

# **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]



1 AN ACT to amend and reenact §8-6-4a and §8-6-5 of the Code of West Virginia, 1931, as  
2 amended, all relating to annexation by minor boundary adjustment; clarifying language  
3 regarding entry of order by county commission following annexation of property within  
4 urban growth boundary by minor boundary adjustment; requiring that municipality as part  
5 of application provide affidavit that persons, businesses, and freeholders in additional  
6 territory consent to inclusion in annexation; providing procedure when affected party is  
7 unavailable to provide affidavit; requiring county commission to enter order denying  
8 application for minor boundary adjustment annexation upon determination that annexation  
9 could be efficiently and cost effectively accomplished under other provisions of said code,  
10 that application lacks evidence of consent of all affected parties, or is otherwise  
11 insufficient; and prohibiting municipality from applying for annexation by minor boundary  
12 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.**

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

5 (b) For purposes of this section only:

6 (1) "Contiguous" means property that is next to, abutting, and having a boundary that is  
7 coterminous with the municipality's designated urban growth boundary. The length of a street,  
8 highway, road, or other traffic or utility easement, streams, rivers, or other natural topography are

9 not to be used to determine if a property is contiguous: *Provided*, That the width of a street,  
10 highway, road, or other traffic or utility easement, streams, rivers, or other natural topography may  
11 be used to determine contiguous boundaries.

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

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

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

32 (2) If the proposed property to be annexed by minor boundary adjustment by a municipality  
33 is entirely within the municipality's designated urban growth boundary, then the municipality may  
34 annex without an election the proposed property pursuant to the provisions of §8-6-4 of this code

35 if the provisions of §8-6-5 of this code are followed, except that agreement with the county  
36 commission is not required.

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

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

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

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

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

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

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

54 (A) Hold a public hearing;

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

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

60 (f) *Procedure for a municipality to annex noncontiguous property outside an urban growth*  
61 *boundary. —*

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

68 (A) Hold a public hearing;

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

71 (C) At least 15 days prior to the public hearing, publish a notice of the date, time, and place  
72 of the public hearing as a Class I legal advertisement in compliance with the provisions of §59-3-  
73 1 *et seq.* of this code.

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

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

81 (h) After a municipality has annexed property pursuant to this section and the property has  
82 been surveyed, the county commission shall enter an order. After the order is entered, the  
83 corporate limits of the municipality include the annexed property.

PART IV. ANNEXATION BY MINOR BOUNDARY ADJUSTMENT.

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

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

6 (b) In addition to any other annexation configuration, a municipality may incorporate by  
7 minor boundary adjustment: (i) Territory that consists of a street or highway as defined in §17C-  
8 1-35 of this code and one or more freeholders; or (ii) territory that consists of a street or highway  
9 as defined in §17C-1-35 of this code which does not include a freeholder but which is necessary  
10 for the provision of emergency services in the territory being annexed.

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

14 (1) The number of businesses located in and persons residing in the additional territory;

15 (2) An affidavit of each business located in, each person residing in, and each freeholder  
16 of the additional territory stating that he, she, or it has consented to be included in the annexation,  
17 in such form as the county commission deems sufficient. In the event the municipality cannot  
18 obtain an affidavit from a business, resident, or freeholder within 90 days after sending the affidavit  
19 form and a letter explaining the purpose of the affidavit via certified mail, return receipt requested,  
20 to the best available address for the business, resident, or freeholder, such business, resident, or  
21 freeholder shall be deemed to have consented to the annexation;

22 (3) An accurate map showing the metes and bounds of the additional territory;

23 (4) A statement setting forth the municipality's plan for providing the additional territory  
24 with all applicable public services such as police and fire protection, solid waste collection, public

25 water and sewer services, and street maintenance services, including to what extent the public  
26 services are or will be provided by a private solid waste collection service or a public service  
27 district;

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

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

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

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

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

46 (e) If the application meets the threshold requirements, the county commission shall order  
47 publication of a notice of the proposed annexation to the corporate limits and of the date and time  
48 set by the commission for a hearing on the proposal. Publication shall be as in the case of an  
49 order calling for an election, as set forth in §8-6-2 of this code. A like notice shall be prominently  
50 posted at not less than five public places within the area proposed to be annexed.

51 (f) In making its final decision on an application for annexation by minor boundary  
52 adjustment, the county commission shall, at a minimum, consider the following factors:

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

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

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

68 (4) Whether the proposed annexation consists of a street or highway as defined in §17C-  
69 1-35 of this code and one or more freeholders;

70 (5) Whether the proposed annexation consists of a street or highway as defined in §17C-  
71 1-35 of this code which does not include a freeholder but which is necessary for the provision of  
72 emergency services in the territory being annexed;

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

75 (7) Whether the proposed annexation is in the best interest of the county as a whole.

76 (g) If the county commission denies the application for annexation by minor boundary  
77 adjustment, the commission may allow the municipality to modify the proposed annexation to  
78 meet the commissions objections. The commission must order another public hearing if significant  
79 modifications are proposed.

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

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

88 (j) If the final order of the county commission is a denial of the application for annexation,  
89 the municipality may appeal as set forth in this section, but the municipality may not present the  
90 commission with another application for annexation relating to the same proposed change or any  
91 part thereof for a period of two years after issuance of the final order of the commission, unless  
92 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.

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*Chairman, Senate Committee*

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*Chairman, House Committee*

Originated in the Senate.

In effect from passage.

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*Clerk of the Senate*

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*Clerk of the House of Delegates*

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*President of the Senate*

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*Speaker of the House of Delegates*

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The within ..... this the.....  
Day of ....., 2020.

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*Governor*