

1 **COMMITTEE SUBSTITUTE**

2 **FOR**

3 **H. B. 4488**

4 (By Delegate Doyle and Fleischauer)

5 [Originating in the Committee on Political Subdivision.]

6 (February 20, 2012)

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10 A BILL to amend and reenact §7-1-1 and §7-1-1a of the Code of West
11 Virginia, 1931, as amended, all relating to county
12 commissions; reforming, altering or modifying a county
13 commission; providing an option for the election of additional
14 commissioners to a county commission; setting forth examples
15 of county commissions; providing an option for the election of
16 county council members by magisterial district; and removing
17 the "county administrator - county commission" option of
18 county government as duplicative of the "county manager"
19 option.

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

21 That §7-1-1 and §7-1-1a of the Code of West Virginia, 1931, as
22 amended, be amended and reenacted, all to read as follows:

23 **ARTICLE 1. COUNTY COMMISSIONS GENERALLY.**

24 **§7-1-1. County commissions corporations; how constituted; election
25 of president.**

1 (a) The county commission, formerly the county court, tribunal
2 or county council in lieu thereof, of every county within the State
3 of West Virginia shall be a corporation by the name of "The county
4 commission of County", or "The County Council
5 of County" by which name it may sue and be
6 sued, plead and be impleaded and contract and be contracted with.

7 (b) A county commission shall consist of three commissioners
8 as provided in section nine, article IX of the Constitution of the
9 State of West Virginia, any two of whom shall constitute a quorum
10 for the transaction of business.

11 (c) An enhanced county commission created on or after July 1,
12 2012, as an alternative to a county commission pursuant to section
13 thirteen, article IX of the Constitution of West Virginia, shall
14 consist of an odd number of members that is more than three members
15 but not more than nine members, a majority of whom shall constitute
16 a quorum for the transaction of business.

17 (e) (d) A county council, created on or after July 1, 2008
18 July 1, 2012, as an alternative to a county commission pursuant to
19 section thirteen, article IX of the Constitution of West Virginia,
20 shall consist of four or more members elected by magisterial
21 district, with those counties having an even number of county
22 council members additionally electing a county council president at
23 large, a majority of whom shall constitute a quorum for the
24 transaction of business. A county council created prior to July 1,
25 2012 whose members are elected at large shall be deemed a county
26 commission on July 1, 2012 and thereafter.

1 (d) (e) Unless provided otherwise in an alternative form of
2 government, each county commission or council shall annually, at
3 its first session in each year, or as soon thereafter as
4 practicable, elect one of its commissioners or council members as
5 president of the county commission or council.

6 (e) (f) Throughout this chapter and the code, the term "county
7 commission" or any reference to a county commission shall include
8 all county councils created in lieu of the county commission.

9 **S7-1-1a. Requirements for reforming, altering or modifying a**
10 **county commission; alternative forms of county**
11 **government.**

12 (a) A county government may be reformed, altered or modified
13 as follows:

14 (1) The county commission or county council of the county may
15 pass a resolution making application to the Legislature to reform,
16 alter or modify an existing form of county government in accordance
17 with the requirements of the West Virginia Constitution and this
18 section; or

19 (2) Ten percent of the registered voters of the county may
20 sign a petition requesting reformation, alteration or modification
21 of the existing form of county government in accordance with the
22 requirements of the West Virginia Constitution and this section.

23 (b) A county commission or county council seeking to make
24 application to reform, alter or modify its county government
25 pursuant to the provisions of section thirteen, article IX of the

1 West Virginia Constitution shall adopt a resolution containing the
2 following information:

3 (1) The reasons for the reformation, alteration or
4 modification of the county commission or county government;

5 (2) The form of the proposed county government; ~~selected from~~
6 ~~the alternatives authorized by this section;~~

7 (3) The proposed name of the county government;

8 (4) When the question of reformation, alteration or
9 modification of the county government will be on the ballot;

10 (5) How and when the officers of the proposed county
11 government will be elected or appointed, taking into consideration
12 the following:

13 (A) When the election on the question of reformation,
14 alteration or modification of the county government will be held;

15 (B) The normal election cycles for county officials; and

16 (C) The time frames for early and absentee voting provided in
17 article three, chapter three of this code; and

18 (6) When the new county government will become effective.

