

E N G R O S S E D

H. B. 4315

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AND VARNER)

[Introduced January 26, 2012; referred to the
Committee on Political Subdivisions then the Judiciary.]

A BILL 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; declaration of results; recount.

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

11 // For Incorporation

12 // Against Incorporation

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

15 ~~Such~~ The election shall be held and conducted under the
16 supervision of the commissioners and clerks of election
17 appointed by the county ~~court~~ commission ~~as aforesaid~~ and
18 shall be conducted as nearly as may be in accordance with
19 the laws of this state governing general elections. The results
20 of ~~such~~ the election shall be certified as in general elections,
21 and the returns shall be canvassed and the results declared by
22 the county ~~court~~ commission. ~~In the event~~ If any
23 commissioner or clerk designated to serve in ~~said~~ the election
24 shall fail or refuse to serve, ~~such~~ the vacancy may be filled in
25 like manner as vacancies in ~~such~~ the positions are filled in
26 general elections under the laws of this state governing
27 general elections. A recount may be had, as in general
28 elections, upon the party or parties desiring ~~such~~ a recount
29 providing adequate assurance to the county ~~court~~ commission
30 that ~~he or they~~ the party or parties will pay all costs of ~~such~~
31 the recount.

32 (b) Each qualified elector of the territory sought to be
33 incorporated as a town or village may cast his or her vote for

34 or against the incorporation at the precinct in which he or she
35 resides, by depositing a ballot in a ballot box or by use of a
36 voting machine to be provided by the county commission for
37 that purpose, on the date named in the notice for the taking of
38 the vote. Each ballot, or ballot label where voting machines
39 are used, shall be without party designation and shall have
40 written or printed thereon the following words:

41 // For Incorporation

42 // Against Incorporation

43 The form of governance:

44 // Plan I -- "Mayor-Council Plan."

45 // Plan II -- "Strong-Mayor Plan."

46 // Plan III -- "Manager Plan."

47 // Plan IV -- "Manager-Mayor Plan."

48 The ballot or ballot label shall be a separate, special
49 ballot or ballot label.

50 The election shall be held and conducted under the
51 supervision of the commissioners and clerks of election
52 appointed by the county commission and shall be conducted

53 as nearly as may be in accordance with the laws of this state
54 governing general elections. The results of the election shall
55 be certified as in general elections, and the returns shall be
56 canvassed and the results declared by the county commission.
57 If any commissioner or clerk designated to serve in the
58 election fails or refuses to serve, the vacancy may be filled in
59 like manner as vacancies in such positions are filled in
60 general elections under the laws of this state governing
61 general elections. A recount may be had, as in general
62 elections, upon the party or parties desiring the recount
63 providing adequate assurance to the county commission that
64 the party or parties will pay all costs of the recount.

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

1 If the proceeding be for the incorporation of a city, and it
2 appears to the county ~~court~~ commission, upon the returns
3 being canvassed, that a majority of the legal votes cast on the
4 question of incorporation were in favor of ~~such~~ the
5 incorporation and the ~~court~~ commission is satisfied that all of

6 the applicable provisions of this article have been complied
7 with, the ~~court~~ commission shall by order duly made and
8 entered of record declare that the territory in question (reciting
9 the boundaries) shall thereby become a body corporate, and shall
10 thenceforth be known as the city of, but that until
11 a charter ~~shall be~~ is framed and adopted as provided in article
12 three of this chapter, ~~such~~ the city shall have and exercise no
13 powers of a municipality except the power to frame and adopt
14 a charter as therein provided.

15 If the proceeding be for the incorporation of a town or
16 village, and it appears to the county ~~court~~ commission, upon
17 the returns being canvassed, that a majority of the legal votes
18 cast on the question of incorporation were in favor of ~~such~~
19 the incorporation and the ~~court~~ commission is satisfied that
20 all of the applicable provisions of this article have been
21 complied with, the ~~court~~ commission shall by order duly
22 made and entered of record, direct the clerk of ~~said court~~ the
23 commission to issue a certificate of incorporation in form or
24 in substance as follows:

