

**ENROLLED**

**H. B. 4315**

(By Delegates Cann, Manchin, Doyle, Fragale,  
Iaquinta, Lawrence, Longstreth, Miley, Morgan  
and Varner)

[Passed March 10, 2012; in effect ninety days from passage.]

AN ACT to amend and reenact §8-2-6 and §8-2-7 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §8-3A-1 and §8-3A-2, all relating to Class IV towns or villages; permitting a new class IV town or village to select a form of government; and permitting a current Class IV town or village to change its form of government.

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

That §8-2-6 and §8-2-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new article, designated §8-3A-1 and §8-3A-2, all to read as follows:

**ARTICLE 2. CREATION OF MUNICIPALITIES.**

**§8-2-6. Same -- Qualified electors; form of ballot or ballot label; election officials; certification; canvass;**

1                   **declaration of results; recount.**

2                   Class I, II, or III city

3           (a) On the date named in the notice for the taking of the  
4 vote, each qualified elector of the territory sought to be  
5 incorporated as a Class I, II, or III city, may cast his or her  
6 vote for or against such incorporation at the precinct in which he  
7 or she resides, by depositing a ballot in a ballot box, or by use  
8 of a voting machine, to be provided by the county commission for  
9 that purpose. Each ballot, or ballot label where voting machines  
10 are used, shall be without party designation and shall have written  
11 or printed thereon the following words:

12            For Incorporation

13            Against Incorporation

14           The ballot or ballot label shall be a separate, special ballot  
15 or ballot label.

16           (b) The election shall be held and conducted under the  
17 supervision of the commissioners and clerks of election appointed  
18 by the county commission and shall be conducted as nearly as may be  
19 in accordance with the laws of this state governing general  
20 elections. The results of the election shall be certified as in  
21 general elections, and the returns shall be canvassed and the  
22 results declared by the county commission. If any commissioner or  
23 clerk designated to serve in the election shall fail or refuse to  
24 serve, the vacancy may be filled in like manner as vacancies in the

1 positions are filled in general elections under the laws of this  
2 state governing general elections. A recount may be had, as in  
3 general elections, upon the party or parties desiring a recount  
4 providing adequate assurance to the county commission that the  
5 party or parties will pay all costs of the recount.

6 Class IV town or village

7 (c) Each qualified elector of the territory sought to be  
8 incorporated as a Class IV town or village may cast his or her vote  
9 for or against the incorporation at the precinct in which he or she  
10 resides, by depositing a ballot in a ballot box or by use of a  
11 voting machine to be provided by the county commission for that  
12 purpose, on the date named in the notice for the taking of the  
13 vote. Each ballot, or ballot label where voting machines are used,  
14 shall be without party designation and shall have written or  
15 printed thereon the following words:

16  For Incorporation

17  Against Incorporation

18 The form of governance:

19  Plan I -- "*Mayor-Council Plan*"

20  Plan II -- "*Strong-Mayor Plan*"

21  Plan III -- "*Manager Plan*"

22  Plan IV -- "*Manager-Mayor Plan*"

23 The ballot or ballot label shall be a separate, special ballot  
24 or ballot label.

1           (d) The election shall be held and conducted under the  
2 supervision of the commissioners and clerks of election appointed  
3 by the county commission and shall be conducted as nearly as may be  
4 in accordance with the laws of this state governing general  
5 elections. The results of the election shall be certified as in  
6 general elections, and the returns shall be canvassed and the  
7 results declared by the county commission. If any commissioner or  
8 clerk designated to serve in the election fails or refuses to  
9 serve, the vacancy may be filled in like manner as vacancies in  
10 such positions are filled in general elections under the laws of  
11 this state governing general elections. A recount may be had, as  
12 in general elections, upon the party or parties desiring the  
13 recount providing adequate assurance to the county commission that  
14 the party or parties will pay all costs of the recount.

15 **§8-2-7. County commission order declaring boundaries of city;**  
16           **certificate of incorporation of town or village;**  
17           **dismissal of proceeding.**

18           (a) *Class I, II, or III city.* -- If the proceeding be for the  
19 incorporation of a city, and it appears to the county commission,  
20 upon the returns being canvassed, that a majority of the legal  
21 votes cast on the question of incorporation were in favor of the  
22 incorporation and the commission is satisfied that all of the  
23 applicable provisions of this article have been complied with, the

1 commission shall by order duly made and entered of record declare  
2 that the territory in question (reciting the boundaries) shall  
3 thereby become a body corporate, and shall thenceforth be known as  
4 the city of ....., but that until a charter is  
5 framed and adopted as provided in article three of this chapter,  
6 the city shall have and exercise no powers of a municipality except  
7 the power to frame and adopt a charter as therein provided.

