

# **WEST VIRGINIA LEGISLATURE**

## **2023 REGULAR SESSION**

**Introduced**

### **House Bill 2227**

By Delegate Foster

[Introduced January 11, 2023; Referred to the  
Committee on Political Subdivisions then Government  
Organization]

1 A BILL to amend and reenact §7-11-3 of the Code of West Virginia, 1931, as amended; and to  
 2 amend and reenact §7-12-3 and §7-12-3a of said code; and to amend and reenact §8A-2-3  
 3 of said code, all relating to limiting the maximum number of appointees to certain county  
 4 and municipal bodies; and imposing quorum requirements on certain county and municipal  
 5 bodies.

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

**CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.**

**ARTICLE 11. COUNTY PARKS AND RECREATION COMMISSIONS.**

**§7-11-3. Number of members; quorum; qualifications; appointment; term; disqualifications.**

1 The commission shall consist of ~~eleven~~ at least five but not more than nine members, a  
 2 majority of whom shall constitute a quorum for the transaction of business: *Provided, That the*  
 3 commission may not transact any business unless a majority of members are contemporaneously  
 4 present at a commission meeting. Each member of ~~said~~ the commission shall be a bona fide  
 5 resident of the county and shall own real estate within ~~such~~ that county. The term of the  
 6 commission members shall be for three years and until their successors have been appointed and  
 7 have qualified: *Provided, That the county court in appointing the members of the first commission*  
 8 *shall appoint three members for a term of one year; four members for a term of two years and four*  
 9 *members for a term of three years* *Provided, That the county court shall have until January 1,*  
 10 *2024, to reduce the number of members to between five and nine members.* The order of the  
 11 county court shall fix the date on which the term of ~~such~~ the commission members shall begin. The  
 12 members of any board of park and recreation commissioners heretofore created under the former  
 13 provisions of this article shall continue in office as members of the parks and recreation  
 14 commission of ~~such~~ the county until their terms expire and their successors have been appointed  
 15 and have qualified. Any member of the commission who shall cease to be a bona fide resident of

16 the county or a freeholder thereof, shall thereby be disqualified as a member of ~~such~~ the said  
 17 commission and his or her office shall become vacant. When a vacancy occurs on ~~said~~ the  
 18 commission by reason of death, resignation, change of residence from the county, failure to  
 19 remain a freeholder of the county, or expiration of term, the county court shall appoint a successor  
 20 or successors to fill out the unexpired term of the member of the commission whose term has been  
 21 vacated.

## **ARTICLE 12. COUNTY AND MUNICIPAL DEVELOPMENT AUTHORITIES.**

### **§7-12-3. Management and control of county authority vested in board; appointment and terms of members; vacancies; removal of members; quorum requirements.**

1 The management and control of a county authority, its property, operations, business, and  
 2 affairs shall be lodged in a board of not fewer than ~~twelve nor more than twenty-one~~ five nor more  
 3 than nine persons who shall be appointed by the county commission and be known as members of  
 4 the authority: Provided, That members appointed to the board prior to July 1, 2017, shall be  
 5 permitted to complete their term of appointment even if the board's membership exceeds nine  
 6 members. The county commission shall appoint one member to represent the county commission  
 7 on the board and, for each municipality located within the county, the county commission shall  
 8 appoint one member to represent the municipality. The city and town council of each municipality  
 9 located within the county shall submit to the county commission the names of three persons, one  
 10 of whom the county commission shall appoint to be the municipality's representative on the board.  
 11 Other members of the board shall be appointed by the county commission and shall include  
 12 representatives of business, industry, and labor. The members of the authority first appointed shall  
 13 serve respectively for terms of one year, two years and three years, divided equally or as nearly  
 14 equal as possible between these terms. Thereafter, members shall be appointed for terms of three  
 15 years each. A member may be reappointed for such additional term or terms as the county  
 16 commission may ~~deem~~ consider proper. If a member resigns, is removed or for any other reason  
 17 his or her membership terminates during his or her term of office, a successor shall be appointed

18 by the county commission to fill out the remainder of his or her term. Members in office at the  
 19 expiration of their respective terms shall continue to serve until their successors have been  
 20 appointed and have qualified. The county commission may at any time remove any member of the  
 21 board by an order duly entered of record and may appoint a successor member for any member so  
 22 removed.

23 Other persons, firms, unincorporated associations, and corporations, who reside, maintain  
 24 offices, or have economic interests ~~as the case may be~~ in the county, shall be eligible to participate  
 25 in and request the county commission to appoint members to the development authority as the  
 26 said authority shall by its bylaws provide.

27 County boards authorized under this section may not transact any business unless a  
 28 majority of members are contemporaneously present at a board meeting. This quorum  
 29 requirement may not be amended by the board’s bylaws.

**§7-12-3a. Management and control of municipal authority vested in board; appointment  
 and terms of members; vacancies; removal of members; quorum requirements.**

1 The management and control of a municipal authority, its property, operations, business,  
 2 and affairs shall be lodged in a board of not fewer than ~~twelve nor more than twenty-one~~ five nor  
 3 more than nine persons who shall be appointed by the governing body and be known as members  
 4 of the authority: Provided, That members appointed to the board prior to July 1, 2022, shall be  
 5 permitted to complete their term of appointment even if the board’s membership exceeds nine  
 6 members. One member of the authority shall also be a member of the governing body appointed  
 7 to represent it on the board. Other members shall be appointed by the governing body and shall  
 8 include representatives of business, industry, and labor. The members of the authority first  
 9 appointed shall serve respectively for terms of one year, two years and three years, divided  
 10 equally or as nearly equal as possible between these terms. Thereafter, members shall be  
 11 appointed for terms of three years each. A member may be reappointed for such additional term or  
 12 terms as the appointing agency may deem proper. If a member resigns, is removed or for any

13 other reason his or her membership terminates during his or her term of office, a successor shall  
 14 be appointed by the appointing agency to fill out the remainder of his or her term. Members in  
 15 office at the expiration of their respective terms shall continue to serve until their successors have  
 16 been appointed and have qualified. The appointing agency may at any time remove its appointed  
 17 member of the authority by an order duly entered of record or by other action appropriate for such  
 18 appointing agency and may appoint a successor member for any member so removed.

