

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

Senate Bill 695

BY SENATOR RUCKER

[Introduced March 22, 2021; referred
to the Committee on Government Organization]

1 A BILL to amend and reenact §8-6-4a and §8-6-5 of the Code of West Virginia, 1931, as amended;
 2 and to amend and reenact §8-7-2 of said code, all relating to counties and municipalities;
 3 and providing procedures for decreasing corporate limits or increasing corporate limits by
 4 annexation and annexation by minor boundary adjustments.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. ANNEXATION.

§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.

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

1 (a) ~~In the event~~ If 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 Provided, That:

7 (1) A minor boundary adjustment may not exceed 105 percent of the existing total
 8 municipal boundary;

9 (2) A minor boundary adjustment may not exceed 120 percent of the current area of the
 10 municipality; and

11 (3) A minor boundary adjustment made in this manner is limited to one boundary
 12 annexation within a five-year period, regardless of subdivisions (1) and (2) of this subsection.

13 (b) In addition to any other annexation configuration, a municipality may incorporate by
14 minor boundary adjustment: (i) Territory that consists of a street or highway as defined in §17C-
15 1-35 of this code and one or more freeholders; or (ii) territory that consists of a street or highway
16 as defined in §17C-1-35 of this code which does not include a freeholder, but which is necessary
17 for the provision of emergency services in the territory being annexed.

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

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

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

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

30 (4) A statement setting forth the municipality's plan for providing the additional territory
31 with all applicable public services such as police and fire protection, solid waste collection, public
32 water and sewer services, and street maintenance services, including to what extent the public
33 services are or will be provided by a private solid waste collection service or a public service
34 district;

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

38 (6) A statement of the impact of the annexation on fire protection and fire insurance rates

39 in the territory proposed for annexation;

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

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

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

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

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

60 (1) Whether the territory proposed for annexation is contiguous to the corporate limits of
61 the municipality. For purposes of this section, "contiguous" means that at the time the application
62 for annexation is submitted, the territory proposed for annexation either abuts directly on the
63 municipal boundary or is separated from the municipal boundary by an unincorporated street or
64 highway, or street or highway right-of-way, a creek or river, or the right-of-way of a railroad or

65 other public service corporation, or lands owned by the state or the federal government;

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

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

75 (4) Whether the proposed annexation consists of a street or highway as defined in §17C-
76 1-35 of this code and one or more freeholders;

77 (5) Whether the proposed annexation consists of a street or highway as defined in §17C-
78 1-35 of this code which does not include a freeholder, but which is necessary for the provision of
79 emergency services in the territory being annexed;

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

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

83 ~~(g)~~ (f) If the county commission denies the application for annexation by minor boundary
84 adjustment, the commission may allow the municipality to modify the proposed annexation to
85 meet the commissions objections. The commission must order another public hearing if significant
86 modifications are proposed.

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

89 ~~(i)~~ (h) The municipality applying for annexation or any affected party may appeal the
90 commission's final order to the circuit court of the county in which the municipality or the major

91 portion thereof, including the area proposed to be annexed, is located. The county commission
 92 may participate in any appeal taken from its order in the same manner and to the same extent as
 93 a party to the appeal. The order may be reviewed by the circuit court as an order of a county
 94 commission ordering an election may be reviewed under §8-5-16 of this code.

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

ARTICLE 7. DECREASE OF CORPORATE LIMITS.

PART II. DECREASE OF CORPORATE LIMITS BY ELECTION.

§8-7-2. Procedure to decrease corporate limits.

1 Five percent or more of the freeholders of a municipality desiring to decrease the corporate
 2 limits thereof may file their petition in writing with the governing body thereof, setting forth the
 3 change proposed in the metes and bounds of the municipality, and asking that a vote be taken
 4 upon the proposed change. ~~Such~~ The petition shall be verified and shall be accompanied by an
 5 accurate survey map showing the territory which would be eliminated from the corporate limits by
 6 the proposed change: Provided, That each business affected by the proposed change to
 7 decrease the corporate limits of the municipality shall file an affidavit stating consent before they
 8 may be included in the change to the metes and bounds of the municipality. If an affected business
 9 fails to file an affidavit of consent, or otherwise respond to the petition to decrease the corporate
 10 limits within 90 days after the petition is filed, the business shall be considered to have consented
 11 to the proposed change to decrease the corporate limits of the municipality. The governing body,
 12 upon bond in penalty prescribed by the governing body with good and sufficient surety being given
 13 by petitioners, and conditioned to pay the costs of such election if a majority of the legal votes

14 cast are against the proposed change in boundary, shall thereupon order a vote of the qualified
 15 voters of such municipality to be taken upon the proposed change on a date and at a time and
 16 place therein to be named in the order, not less than 20 nor more than 30 days from the date
 17 thereof. The governing body shall cause the order to be published, at the cost of the municipality,
 18 as a Class II-0 legal advertisement in compliance with ~~the provisions of~~ §59-3-1 *et seq.* of this
 19 code, and the publication area for such publication shall be the municipality. The first publication
 20 ~~must~~ shall be at least 14 days prior to the date upon which the vote is to be taken. The order so
 21 published shall contain an accurate description by metes and bounds of the territory which would
 22 be eliminated from the corporate limits by the proposed change, and, if practicable, shall also
 23 contain a popular description of ~~such~~ the territory.

24 The election shall be held, superintended, and conducted, and the results thereof
 25 ascertained, certified, returned and canvassed in the same manner and by the same individuals
 26 as elections for municipal officers. The ballots, or ballot labels where voting machines are used,
 27 shall have written, or printed on them the words:

28 / / For Decrease of Corporate Limits

29 / / Against Decrease of Corporate Limits

30 When an election is held in any municipality in accordance with the provisions of this
 31 section, another such election relating to the same proposed change or any part thereof shall not
 32 be held for a period of one year.

33 If a majority of all of the legal votes cast within such municipality are in favor of the
 34 proposed change, then the governing body shall proceed as specified in the immediately
 35 succeeding section of this article.

NOTE: The purpose of this bill is to amend procedures for decreasing corporate limits or increasing corporate limits by annexation and annexation by minor boundary adjustments and to remove certain requirements when a municipality seeks to annex property within an urban growth boundary.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.