8       (b) *Class IV town or village.* -- If the proceeding be for the  
9 incorporation of a town or village, and it appears to the county  
10 commission, upon the returns being canvassed, that a majority of  
11 the legal votes cast on the question of incorporation were in favor  
12 of the incorporation and the commission is satisfied that all of  
13 the applicable provisions of this article have been complied with,  
14 the commission shall by order duly made and entered of record,  
15 direct the clerk of the commission to issue a certificate of  
16 incorporation in form or in substance as follows:

17       "It appearing to the commission that under the provisions of  
18 article two, chapter eight of the Code of West Virginia, 1931, as  
19 amended, at an election duly held on the ..... day of  
20 ....., 20....., a majority of the legal votes cast on  
21 the question of incorporation by the qualified voters of the  
22 following territory, to wit: Beginning, etc. (here recite the  
23 boundaries), were cast in favor of the incorporation of the town or  
24 village of ....., in the County of

1 ..... , bounded as herein set forth; adopting the  
2 ..... form of government, and it appearing to the  
3 satisfaction of the commission that all of the provisions of  
4 article two, chapter eight of the Code of West Virginia, as  
5 amended, have been complied with by the petitioners for  
6 incorporation, the town or village is declared to be a body  
7 corporate, duly authorized to exercise all of the corporate powers  
8 conferred upon towns or villages by chapter eight of the Code of  
9 West Virginia, 1931, as amended, from and after the date of this  
10 certificate. (Signed) ..... , Clerk County  
11 Commission."

12 (c) Thereupon, the first election of officers shall be held as  
13 provided in sections two, three and four, article five of this  
14 chapter.

15 (d) If, on the returns being canvassed on the question of  
16 incorporation, a majority of the legal votes cast be against  
17 incorporation, the proceeding shall be dismissed, and no subsequent  
18 proceeding for incorporation of the same or any portion of the  
19 territory shall be considered or election had within a period of  
20 three years.

21 **ARTICLE 3A. GOVERNMENT OF CLASS IV TOWNS OR VILLAGES.**

22 **§8-3A-1. Class IV town or village form of government.**

23 In the absence of any charter or official declaration to the  
24 contrary, a Class IV town or village shall be the mayor-council

1 form of government, as set out in section two, article three of  
2 this chapter. The Class IV town or village form of government may  
3 be changed pursuant to the provisions of section two of this  
4 article.

5 **§8-3A-2. Changing Class IV town or village form of government.**

6 (a) A Class IV town or village may change its form of  
7 government upon the submission of a petition containing the  
8 signatures of twenty-five percent of the qualified voters.

9 (b) After receipt and verification of the petition, the  
10 question shall be submitted to the voters of the Class IV town or  
11 village at the next general or primary election.

12 (c) A Class IV town or village shall select from the following  
13 government plans:

14 Plan I -- "*Mayor-Council Plan*". Under this plan:

15 (1) There shall be a town or village council, elected at large  
16 or by wards, or both at large and by wards, by the qualified voters  
17 of the town or village; a mayor elected by the qualified voters of  
18 the town or village; and such other elective officers as set by  
19 ordinance; and

20 (2) The mayor and council shall be the governing body and  
21 administrative authority.

22 Plan II -- "*Strong-Mayor Plan*". Under this plan:

23 (1) There shall be a mayor elected by the qualified voters of  
24 the town or village; and a town or village council elected at large

1 or by wards, or both at large and by wards, by the qualified voters  
2 of the town or village;

3 (2) The council shall be the governing body;

4 (3) The mayor shall be the administrative authority; and

5 (4) Other officers and employees shall be appointed by the  
6 mayor or by his or her order in accordance with this chapter, but  
7 the appointments by the mayor or by his or her order may be made  
8 subject to the approval of the council.

9 Plan III -- "*Manager Plan*". Under this plan:

10 (1) There shall be a council of not less than five nor more  
11 than eleven members, elected either at large or from the  
12 geographical districts as may be established by ordinance, or  
13 partly at large and partly from the geographical districts, and the  
14 ordinance may empower the council to change the geographical  
15 districts without amending the ordinance: *Provided*, That the  
16 change of these districts may not take effect during the terms of  
17 office of the members of the council making the change;

18 (2) There shall be a mayor elected by the council from among  
19 its membership who shall serve as the presiding officer of the  
20 council; and a town or village manager who shall be appointed by  
21 the council;

22 (3) The council shall be the governing body; and

23 (4) The manager shall be the administrative authority and  
24 shall manage the affairs of the town or village under the



1 supervision of the council and shall be responsible to the council.  
2 The manager shall appoint or employ, in accordance with this  
3 chapter, all subordinates and employees for whose duties or work  
4 the manager is responsible to the council.

5 Plan IV -- "*Manager-Mayor Plan*". Under this plan:

6 (1) There shall be a council of not less than five nor more  
7 than eleven members, elected either at large or from the  
8 geographical districts as may be established by ordinance, or  
9 partly at large and partly from the geographical districts, and the  
10 ordinance may empower the council to change these geographical  
11 districts without amending the ordinance: *Provided*, That the  
12 change of these geographical districts may not take effect during  
13 the terms of office of the members of the council making the  
14 change;

15 (2) There shall be a mayor elected at large by the qualified  
16 voters of the town or village as may be established by the  
17 ordinance, who shall serve as a member and the presiding officer of  
18 the council; and a town or village manager who shall be appointed  
19 by the council;

20 (3) The council shall be the governing body; and

21 (4) The manager shall be the administrative authority and  
22 shall manage the affairs of the town or village under the  
23 supervision of the council and shall be responsible to the council.  
24 The manager shall appoint or employ, in accordance with this

1 chapter, all subordinates and employees for whose duties or work  
2 the manager is responsible to the council.