19 (c) Prior to the adoption of a resolution seeking to reform,
20 alter or modify a county commission or county council, the
21 governing body of the county shall publish by a Class II legal
22 advertisement in one or more newspapers of general circulation
23 throughout the county, in compliance with the provisions of article
24 three, chapter fifty-nine of this code, notice of the proposed
25 changes to the current form of county government. The publication
26 area shall be the entire county. The notice shall summarize the

1 proposed changes to the county government and include the date,
2 time and place for the meeting or meetings in which the resolution
3 will be considered.

4 (d) After the publication and adoption of the resolution, the
5 following information shall be submitted by the county to the Clerk
6 of the Senate and to the Clerk of the House of Delegates no later
7 than the tenth day of a regular legislative session in which the
8 request for reforming, altering or modifying a county commission or
9 county government is to be considered by the Legislature:

- 10 (1) A certified copy of the adopted resolution;
11 (2) A copy of the required public notice;
12 (3) The vote on the adoption of the resolution; and
13 (4) The date the resolution was adopted.

14 (e) Registered voters of a county seeking to reform, alter or
15 modify the county commission or county council pursuant to section
16 thirteen, article IX of the West Virginia Constitution shall submit
17 a petition, signed by ten percent of the registered voters in the
18 county, to the county commission or county council, setting forth
19 the information required in subsection (b) of this section. Upon
20 receipt of the petition, the county commission or county council
21 shall verify that the signatures on the petition are: (1) Legally
22 registered voters of the county; and (2) equal to ten percent of
23 the registered voters of the county.

24 (f) The county commission or county council shall, within
25 thirty days of receipt of a constitutionally defective petition,
26 return it to the petitioners with a written statement as to why the

1 petition is defective. The petitioners may, within ninety days of
2 receipt of the written statement from the county commission or
3 council and after making the necessary changes, resubmit the
4 petition to the county commission or county council.

5 (g) After verifying that the signatures on the petition meet
6 the constitutional requirements, the county commission or council
7 shall forward the petition to the Clerk of the Senate and to the
8 Clerk of the House of Delegates no later than the tenth day of a
9 regular legislative session in which the request for reforming,
10 altering or modifying a county commission or county government is
11 to be considered by the Legislature.

12 (h) After receipt of a certified resolution or verified
13 petition by the Clerk of the Senate and the Clerk of the House of
14 Delegates, the Legislature shall determine whether all
15 constitutional and statutory requirements have been met. If such
16 requirements have not been met, the certified resolution or
17 verified petition shall be returned with a written statement of the
18 deficiencies. A certified resolution or verified petition may be
19 revised following the procedures set forth in this section for an
20 original submission and then may be resubmitted to the Clerk of the
21 Senate and the Clerk of the House of Delegates for consideration by
22 the Legislature. The requirement that the petition be submitted
23 prior to the tenth day of the legislative session ~~shall~~ does not
24 apply to resubmitted resolutions or petitions.

25 (i) Following passage of an act by the Legislature authorizing
26 an election on the question of reforming, altering or modifying a

1 county commission or council, the question shall be placed on the
2 ballot of the county at the next general election following such
3 passage or, at the expense of the county, a special election.

4 (j) Following approval of the reformation, alteration or
5 modification of the county commission or council by a majority of
6 the county's registered voters, nomination of the county commission
7 or council members and, where authorized, the chief executive,
8 shall be held in the next primary election or the primary election
9 set forth in the resolution or petition to reform, alter or modify
10 the county commission or council. Election of the county
11 commissioners or council members and, where authorized, the chief
12 executive shall be held in the next general election or the general
13 election set forth in the resolution or petition to change the form
14 of the county commission.

15 (k) All elections required by this section shall be held in
16 accordance with the provisions of chapter three of this code.

17 (l) The following are ~~guidelines~~ examples for alternative
18 forms of county government:

19 (A) ~~"Chief executive—county commission plan". Under this~~
20 ~~plan:~~

21 (A) ~~There shall be a chief executive elected by the registered~~
22 ~~voters of the county at large and three county commissioners that~~
23 ~~shall be elected at large;~~

24 (B) ~~The commission shall be the governing body;~~

25 (C) ~~The chief executive shall have the exclusive authority to~~
26 ~~supervise, direct and control the administration of the county~~

1 government. The chief executive shall carry out, execute and
2 enforce all ordinances, policies, rules and regulations of the
3 commission;

4 (D) The salary of the chief executive shall be set by the
5 legislature;

6 (E) Other nonelected officers and employees shall be appointed
7 by the chief executive subject to the approval of the county
8 commission; and

9 (F) The chief executive shall not be a member of the county
10 commission nor shall he or she hold any other elective office.

