Enrolled
Committee Substitute
for
Senate Bill 209

SENATORS RUCKER AND MAYNARD, original sponsor

[Passed February 20, 2020; in effect from passage]
WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Enrolled

Committee Substitute for

Senate Bill 209

SENATORS RUCKER AND MAYNARD, original sponsor

[Passed February 20, 2020; in effect from passage]
AN ACT to amend and reenact §8-6-4a and §8-6-5 of the Code of West Virginia, 1931, as amended, all relating to annexation by minor boundary adjustment; clarifying language regarding entry of order by county commission following annexation of property within urban growth boundary by minor boundary adjustment; requiring that municipality as part of application provide affidavit that persons, businesses, and freeholders in additional territory consent to inclusion in annexation; providing procedure when affected party is unavailable to provide affidavit; requiring county commission to enter order denying application for minor boundary adjustment annexation upon determination that annexation could be efficiently and cost effectively accomplished under other provisions of said code, that application lacks evidence of consent of all affected parties, or is otherwise insufficient; and prohibiting municipality from applying for annexation by minor boundary adjustment for two years after denial of application.

Be it enacted by the Legislature of West Virginia:

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.

(a) This section applies to municipalities in counties that have adopted a countywide zoning ordinance with designated urban growth boundaries and, prior to January 1, 2009, have adopted local impact fees pursuant to the provisions of §7-20-1 et seq. of this code that want to annex additional property without an election.

(b) For purposes of this section only:

(1) "Contiguous" means property that is next to, abutting, and having a boundary that is coterminous with the municipality's designated urban growth boundary. The length of a street, highway, road, or other traffic or utility easement, streams, rivers, or other natural topography are
not to be used to determine if a property is contiguous: Provided, That the width of a street, highway, road, or other traffic or utility easement, streams, rivers, or other natural topography may be used to determine contiguous boundaries.

(2) "Urban growth boundary" means a site-specific line, delineated on a zoning map or a written description in a zoning ordinance identifying an area around and outside the corporate limits of a municipality within which there is a sufficient supply of developable land within the boundary for at least a prospective 20-year period of municipal growth based on demographic forecasts and the time reasonably required to effectively provide municipal services to the identified area. The urban growth boundary may be called by any name chosen by the county commission, but the word "boundary" shall be used in the name of the boundary. The boundary shall be established by the county commission in agreement with each individual municipality regarding that municipality's boundary. If the county commission and municipality cannot agree upon the location or size of the boundary, either party may file for declaratory judgment relief in the circuit court which shall submit the dispute to mediation or arbitration prior to final resolution by the circuit court. Once a county has adopted an urban growth boundary by its designation on an adopted county zoning map, the gross area inside the boundary may not be reduced without written consent of the municipality. The county commission shall review each urban growth boundary at a period not to exceed 10 years or upon request of the individual municipality.

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

(1) If the proposed property to be annexed by a municipality is entirely within the municipality's designated urban growth boundary, then the municipality may annex without an election the proposed property pursuant to the provisions of §8-6-4 of this code. Agreement with the county commission is not required.

(2) If the proposed property to be annexed by minor boundary adjustment by a municipality is entirely within the municipality's designated urban growth boundary, then the municipality may annex without an election the proposed property pursuant to the provisions of §8-6-4 of this code
if the provisions of §8-6-5 of this code are followed, except that agreement with the county commission is not required.

(d) Procedure for a municipality to annex property within urban growth boundaries of two or more municipalities. —

If the proposed property to be annexed by a municipality is partially or wholly within another municipality’s urban growth boundary, then the municipality may annex without an election the proposed property pursuant to the provisions of §8-6-4 of this code if the two municipalities have executed an intergovernmental agreement regarding the annexation of the subject property. Agreement with the county commission is not required.

(e) Procedure for a municipality to annex contiguous property outside an urban growth boundary. —

(1) If the proposed property to be annexed by a municipality is outside the municipality's designated urban growth boundary, then the municipality may annex without an election the proposed property pursuant to the provisions of §8-6-4 of this code, if:

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

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

(2) Prior to the agreement of the county commission to the annexation of the proposed property, the county commission shall:

(A) Hold a public hearing;

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

(C) At least 15 days prior to the public hearing, publish a notice of the date, time, and place of the public hearing as a Class I legal advertisement in compliance with the provisions of §59-3-1 et seq. of this code.
(f) Procedure for a municipality to annex noncontiguous property outside an urban growth boundary. —

(1) If the proposed property to be annexed by a municipality is entirely outside the municipality's designated urban growth boundary and is not contiguous to the municipality, as defined in this section, then the municipality may annex without an election the proposed property pursuant to the provisions of §8-6-4 of this code if the municipality has the county commission's agreement and, prior to the agreement of the county commission to the annexation of the proposed property, the county commission shall:

(A) Hold a public hearing;

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

(C) At least 15 days prior to the public hearing, publish a notice of the date, time, and place of the public hearing as a Class I legal advertisement in compliance with the provisions of §59-3-1 et seq. of this code.

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

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

(h) After a municipality has annexed property pursuant to this section and the property has been surveyed, the county commission shall enter an order. After the order is entered, the corporate limits of the municipality include the annexed property.
PART IV. ANNEXATION BY MINOR BOUNDARY ADJUSTMENT.

§8-6-5. Annexation by minor boundary adjustment.

