

# WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2012



# ENROLLED

## House Bill No. 4315

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



Passed March 10, 2012

To Take Effect Ninety Days From Passage

# E N R O L L E D

## H. B. 4315

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(BY DELEGATES CANN, MANCHIN, DOYLE,  
FRAGALE, IAQUINTA, LAWRENCE, LONGSTRETH,  
MILEY, MORGAN AND VARNER)

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[Passed March 10, 2012; to take 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; declaration of results; recount.**

2 (a) On the date named in the notice for the taking of the  
3 vote, each qualified elector of the territory sought to be  
4 incorporated as a Class I, II, or III city, may cast his or her  
5 vote for or against such incorporation at the precinct in which  
6 he or she resides, by depositing a ballot in a ballot box, or by  
7 use of a voting machine, to be provided by the county  
8 commission for that purpose. Each ballot, or ballot label  
9 where voting machines are used, shall be without party  
10 designation and shall have written or printed thereon the  
11 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  
18 appointed by the county commission and shall be conducted  
19 as nearly as may be in accordance with the laws of this state  
20 governing general elections. The results of the election shall  
21 be certified as in general elections, and the returns shall be  
22 canvassed and the results declared by the county commission.  
23 If any commissioner or clerk designated to serve in the  
24 election shall fail or refuse to serve, the vacancy may be filled  
25 in like manner as vacancies in 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 a recount  
29 providing adequate assurance to the county commission that  
30 the party or parties will pay all costs of the recount.

31 Class IV town or village

32 (c) Each qualified elector of the territory sought to be  
33 incorporated as a Class IV town or village may cast his or her  
34 vote for or against the incorporation at the precinct in which  
35 he or she resides, by depositing a ballot in a ballot box or by  
36 use of a voting machine to be provided by the county  
37 commission for that purpose, on the date named in the notice  
38 for the taking of the vote. Each ballot, or ballot label where  
39 voting machines are used, shall be without party designation  
40 and shall have 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 ballot  
49 or ballot label.

50 (d) 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 (a) *Class I, II, or III city.* -- If the proceeding be for the  
 2 incorporation of a city, and it appears to the county  
 3 commission, upon the returns being canvassed, that a  
 4 majority of the legal votes cast on the question of  
 5 incorporation were in favor of the incorporation and the  
 6 commission is satisfied that all of the applicable provisions of  
 7 this article have been complied with, the commission shall by  
 8 order duly made and entered of record declare that the  
 9 territory in question (reciting the boundaries) shall thereby  
 10 become a body corporate, and shall thenceforth be known as  
 11 the city of ....., but that until a charter is framed  
 12 and adopted as provided in article three of this chapter, the  
 13 city shall have and exercise no powers of a municipality  
 14 except the power to frame and adopt a charter as therein  
 15 provided.

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

23 order duly made and entered of record, direct the clerk of the  
24 commission to issue a certificate of incorporation in form or  
25 in substance as follows:

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

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

48 (d) If, on the returns being canvassed on the question of  
49 incorporation, a majority of the legal votes cast be against  
50 incorporation, the proceeding shall be dismissed, and no  
51 subsequent proceeding for incorporation of the same or any  
52 portion of the territory shall be considered or election had  
53 within a period of three years.

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

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

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

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

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

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

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

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

10        (1) There shall be a town or village council, elected at  
11        large or by wards, or both at large and by wards, by the  
12        qualified voters of the town or village; a mayor elected by the  
13        qualified voters of the town or village; and such other  
14        elective officers as set by ordinance; and

15        (2) The mayor and council shall be the governing body  
16        and administrative authority.

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

18 (1) There shall be a mayor elected by the qualified voters  
19 of the town or village; and a town or village council elected  
20 at large or by wards, or both at large and by wards, by the  
21 qualified voters of the town or village;

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

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

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

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

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

38 (2) There shall be a mayor elected by the council from  
39 among its membership who shall serve as the presiding  
40 officer of the council; and a town or village manager who  
41 shall be appointed by the council;

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

43 (4) The manager shall be the administrative authority and  
44 shall manage the affairs of the town or village under the  
45 supervision of the council and shall be responsible to the  
46 council. The manager shall appoint or employ, in accordance  
47 with this chapter, all subordinates and employees for whose  
48 duties or work the manager is responsible to the council.

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

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

59 (2) There shall be a mayor elected at large by the  
60 qualified voters of the town or village as may be established  
61 by the ordinance, who shall serve as a member and the  
62 presiding officer of the council; and a town or village  
63 manager who shall be appointed by the council;

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

65 (4) The manager shall be the administrative authority and  
66 shall manage the affairs of the town or village under the  
67 supervision of the council and shall be responsible to the  
68 council. The manager shall appoint or employ, in accordance  
69 with this chapter, all subordinates and employees for whose  
70 duties or work the manager is responsible to the council.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

\_\_\_\_\_  
*Chairman, House Committee*

\_\_\_\_\_  
*Chairman, Senate Committee*

Originating in the House.

To take effect ninety days from passage.

\_\_\_\_\_  
*Clerk of the House of Delegates*

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*Clerk of the Senate*

\_\_\_\_\_  
*Speaker of the House of Delegates*

\_\_\_\_\_  
*President of the Senate*

The within \_\_\_\_\_ this the \_\_\_\_\_  
day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
*Governor*