11 (1) "Enhanced county commission plan". -- Under this plan, an
12 enhanced county commission shall consist of an odd number of
13 members, more than three but not more than nine, who shall be
14 elected at large. An enhanced county commission created pursuant
15 to this subdivision shall be known and referenced as a "county
16 commission".

17 (1) (2) "Chief executive - county commission plan". -- Under
18 this plan:

19 (A) There ~~shall be~~ is a chief executive elected by the
20 registered voters of the county at large and three county
21 commissioners that ~~shall be~~ are elected at large;

22 (B) The commission shall be the governing body;

23 (C) The chief executive ~~shall have~~ has the exclusive authority
24 to supervise, direct and control the administration of the county
25 government. The chief executive shall carry out, execute and
26 enforce all ordinances, policies ~~rules and regulations~~ and rules of

1 the commission;

2 (D) The salary of the chief executive ~~shall be~~ is set by the
3 Legislature;

4 (E) Other nonelected officers and employees ~~shall be~~ are
5 appointed by the chief executive subject to the approval of the
6 county commission; and

7 (F) The chief executive ~~shall~~ may not be a member of the
8 county commission ~~nor shall he or she~~ or hold any other elective
9 office.

10 (2) (3) "County manager or administrator- county commission
11 plan". -- Under this plan:

12 (A) There ~~shall be~~ is a county manager or administrator
13 appointed by the county commission and three county commissioners
14 that may be elected at large;

15 (B) The commission shall be the governing body;

16 (C) The county manager ~~shall have~~ or administrator has the
17 exclusive authority to supervise, direct and control the
18 administration of the county government. The county manager or
19 administrator shall carry out, execute and enforce all ordinances,
20 policies ~~rules and regulations~~ and rules of the commission;

21 (D) The salary of the county manager or administrator ~~shall be~~
22 is set by the county commission;

23 (E) Other nonelected officers and employees ~~shall be~~ are
24 appointed by the county manager or administrator subject to the
25 approval of the commission; and

26 (F) The county manager ~~shall~~ or administrator may not be a

1 member of the county commission ~~nor shall he or she~~ or hold any
2 other elective office.

3 ~~(3) "County administrator - county commission plan". -- Under~~
4 ~~this plan:~~

5 ~~(A) There shall be a county administrator appointed by the~~
6 ~~county commission and three county commissioners that shall be~~
7 ~~elected at large;~~

8 ~~(B) The commission shall be the governing body;~~

9 ~~(C) The county administrator shall have the authority to~~
10 ~~direct the administration of the county government under the~~
11 ~~supervision of the county commission. The county administrator~~
12 ~~shall carry out, execute and enforce all ordinances, policies,~~
13 ~~rules and regulations of the commission;~~

14 ~~(D) The salary of the county administrator shall be set by the~~
15 ~~county commission;~~

16 ~~(E) The county administrator shall appoint or employ all~~
17 ~~subordinates and employees for whose duties or work he or she is~~
18 ~~responsible to the commission; and~~

19 ~~(F) The county administrator shall not be a member of the~~
20 ~~county commission nor shall he or she hold any other elective~~
21 ~~office.~~

22 ~~(4) A county council consisting of four or more members that~~
23 ~~shall be elected at large.~~

24 (4) "County Council Plan". -- Under this plan, a county
council shall be elected by magisterial districts.

26 (A) In counties with an odd number of magisterial districts,

1 one council member shall be elected from each magisterial district
2 for a four-year term; with those counties having an even number of
3 magisterial districts, an additional member shall be elected from
4 the county at large.

5 (5) Any form of county government adopted pursuant to section
6 thirteen, article IX of the West Virginia Constitution and this
7 section may, by the methods set forth in this section, return to
8 the traditional county commission or change to another form of
9 county government as set out in this section.

10 (m) The purpose of this section is to establish the basic
11 requirements for reforming, altering or modifying a county
12 commission or county council pursuant to section thirteen, article
13 IX of the West Virginia Constitution. The structure and
14 organization of a county government may be specified in greater
15 detail by resolution or ordinance so long as such provisions do not
16 conflict with the purposes and provisions set forth in this
17 section, chapter seven-a of this code or the Constitution.