(a) In the event a municipality desires to increase its corporate limits by making a minor boundary adjustment, the governing body of the municipality may apply to the county commission of the county wherein the municipality or the major portion of the territory thereof, including the territory to be annexed, is located for permission to effect annexation by minor boundary adjustment. The municipality shall pay the costs of all proceedings before the commission.

(b) In addition to any other annexation configuration, a municipality may incorporate by minor boundary adjustment: (i) Territory that consists of a street or highway as defined in §17C-1-35 of this code and one or more freeholders; or (ii) territory that consists of a street or highway as defined in §17C-1-35 of this code which does not include a freeholder but which is necessary for the provision of emergency services in the territory being annexed.

(c) A county commission may develop a form application for annexation for minor boundary adjustment. An application for annexation by minor boundary adjustment shall include, but not be limited to:

1. The number of businesses located in and persons residing in the additional territory;
2. An affidavit of each business located in, each person residing in, and each freeholder of the additional territory stating that he, she, or it has consented to be included in the annexation, in such form as the county commission deems sufficient. In the event the municipality cannot obtain an affidavit from a business, resident, or freeholder within 90 days after sending the affidavit form and a letter explaining the purpose of the affidavit via certified mail, return receipt requested, to the best available address for the business, resident, or freeholder, such business, resident, or freeholder shall be deemed to have consented to the annexation;
3. An accurate map showing the metes and bounds of the additional territory;
4. A statement setting forth the municipality's plan for providing the additional territory with all applicable public services such as police and fire protection, solid waste collection, public...
water and sewer services, and street maintenance services, including to what extent the public
services are or will be provided by a private solid waste collection service or a public service
district;

(5) A statement of the impact of the annexation on any private solid waste collection
service or public service district currently doing business in the territory proposed for annexation
in the event the municipality should choose not to utilize the current service providers;

(6) A statement of the impact of the annexation on fire protection and fire insurance rates
in the territory proposed for annexation;

(7) A statement of how the proposed annexation will affect the municipality's finances and
services; and

(8) A statement that the proposed annexation meets the requirements of this section.

(d) Upon receipt of a complete application for annexation by minor boundary adjustment,
the county commission shall determine whether the application meets the threshold requirements
for consideration as a minor boundary adjustment including whether the annexation could be
efficiently and cost effectively accomplished under §8-6-2 or §8-6-4 of this code. If the county
commission determines that the annexation could be cost effectively and efficiently accomplished
under §8-6-2 or §8-6-4 of this code, that the application lacks sufficient evidence that all affected
parties of the additional territory consent to the annexation, or that the application otherwise fails
to meet the threshold requirements for consideration as a minor boundary adjustment, it shall
enter an order denying the application, which order shall include the reasons upon which it is
based.

(e) If the application meets the threshold requirements, the county commission shall order
publication of a notice of the proposed annexation to the corporate limits and of the date and time
set by the commission for a hearing on the proposal. Publication shall be as in the case of an
order calling for an election, as set forth in §8-6-2 of this code. A like notice shall be prominently
posted at not less than five public places within the area proposed to be annexed.
(f) In making its final decision on an application for annexation by minor boundary
adjustment, the county commission shall, at a minimum, consider the following factors:

(1) Whether the territory proposed for annexation is contiguous to the corporate limits of
the municipality. For purposes of this section, "contiguous" means that at the time the application
for annexation is submitted, the territory proposed for annexation either abuts directly on the
municipal boundary or is separated from the municipal boundary by an unincorporated street or
highway, or street or highway right-of-way, a creek or river, or the right-of-way of a railroad or
other public service corporation, or lands owned by the state or the federal government;

(2) Whether the proposed annexation is limited solely to a Division of Highways right-of-
way or whether the Division of Highways holds title to the property in fee;

(3) Whether affected parties of the territory to be annexed oppose or support the proposed
annexation. For purposes of this section, "affected parties" means freeholders, firms,
corporations, and qualified voters in the territory proposed for annexation and in the municipality,
and a freeholder whose property abuts a street or highway, as defined in §17C-1-35 of this code,
when: (i) The street or highway is being annexed to provide emergency services; or (ii) the
annexation includes one or more freeholders at the end of the street or highway proposed for
annexation;

(4) Whether the proposed annexation consists of a street or highway as defined in §17C-
1-35 of this code and one or more freeholders;

(5) Whether the proposed annexation consists of a street or highway as defined in §17C-
1-35 of this code which does not include a freeholder but which is necessary for the provision of
emergency services in the territory being annexed;

(6) Whether another municipality has made application to annex the same or substantially
the same territory; and

(7) Whether the proposed annexation is in the best interest of the county as a whole.
(g) If the county commission denies the application for annexation by minor boundary adjustment, the commission may allow the municipality to modify the proposed annexation to meet the commission's objections. The commission must order another public hearing if significant modifications are proposed.

(h) The final order of the commission shall include the reasons for the grant or denial of the application.

(i) The municipality applying for annexation or any affected party may appeal the commission's final order to the circuit court of the county in which the municipality or the major portion thereof, including the area proposed to be annexed, is located. The county commission may participate in any appeal taken from its order in the same manner and to the same extent as a party to the appeal. The order may be reviewed by the circuit court as an order of a county commission ordering an election may be reviewed under §8-5-16 of this code.

(j) If the final order of the county commission is a denial of the application for annexation, the municipality may appeal as set forth in this section, but the municipality may not present the commission with another application for annexation relating to the same proposed change or any part thereof for a period of two years after issuance of the final order of the commission, unless such application is directed by the circuit court as the result of an appeal.
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 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 5th Day of March, 2020.

Governor