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WEST VIRGINIA LEGISLATURE
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THE WEST VIRGINIA
SECRETARY OF STATE

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ENROLLED

Senate Bill No. 388

(By SENATORS BOWMAN, BOLEY, BROWNING,
FOSTER, MINARD, PALUMBO, SNYDER,
SYPOLT, WHITE, WILLIAMS AND YOST)

[Passed March 10, 2010; in effect ninety days from passage.]

SB 388

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SECRETARY OF STATE

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(BY SENATORS BOWMAN, BOLEY, BROWNING, FOSTER,
MINARD, PALUMBO, SNYDER, SYPOLT, WHITE, WILLIAMS AND YOST)

[Passed March 10, 2010; in effect ninety days from passage.]

AN ACT to amend and reenact §8A-2-3 of the Code of West Virginia, 1931, as amended; and to amend and reenact §8A-8-3 of said code, all relating to municipal planning commissions and municipal boards of zoning appeals; and specifying the number of members by municipal classifications.

Be it enacted by the Legislature of West Virginia:

That §8A-2-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §8A-8-3 of said code be amended and reenacted, all to read as follows:

ARTICLE 2. PLANNING COMMISSIONS.

§8A-2-3. Municipal planning commission.

- 1 (a) A municipal planning commission in a Class I, II or
- 2 III city shall have not less than five nor more than fifteen
- 3 members, the exact number to be specified in the ordi-
- 4 nance creating the planning commission. A municipal

5 planning commission in a Class IV town or village shall
6 have not less than three nor more than nine members, the
7 exact number to be specified in the ordinance creating the
8 planning commission.

9 (b) The members of a municipal planning commission
10 must be:

11 (1) Residents of the municipality; and

12 (2) Qualified by knowledge and experience in matters
13 pertaining to the development of the municipality.

14 (c) At least three fifths of all of the members must have
15 been residents of the municipality for at least three years
16 prior to nomination or appointment and confirmation.

17 (d) The members of a municipal planning commission
18 must fairly represent different areas of interest, knowledge
19 and expertise, including, but not limited to, business,
20 industry, labor, government and other relevant disciplines.
21 One member must be a member of the municipal govern-
22 ing body or a designee and one member must be a member
23 of the administrative department of the municipality or a
24 designee. The term of membership for these two members
25 is the same as their term of office.

26 (e) The Legislature finds that there are persons willing
27 to serve on planning commissions who may also own
28 interests in businesses that regularly conduct business in
29 front of or with planning commission staff. Such persons
30 may have experience and expertise which would be
31 valuable assets to a planning commission. For those
32 reasons, notwithstanding any other provisions in this code
33 to the contrary, any person employed by, owning an
34 interest in or otherwise associated with a business that
35 regularly conducts business in front of or with planning
36 commission staff may also serve as a member of a plan-
37 ning commission and shall not be disqualified from

38 serving as a member because of a conflict of interest as
39 defined in section fifteen, article ten, chapter sixty-one of
40 this code and shall not be subject to prosecution under
41 provisions of that chapter when the violation is created
42 solely as a result of his or her relationship with the
43 business. This member must recuse himself or herself from
44 any vote, discussion, participation or other activity
45 regarding the conflicting issue.

46 (f) The Legislature finds that there are persons willing to
47 serve on planning commissions who may also own inter-
48 ests in businesses who regularly conduct business in front
49 of or with planning commission staff. Such persons may
50 have experience and expertise which would be valuable
51 assets to a planning commission. For those reasons,
52 notwithstanding any other provisions in this code to the
53 contrary, any person employed by, owning an interest in
54 or otherwise associated with a business that regularly
55 conducts business in front of or with planning commission
56 staff may also serve as a member of a planning commis-
57 sion and shall not be in violation of subsection (g), section
58 five, article two, chapter six-b of this code if the member
59 recuses himself or herself from any vote, discussion,
60 participation or other activity regarding the conflicting
61 issue: *Provided*, That such members do not constitute a
62 majority of the members of the planning commission at
63 the same time.