19 In addition to the appointing agencies hereinbefore named, such other persons, firms,  
 20 unincorporated associations, and corporations, who reside, maintain offices, or have economic  
 21 interests, ~~as the case may be,~~ in the municipality, are eligible to participate in and request the  
 22 governing body to appoint members to the development authority as the ~~said~~ authority by its  
 23 bylaws provides.

24 Municipal boards authorized under this section may not transact any business unless a  
 25 majority of members are contemporaneously present at a board meeting. This quorum  
 26 requirement may not be amended by the board’s bylaws.

**CHAPTER 8A. LAND USE PLANNING.**

**ARTICLE 2. PLANNING COMMISSIONS.**

**§8A-2-3. Municipal planning commission.**

1 (a) A municipal planning commission in a Class I, II or III city shall have not less than five  
 2 nor more than ~~fifteen~~ nine members, the exact number to be specified in the ordinance creating  
 3 the planning commission. A municipal planning commission in a Class IV town or village shall  
 4 have not less than three nor more than nine members, the exact number to be specified in the  
 5 ordinance creating the planning commission.

6 (b) The members of a municipal planning commission ~~must~~ shall be:

7 (1) Residents of the municipality; and

8 (2) Qualified by knowledge and experience in matters pertaining to the development of the

9 municipality.

10 (c) At least three fifths of all of the members ~~must~~ shall have been residents of the  
11 municipality for at least three years prior to nomination or appointment and confirmation.

12 (d) The members of a municipal planning commission ~~must~~ shall fairly represent different  
13 areas of interest, knowledge, and expertise, including, but not limited to, business, industry, labor,  
14 government, and other relevant disciplines. One member ~~must~~ shall be a member of the municipal  
15 governing body or a designee and one member ~~must~~ shall be a member of the administrative  
16 department of the municipality or a designee. The term of membership for these two members is  
17 the same as their term of office.

18 (e) The Legislature finds that there are persons willing to serve on planning commissions  
19 who may also own interests in businesses that regularly conduct business in front of or with  
20 planning commission staff. ~~Such~~ These persons may have experience and expertise which would  
21 be valuable assets to a planning commission. For those reasons, notwithstanding any other  
22 provisions in this code to the contrary, any person employed by, owning an interest in or otherwise  
23 associated with a business that regularly conducts business in front of or with planning  
24 commission staff may also serve as a member of a planning commission and ~~shall~~ may not be  
25 disqualified from serving as a member because of a conflict of interest as defined in §61-10-15 of  
26 this code and ~~shall~~ may be subject to prosecution under provisions of that chapter when the  
27 violation is created solely as a result of his or her relationship with the business. This member ~~must~~  
28 shall recuse himself or herself from any vote, discussion, participation, or other activity regarding  
29 the conflicting issue.

30 (f) The Legislature finds that there are persons willing to serve on planning commissions  
31 who may also own interests in businesses who regularly conduct business in front of or with  
32 planning commission staff. ~~Such~~ These persons may have experience and expertise which would  
33 be valuable assets to a planning commission. For those reasons, notwithstanding any other  
34 provisions in this code to the contrary, any person employed by, owning an interest in or otherwise

35 associated with a business that regularly conducts business in front of or with planning  
36 commission staff may also serve as a member of a planning commission and ~~shall~~ may be in  
37 violation of subsection §6B-2-5(g) of this code if the member recuses himself or herself from any  
38 vote, discussion, participation or other activity regarding the conflicting issue: *Provided*, That such  
39 these members do not constitute a majority of the members of the planning commission at the  
40 same time.

41 (g) The remaining members of the municipal planning commission first selected shall  
42 serve respectively for terms of one year, two years and three years, divided equally or as nearly  
43 equally as possible between these terms. Thereafter, members shall serve three-year terms.  
44 Vacancies shall be filled for the unexpired term and made in the same manner as original  
45 selections were made: *Provided*, That members appointed to the commission prior to July 1, 2022,  
46 shall be permitted to complete their term of appointment even if the commission's membership  
47 exceeds nine members.

48 (h) The members of a municipal planning commission shall serve without compensation,  
49 but shall be reimbursed for all reasonable and necessary expenses actually incurred in the  
50 performance of their official duties.

51 (i) Nominations for municipal planning commission membership shall be made by the  
52 administrative authority and confirmed by the governing body when the administrative authority  
53 and the governing body are separate, or appointed and confirmed by the governing body where  
54 the administrative authority and governing body are the same.

55 (j) An individual may serve as a member of a municipal planning commission, a county  
56 planning commission, a multicounty planning commission, a regional planning commission or a  
57 joint planning commission, at the same time.

58 (k) The governing body of the municipality may establish procedures for the removal of  
59 members of the planning commission for inactivity, neglect of duty or malfeasance. The  
60 procedures ~~must~~ shall contain provisions requiring that the person to be removed be provided with

61 a written statement of the reasons for removal and an opportunity to be heard on the matter.

62 (l) The planning commission may not transact any business unless a majority of members

63 are contemporaneously present at a commission meeting. This quorum requirement may not be

64 amended by the commission's bylaws.

NOTE: The purpose of this bill is to impose limits on the number of appointees to certain county and municipal bodies; and impose quorum requirements on certain county and municipal bodies.

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