinance may be replaced with a zoning ordinance by:

(1) The governing body; or

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

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

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

(2) The reason for the petition, including:

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

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

(3) Signatures in ink or permanent marker.

(c) Each person signing the petition must be a registered voter in the affected area and in the governing body's jurisdiction. The petition must be delivered to the clerk of the affected governing body. There are no time constraints on the petition.
(d) Upon receipt of the petition with the required number of qualifying signatures, the governing body shall place the question on the next special, primary or general election ballot. Notice for an election on replacing a zoning ordinance must be published in a local newspaper of general circulation in the area affected by the nontraditional zoning ordinance, as a Class II-0 legal advertisement, in accordance with the provisions of article three, chapter fifty-nine of this code.

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

"Shall ________ (name of governing body) replace _________ (name of commonly known nontraditional zoning ordinance) with a zoning ordinance?  
____ Yes  ______ No"

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

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

(h) If a majority of the voters reject replacing the nontraditional zoning ordinance with a zoning ordinance, the affected voters may not petition for a vote on the issue for at least two years from the date of the election.
(i) Nothing in this section shall prevent a governing body from amending its zoning ordinance in accordance with this chapter.

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

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

(2) An election is held; and

(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 approved this the 28th day of _March_ 2008.

Governor
PRESENTED TO THE GOVERNOR

MAR 19 2008

Time 10:15 AM