

SB 256  
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**WEST VIRGINIA LEGISLATURE**

**SEVENTY-NINTH LEGISLATURE**

**REGULAR SESSION, 2009**

FILED

2009 MAY 11 PM 4:06

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

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**ENROLLED**

**COMMITTEE SUBSTITUTE**

**FOR**

**Senate Bill No. 256**

(SENATOR SNYDER, *original sponsor*)

[Passed April 11, 2009; in effect ninety days from passage.]

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AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §8-6-4a; and to amend and reenact §8A-7-2 of said code, all relating to urban growth boundaries; definitions; providing new procedures for annexation without election and annexation by minor boundary adjustment for municipalities in growth counties that have an adopted countywide zoning ordinance which includes urban growth boundaries; setting requirements; and permitting urban growth boundaries in zoning ordinances.

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

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §8-6-4a; and that §8A-7-2 of said code be amended and reenacted, all to read as follows:

**CHAPTER 8. MUNICIPAL CORPORATIONS.**

**ARTICLE 6. ANNEXATION.**

PART III - ANNEXATION WITHOUT ELECTION.

**§8-6-4a. Annexation without election for municipalities in counties that have an adopted countywide zoning ordinance which includes urban growth boundaries.**

1 (a) This section applies to municipalities in counties  
2 that have adopted a countywide zoning ordinance with  
3 designated urban growth boundaries and, prior to January  
4 1, 2009, have adopted local impact fees pursuant to the  
5 provisions of article twenty, chapter seven of this code  
6 that want to annex additional property without an  
7 election.

8 (b) For purposes of this section only:

9 (1) "Contiguous" means property that is next to,  
10 abutting and having a boundary that is coterminous with  
11 the municipality's designated urban growth boundary.  
12 The length of a street, highway, road or other traffic or  
13 utility easement, streams, rivers or other natural topogra-  
14 phy are not to be used to determine if a property is contig-  
15 uous: *Provided*, That the width of a street, highway, road  
16 or other traffic or utility easement, streams, rivers or other  
17 natural topography may be used to determine contiguous  
18 boundaries.

19 (2) "Urban growth boundary" means a site-specific line,  
20 delineated on a zoning map or a written description in a  
21 zoning ordinance identifying an area around and outside  
22 the corporate limits of a municipality within which there  
23 is a sufficient supply of developable land within the  
24 boundary for at least a prospective twenty-year period of  
25 municipal growth based on demographic forecasts and the  
26 time reasonably required to effectively provide municipal  
27 services to the identified area. The urban growth bound-  
28 ary may be called by any name chosen by the county  
29 commission, but the word "boundary" shall be used in the

30 name of the boundary. The boundary shall be established  
31 by the county commission in agreement with each individ-  
32 ual municipality regarding that municipality's boundary.  
33 If the county commission and municipality cannot agree  
34 upon the location or size of the boundary, either party may  
35 file for declaratory judgment relief in the circuit court  
36 which shall submit the dispute to mediation or arbitration  
37 prior to final resolution by the circuit court. Once a  
38 county has adopted an urban growth boundary by its  
39 designation on an adopted county zoning map, the gross  
40 area inside the boundary may not be reduced without  
41 written consent of the municipality. The county commis-  
42 sion shall review each urban growth boundary at a period  
43 not to exceed ten years or upon request of the individual  
44 municipality.

45 (c) *Procedure for a municipality to annex property*  
46 *within an urban growth boundary.* —

47 (1) If the proposed property to be annexed by a munici-  
48 pality is entirely within the municipality's designated  
49 urban growth boundary, then the municipality may annex  
50 without an election the proposed property pursuant to the  
51 provisions of section four of this article. Agreement with  
52 the county commission is not required.

53 (2) If the proposed property to be annexed by minor  
54 boundary adjustment by a municipality is entirely within  
55 the municipality's designated urban growth boundary,  
56 then the municipality may annex without an election the  
57 proposed property pursuant to the provisions of section  
58 four of this article if the provisions of section five of this  
59 article are followed, except that agreement with the  
60 county commission is not required.

61 (d) *Procedure for a municipality to annex property*  
62 *within urban growth boundaries of two or more municipal-*  
63 *ities.* —

64 If the proposed property to be annexed by a municipal-  
65 ity is partially or wholly within another municipality's  
66 urban growth boundary, then the municipality may annex  
67 without an election the proposed property pursuant to the  
68 provisions of section four of this article if the two municipi-  
69 palities have executed an intergovernmental agreement  
70 regarding the annexation of the subject property. Agree-  
71 ment with the county commission is not required.

72 (e) *Procedure for a municipality to annex contiguous*  
73 *property outside an urban growth boundary. -*

74 (1) If the proposed property to be annexed by a municipi-  
75 pality is outside the municipality's designated urban  
76 growth boundary, then the municipality may annex  
77 without an election the proposed property pursuant to the  
78 provisions of section four of this article, if:

79 (A) The proposed property to be annexed is contiguous  
80 to the municipality, as defined in this section; and

81 (B) The municipality has the county commission's  
82 agreement.

83 (2) Prior to the agreement of the county commission to  
84 the annexation of the proposed property the county  
85 commission shall:

86 (A) Hold a public hearing;

87 (B) Place a notice on the subject property, which notice  
88 shall be the same as that required for property to be  
89 rezoned; and

90 (C) At least fifteen days prior to the public hearing,  
91 publish a notice of the date, time and place of the public  
92 hearing as a Class I legal advertisement in compliance  
93 with the provisions of article three, chapter fifty-nine of  
94 this code.