64 (g) The remaining members of the municipal planning
65 commission first selected shall serve respectively for terms
66 of one year, two years and three years, divided equally or
67 as nearly equally as possible between these terms. There-
68 after, members shall serve three-year terms. Vacancies
69 shall be filled for the unexpired term and made in the
70 same manner as original selections were made.

71 (h) The members of a municipal planning commission
72 shall serve without compensation, but shall be reimbursed

73 for all reasonable and necessary expenses actually in-
74 curred in the performance of their official duties.

75 (i) Nominations for municipal planning commission
76 membership shall be made by the administrative authority
77 and confirmed by the governing body when the adminis-
78 trative authority and the governing body are separate, or
79 appointed and confirmed by the governing body where the
80 administrative authority and governing body are the same.

81 (j) An individual may serve as a member of a municipal
82 planning commission, a county planning commission, a
83 multicounty planning commission, a regional planning
84 commission or a joint planning commission, at the same
85 time.

86 (k) The governing body of the municipality may estab-
87 lish procedures for the removal of members of the plan-
88 ning commission for inactivity, neglect of duty or malfea-
89 sance. The procedures must contain provisions requiring
90 that the person to be removed be provided with a written
91 statement of the reasons for removal and an opportunity
92 to be heard on the matter.

ARTICLE 8. BOARD OF ZONING APPEALS.

§8A-8-3. Municipal board of zoning appeals.

1 (a) A municipal board of zoning appeals in a Class I, II
2 or III city shall have five members to be appointed by the
3 governing body of the municipality. A municipal board of
4 zoning appeals in a Class IV town or village shall have not
5 less than three nor more than five members to be ap-
6 pointed by the governing body of the municipality.

7 (b) The members of a municipal board of zoning appeals
8 must be:

9 (1) Residents of the municipality for at least three years
10 preceding his or her appointment;

11 (2) Cannot be a member of the municipal planning
12 commission; and

13 (3) Cannot hold any other elective or appointive office in
14 the municipal government.

15 (c) Upon the creation of a board of zoning appeals, the
16 members shall be appointed for the following terms: One
17 for a term of one year; two for a term of two years; and
18 two for a term of three years. The terms shall expire on
19 the first day of January of the first, second and third year,
20 respectively, following their appointment. Thereafter,
21 members shall serve three-year terms. If a vacancy occurs,
22 the governing body of the municipality shall appoint a
23 member for the unexpired term.

24 (d) The governing body of the municipality may appoint
25 up to three additional members to serve as alternate
26 members of the municipal board of zoning appeals. The
27 alternate members must meet the same eligibility require-
28 ments as set out in subsection (b) of this section. The term
29 for an alternate member is three years. The governing
30 body of the municipality may appoint alternate members
31 on a staggered term schedule.

32 (e) An alternate member shall serve on the board when
33 one of the regular members is unable to serve. The
34 alternate member shall serve until a final determination is
35 made in the matter to which the alternate member was
36 initially called on to serve.

37 (f) The municipal board of zoning appeals shall establish
38 rules and procedures for designating an alternate member.
39 An alternate member shall have the same powers and
40 duties of a regular board member.

41 (g) The members and alternate members of a county
42 board of zoning appeals shall serve without compensation,
43 but shall be reimbursed for all reasonable and necessary

44 expenses actually incurred in the performance of their
45 official duties.

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

[Handwritten Signature]
.....
Chairman Senate Committee

[Handwritten Signature]
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

[Handwritten Signature]
.....
Clerk of the Senate

[Handwritten Signature]
.....
Clerk of the House of Delegates

[Handwritten Signature]
.....
President of the Senate

[Handwritten Signature]
.....
Speaker House of Delegates

The within is approved..... this the 22nd
Day of June....., 2010.

[Handwritten Signature]
.....
Governor

PRESENTED TO THE
GOVERNOR

MAR 19 2010

Time 4:00 pm