25 "It appearing to the ~~court~~ court commission that under the
26 provisions of article two, chapter eight of the Code of West
27 Virginia, as amended, at an election duly held on the day
28 of, 20....., a majority of the legal votes cast on the
29 question of incorporation by the qualified voters of the following
30 territory, to wit: Beginning, etc. (here recite the boundaries), were
31 cast in favor of the incorporation of the town or village of
32, in the County of, bounded as herein
33 set forth; adopting the form of government, and it
34 appearing to the satisfaction of the ~~court~~ court commission that all of the
35 provisions of article two, chapter eight of the Code of West
36 Virginia, as amended, have been complied with by the petitioners
37 for ~~said~~ incorporation, ~~said~~ the town or village is ~~hereby~~ declared
38 to be a body corporate, duly authorized to exercise all of the
39 corporate powers conferred upon towns or villages by chapter
40 eight of the Code of West Virginia, 1931, as amended, from and
41 after the date of this certificate. (Signed), Clerk
42 County ~~Court~~ Court Commission." Thereupon, the first election of
43 officers shall be held as provided in sections two, three and four,
44 article five of this chapter.

45 If on the returns being canvassed on the question of
46 incorporation, a majority of the legal votes cast be against
47 incorporation, the proceeding shall be dismissed, and no
48 subsequent proceeding for incorporation of the same or any
49 portion of the territory ~~or any portion thereof~~ shall be
50 considered ~~or election thereon had~~ within a period of three
51 years. ~~thereafter.~~

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

§8-3A-1. Class IV town or village form of governance.

1 In absence of any charter or official declaration to the
2 contrary, a Class IV town or village shall be the mayor-
3 council form of government, unless changed by the
4 provisions of section two of this article.

§8-3A-2. Changing Class IV town or village form of governance.

1 A town or village may revise its form of city government,
2 upon the submission of a petition containing twenty-five
3 percent of the qualified voters. The question shall be
4 submitted to the voters of town or village at the next general

5 or primary election. A town or village shall select from the
6 following plans:

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

8 (1) There shall be a city council, elected at large or by
9 wards, or both at large and by wards, by the qualified voters
10 of the city; a mayor elected by the qualified voters of the city;
11 and such other elective officers as the charter may prescribe;
12 and

13 (2) The mayor and council shall be the governing body
14 and administrative authority.

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

16 (1) There shall be a mayor elected by the qualified voters
17 of the city; and a city council elected at large or by wards, or
18 both at large and by wards, by the qualified voters of the city;

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

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

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

25 Plan III -- "Manager Plan." Under this plan:

26 (1) There shall be a council of not less than five nor more
27 than eleven members, elected either at large or from such
28 geographical districts as may be established by the charter, or
29 partly at large and partly from such geographical districts,
30 and the charter may empower the council to change, from
31 time to time, such districts without amending the charter:
32 Provided, That the change of these districts may not take
33 effect during the terms of office of the members of the
34 council making the change;

35 (2) There shall be a mayor elected by the council from
36 among its membership who shall serve as the presiding
37 officer of the council; and a city manager who shall be
38 appointed by the council;

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

40 (4) The manager shall be the administrative authority and
41 shall manage the affairs of the city under the supervision of
42 the council and shall be responsible to the council. The

43 manager shall appoint or employ, in accordance with this
44 chapter, all subordinates and employees for whose duties or
45 work the manager is responsible to the council.

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

47 (1) There shall be a council of not less than five nor more
48 than eleven members, elected either at large or from such
49 geographical districts as may be established by the charter, or
50 partly at large and partly from such geographical districts,
51 and the charter may empower the council to change these
52 districts, from time to time, without amending the charter:
53 *Provided,* That the change of these districts may not take
54 effect during the terms of office of the members of the
55 council making the change.

56 (2) There shall be a mayor elected at large by the
57 qualified voters of the municipality as may be established by
58 the charter, who shall serve as a member and the presiding
59 officer of the council; and a city manager who shall be
60 appointed by the council;

61 (3) The council shall be the governing body; and
62 (4) The manager shall be the administrative authority and
63 shall manage the affairs of the city under the supervision of
64 the council and shall be responsible to the council. The
65 manager shall appoint or employ, in accordance with this
66 chapter, all subordinates and employees for whose duties or
67 work the manager is responsible to the council.

NOTE: The purpose of the bill is to clarify that a Class IV town or village may choose and change to certain forms of government.

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