95 (f) *Procedure for a municipality to annex noncontiguous*  
96 *property outside an urban growth boundary. –*

97 (1) If the proposed property to be annexed by a municipi-  
98 pality is entirely outside the municipality's designated  
99 urban growth boundary and is not contiguous to the  
100 municipality, as defined in this section, then the municipi-  
101 pality may annex without an election the proposed  
102 property pursuant to the provisions of section four of this  
103 article if the municipality has the county commission's  
104 agreement and, prior to the agreement of the county  
105 commission to the annexation of the proposed property,  
106 the county commission shall:

107 (A) Hold a public hearing;

108 (B) Place a notice on the subject property, which notice  
109 shall be the same as that required for property to be  
110 rezoned; and

111 (C) At least fifteen days prior to the public hearing,  
112 publish a notice of the date, time and place of the public  
113 hearing as a Class I legal advertisement in compliance  
114 with the provisions of article three, chapter fifty-nine of  
115 this code.

116 (2) After the public hearing and on-site notice, if the  
117 county commission finds, by a written record, that the  
118 proposed annexation is for the good of the county as a  
119 whole, then the county commission may agree to the  
120 annexation.

121 (g) Prior to the county commission entering an order for  
122 any annexation pursuant to this section, the annexed  
123 property shall be surveyed by a licensed professional  
124 surveyor and a metes and bounds description of the  
125 annexed property must be provided to the county commis-  
126 sion in which the property is located.

127 (h) After a municipality has annexed property pursuant  
128 to this section and the property has been surveyed, the  
129 county commission shall enter an order. After the order is  
130 entered, the corporate limits of the municipality include  
131 the annexed property.

## CHAPTER 8A. LAND USE PLANNING:

### ARTICLE 7. ZONING ORDINANCE.

#### §8A-7-2. Contents of zoning ordinance.

1 (a) The following must be considered when enacting a  
2 zoning ordinance:

3 (1) Promoting general public welfare, health, safety,  
4 comfort and morals;

5 (2) A plan so that adequate light, air, convenience of  
6 access and safety from fire, flood and other danger is  
7 secured;

8 (3) Ensuring attractiveness and convenience is pro-  
9 moted;

10 (4) Lessening congestion;

11 (5) Preserving historic landmarks, sites, districts and  
12 buildings;

13 (6) Preserving agricultural land; and

14 (7) Promoting the orderly development of land.

15 (b) A zoning ordinance may include the following:

16 (1) Regulating the use of land and designating or  
17 prohibiting specific land uses;

18 (2) Authorizing flexible planning standards to create,  
19 redevelop, reuse, protect and enhance the physical quali-  
20 ties of the community;

21 (3) Designating historic districts and regulating the uses  
22 of land and the design of buildings within the historic  
23 district;

24 (4) Establishing corridor overlay districts to achieve  
25 land design goals and regulating the uses of land within  
26 the corridor overlay districts;

27 (5) Establishing design standards and site plan approval  
28 procedures;

29 (6) Dividing the land of the governing body into differ-  
30 ent zone classifications regulating the use of land, estab-  
31 lishing performance standards for various land uses when  
32 dividing is not desired or any combination of both;

33 (7) Authorizing overlay districts and special design  
34 districts within which specific additional development  
35 standards for each permitted, accessory and conditional  
36 use shall apply;

37 (8) Regulating the height, area, bulk, use and architec-  
38 tural features of buildings, including reasonable exterior  
39 architectural features and reasonable aesthetic standards  
40 for factory-built homes;

41 (9) Authorizing a process and standards for fac-  
42 tory-built homes: *Provided*, That a governing body is  
43 prohibited from establishing a process and standards for  
44 regulating factory-built homes that is more restrictive  
45 than a process and standards for site-built homes;

46 (10) Preserving green spaces and requiring new green  
47 spaces, landscaping, screening and the preservation of  
48 adequate natural light;

49 (11) Regulating traffic flow and access, pedestrian flow  
50 and access, parking and loading;

51 (12) Identifying flood-prone areas subject to periodic  
52 flooding and regulating with specific control the permitted

53 use, type of construction and height of floor levels above  
54 base flood elevation permitted in the area so as to lessen or  
55 avoid the hazards to persons and damage to property  
56 resulting from the accumulation of storm or flood waters;

57 (13) Designating an airport area and establishing  
58 land-use regulations within a specific distance from the  
59 boundaries of the airport;

60 (14) Authorizing planned unit developments to achieve  
61 more efficient use of land and setting standards and  
62 regulations for the developments; and

63 (15) Identifying, establishing and designating urban  
64 growth boundaries, as defined in section four-a, article  
65 six, chapter eight of this code, for municipalities.

66 (c) A zoning ordinance shall:

67 (1) Create a board of zoning appeals;

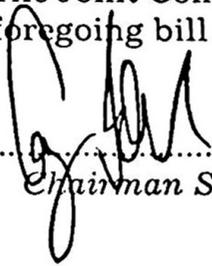
68 (2) Specify certification requirements for zoning district  
69 maps that are consistent with the governing body's  
70 comprehensive plan;

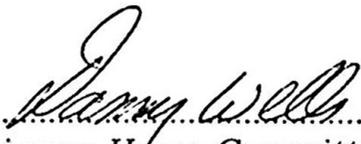
71 (3) Adopt procedures and requirements for  
72 nonconforming land uses;

73 (4) Adopt procedures and requirements for variances;  
74 and

75 (5) Adopt procedures and requirements for conditional  
76 use permits.

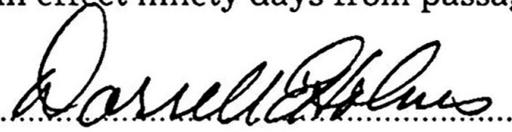
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

  
.....  
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 11<sup>th</sup>  
May  
Day of ....., 2009.

  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

MAY 7 2009

Time 11:20am