

COMMITTEE SUBSTITUTE

FOR

H. B. 4488

(BY DELEGATE DOYLE AND FLEISCHAUER)

(Originating in the Committee on Political Subdivision)
[February 20, 2012]

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

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

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

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

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

12 (c) An enhanced county commission created on or after
13 July 1, 2012, as an alternative to a county commission
14 pursuant to section thirteen, article IX of the Constitution of

15 West Virginia, shall consist of an odd number of members
16 that is more than three members but not more than nine
17 members, a majority of whom shall constitute a quorum for
18 the transaction of business.

19 ~~(c)~~ (d) A county council, created on or after ~~July 1, 2008~~
20 July 1, 2012, as an alternative to a county commission
21 pursuant to section thirteen, article IX of the Constitution of
22 West Virginia, shall consist of ~~four or more~~ members elected
23 by magisterial district, with those counties having an even
24 number of county council members additionally electing a
25 county council president at large, a majority of whom shall
26 constitute a quorum for the transaction of business. A county
27 council created prior to July 1, 2012 whose members are
28 elected at large shall be deemed a county commission on July
29 1, 2012 and thereafter.

30 ~~(d)~~ (e) Unless provided otherwise in an alternative form
31 of government, each county commission or council shall
32 annually, at its first session in each year, or as soon thereafter

33 as practicable, elect one of its commissioners or council
34 members as president of the county commission or council.

35 ~~(e)~~ (f) Throughout this chapter and the code, the term
36 “county commission” or any reference to a county
37 commission shall include all county councils created in lieu
38 of the county commission.

**§7-1-1a. Requirements for reforming, altering or modifying a
county commission; alternative forms of county
government.**

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

3 (1) The county commission or county council of the
4 county may pass a resolution making application to the
5 Legislature to reform, alter or modify an existing form of
6 county government in accordance with the requirements of
7 the West Virginia Constitution and this section; or

8 (2) Ten percent of the registered voters of the county may
9 sign a petition requesting reformation, alteration or
10 modification of the existing form of county government in

11 accordance with the requirements of the West Virginia
12 Constitution and this section.

13 (b) A county commission or county council seeking to
14 make application to reform, alter or modify its county
15 government pursuant to the provisions of section thirteen,
16 article IX of the West Virginia Constitution shall adopt a
17 resolution containing the following information:

18 (1) The reasons for the reformation, alteration or
19 modification of the county commission or county
20 government;

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

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

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

26 (5) How and when the officers of the proposed county
27 government will be elected or appointed, taking into
28 consideration the following:

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

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

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

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

37 (c) Prior to the adoption of a resolution seeking to reform,
38 alter or modify a county commission or county council, the
39 governing body of the county shall publish by a Class II legal
40 advertisement in one or more newspapers of general circulation
41 throughout the county, in compliance with the provisions of
42 article three, chapter fifty-nine of this code, notice of the
43 proposed changes to the current form of county government.
44 The publication area shall be the entire county. The notice shall
45 summarize the proposed changes to the county government and
46 include the date, time and place for the meeting or meetings in
47 which the resolution will be considered.

48 (d) After the publication and adoption of the resolution,
49 the following information shall be submitted by the county to
50 the Clerk of the Senate and to the Clerk of the House of
51 Delegates no later than the tenth day of a regular legislative
52 session in which the request for reforming, altering or
53 modifying a county commission or county government is to
54 be considered by the Legislature:

- 55 (1) A certified copy of the adopted resolution;
- 56 (2) A copy of the required public notice;
- 57 (3) The vote on the adoption of the resolution; and
- 58 (4) The date the resolution was adopted.

59 (e) Registered voters of a county seeking to reform, alter
60 or modify the county commission or county council pursuant
61 to section thirteen, article IX of the West Virginia
62 Constitution shall submit a petition, signed by ten percent of
63 the registered voters in the county, to the county commission
64 or county council, setting forth the information required in
65 subsection (b) of this section. Upon receipt of the petition,
66 the county commission or county council shall verify that the

67 signatures on the petition are: (1) Legally registered voters
68 of the county; and (2) equal to ten percent of the registered
69 voters of the county.

70 (f) The county commission or county council shall, within
71 thirty days of receipt of a constitutionally defective petition,
72 return it to the petitioners with a written statement as to why the
73 petition is defective. The petitioners may, within ninety days of
74 receipt of the written statement from the county commission or
75 council and after making the necessary changes, resubmit the
76 petition to the county commission or county council.

77 (g) After verifying that the signatures on the petition meet
78 the constitutional requirements, the county commission or
79 council shall forward the petition to the Clerk of the Senate
80 and to the Clerk of the House of Delegates no later than the
81 tenth day of a regular legislative session in which the request
82 for reforming, altering or modifying a county commission or
83 county government is to be considered by the Legislature.

84 (h) After receipt of a certified resolution or verified
85 petition by the Clerk of the Senate and the Clerk of the House

86 of Delegates, the Legislature shall determine whether all
87 constitutional and statutory requirements have been met. If
88 such requirements have not been met, the certified resolution
89 or verified petition shall be returned with a written statement
90 of the deficiencies. A certified resolution or verified petition
91 may be revised following the procedures set forth in this
92 section for an original submission and then may be
93 resubmitted to the Clerk of the Senate and the Clerk of the
94 House of Delegates for consideration by the Legislature. The
95 requirement that the petition be submitted prior to the tenth
96 day of the legislative session ~~shall~~ does not apply to
97 resubmitted resolutions or petitions.

98 (i) Following passage of an act by the Legislature
99 authorizing an election on the question of reforming, altering
100 or modifying a county commission or council, the question
101 shall be placed on the ballot of the county at the next general
102 election following such passage or, at the expense of the
103 county, a special election.

104 (j) Following approval of the reformation, alteration or
105 modification of the county commission or council by a
106 majority of the county's registered voters, nomination of the
107 county commission or council members and, where
108 authorized, the chief executive, shall be held in the next
109 primary election or the primary election set forth in the
110 resolution or petition to reform, alter or modify the county
111 commission or council. Election of the county commissioners
112 or council members and, where authorized, the chief
113 executive shall be held in the next general election or the
114 general election set forth in the resolution or petition to
115 change the form of the county commission.

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

118 (l) The following are guidelines examples for alternative
119 forms of county government:

120 (1) ~~“Chief executive - county commission plan”.~~ -- Under
121 ~~this plan:~~

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

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

126 ~~(C) The chief executive shall have the exclusive authority~~
127 ~~to supervise, direct and control the administration of the~~
128 ~~county government. The chief executive shall carry out,~~
129 ~~execute and enforce all ordinances, policies, rules and~~
130 ~~regulations of the commission;~~

131 ~~(D) The salary of the chief executive shall be set by the~~
132 ~~Legislature;~~

133 ~~(E) Other nonelected officers and employees shall be~~
134 ~~appointed by the chief executive subject to the approval of~~
135 ~~the county commission; and~~

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

138 (1) "Enhanced county commission plan". -- Under this
139 plan, an enhanced county commission shall consist of an odd
140 number of members, more than three but not more than nine,

141 who shall be elected at large. An enhanced county
142 commission created pursuant to this subdivision shall be
143 known and referenced as a "county commission".

144 (†) (2) “*Chief executive - county commission plan*”. --

145 Under this plan:

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

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

150 (C) The chief executive ~~shall have~~ has the exclusive
151 authority to supervise, direct and control the administration
152 of the county government. The chief executive shall carry
153 out, execute and enforce all ordinances, policies ~~rules and~~
154 ~~regulations~~ and rules of the commission;

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

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

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

163 ~~(2)~~ (3) “*County manager or administrator- county*
164 *commission plan*”. -- Under this plan:

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

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

169 (C) The county manager ~~shall have~~ or administrator has the
170 exclusive authority to supervise, direct and control the
171 administration of the county government. The county manager or
172 administrator shall carry out, execute and enforce all ordinances,
173 policies ~~rules and regulations~~ and rules of the commission;

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

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

179 (F) The county manager ~~shall~~ or administrator may not be
180 a member of the county commission ~~nor shall he or she~~ or
181 hold any other elective office.

182 (3) ~~“County administrator - county commission plan”.~~

183 Under this plan:

184 (A) ~~There shall be a county administrator appointed by~~
185 ~~the county commission and three county commissioners that~~
186 ~~shall be elected at large;~~

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

188 (C) ~~The county administrator shall have the authority to~~
189 ~~direct the administration of the county government under the~~
190 ~~supervision of the county commission. The county~~
191 ~~administrator shall carry out, execute and enforce all~~
192 ~~ordinances, policies, rules and regulations of the commission;~~

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

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

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

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

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

205 (A) In counties with an odd number of magisterial
206 districts, one council member shall be elected from each
207 magisterial district for a four-year term; with those counties
208 having an even number of magisterial districts, an additional
209 member shall be elected from the county at large.

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

215 (m) The purpose of this section is to establish the basic
216 requirements for reforming, altering or modifying a county

217 commission or county council pursuant to section thirteen,
218 article IX of the West Virginia Constitution. The structure
219 and organization of a county government may be specified in
220 greater detail by resolution or ordinance so long as such
221 provisions do not conflict with the purposes and provisions
222 set forth in this section, chapter seven-a of this code or the
223 Constitution.