

H. B. 2749

(By Delegates Fragale and Iaquina)
[Introduced January 21, 2011; referred to the
Committee on Political Subdivisions then the Judiciary.]

A BILL to amend and reenact §8-2-7 of the Code of West Virginia, 1931, as amended; and to amend and reenact §8-3-1, §8-3-2, §8-3-3, §8-3-4, §8-3-6 and §8-3-7, all relating to allowing a Class IV Town be allowed to create their own charter.

Be it enacted by the Legislature of West Virginia:

That §8-2-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §8-3-1, §8-3-2, §8-3-3, §8-3-4, §8-3-6 and §8-3-7 of said code be amended and reenacted, all to read as follows:

ARTICLE 2. CREATION OF MUNICIPALITIES.

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

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

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

9 If the proceeding be for the incorporation of a town or
10 village, and it appears to the county ~~court~~ commission, upon the
11 returns being canvassed, that a majority of the legal votes cast on
12 the question of incorporation were in favor of such incorporation
13 and the court is satisfied that all of the applicable provisions of
14 this article have been complied with, the court shall by order duly
15 made and entered of record declare that the territory in question
16 (reciting the boundaries) shall thereby become a body corporate,
17 and shall thenceforth be known as the town or village of
18, but that until a charter shall be framed
19 and adopted as provided in article three of this chapter, such city
20 shall have and exercise no powers of a municipality except the
21 power to frame and adopt a charter as therein provided. ~~by order~~
22 ~~duly made and entered of record, direct the clerk of said court to~~
23 ~~issue a certificate of incorporation in form or in substance as~~
24 ~~follows:~~

25 ~~"It appearing to the court that under the provisions of~~
26 ~~article two, chapter eight of the Code of West Virginia, as~~
27 ~~amended, at an election duly held on the day of~~

1 , 19....., a majority of the legal votes cast on
2 the question of incorporation by the qualified voters of the
3 following territory, to wit: Beginning, etc. (here recite the
4 boundaries), were cast in favor of the incorporation of the town or
5 village of , in the County of
6 , bounded as herein set forth; and it appearing
7 to the satisfaction of the court that all of the provisions of
8 article two, chapter eight of the Code of West Virginia, as
9 amended, have been complied with by the petitioners for said
10 incorporation, said town or village is hereby declared to be a body
11 corporate, duly authorized to exercise all of the corporate powers
12 conferred upon towns or villages by chapter eight of the Code of
13 West Virginia, as amended, from and after the date of this
14 certificate. (Signed) , Clerk County
15 Court." Thereupon, the first election of officers shall be held as
16 provided in sections two, three and four, article five of this
17 chapter.

18 If on the returns being canvassed on the question of
19 incorporation, a majority of the legal votes cast be against
20 incorporation, the proceeding shall be dismissed, and no subsequent
21 proceeding for incorporation of the same territory or any portion
22 thereof shall be considered or election thereon had within a period
23 of three years thereafter.

24 **ARTICLE 3. FRAMING AND ADOPTING AN ORIGINAL CHARTER FOLLOWING**
25 **INCORPORATION OF A CITY; REVISING OR AMENDING A**
26 **CHARTER; EXPENSES OF INCORPORATION.**

27 **§8-3-1. Charter board for cities -- Number of members;**

1 **qualifications of members; nominations; ballots and**
2 **ballot labels; dismissal of proceeding.**

3 At every election on the question of incorporation of a city,
4 under article two of this chapter, each qualified voter entitled to
5 vote shall also be entitled to vote for a charter board consisting
6 of eleven members if it is to be a Class I or Class II city, ~~and~~ of
7 seven members if it is to be a Class III city and of five members
8 if it is to be a Class IV town. Members shall be elected at large
9 and shall receive no compensation for their services, but shall be
10 reimbursed by the city for all reasonable and necessary expenses
11 actually incurred in the discharge of their duties. Any individual
12 who has been a resident of the territory sought to be incorporated
13 for at least two years prior to the date of said election and who
14 shall have been qualified to vote in state-county elections for at
15 least two years prior to the date of said election shall be
16 eligible for membership on said charter board. Nominations for
17 said charter board shall be made by petition to the county ~~court~~
18 commission bearing the signatures, written in their own
19 handwriting, of not less than two hundred qualified voters of the
20 territory. All nominating petitions shall be filed with the county
21 ~~court~~ commission at least twenty days prior to the date of the
22 election on the question of incorporation. In the event of a
23 vacancy in the nominations which shall reduce the number of
24 candidates below the number of members to be elected, the vacancy
25 shall be filled by the county ~~court~~ commission. The ballots, or
26 ballot labels where voting machines are used, shall be prepared by
27 or at the direction of the clerk of the county ~~court~~ commission.

1 The ballots or ballot labels for members of the charter board shall
2 be separate from the ballots or ballot labels on the question of
3 incorporation. Such ballots or ballot labels for members of the
4 charter board shall be special ballots or ballot labels without
5 party designation. The position of the names of the candidates
6 upon the ballots or voting machines shall be interchanged, as
7 provided in the general election laws of this state. The ballots
8 or voting machine directions shall bear instructions specifying the
9 number of candidates to be voted for, and each qualified voter
10 entitled to vote on the question of framing a charter may cast as
11 many votes for members of the charter board as there are members to
12 be elected. ~~He~~ The voter may cumulate all of his or her votes for
13 one candidate, or distribute them among several candidates as ~~he~~
14 the voter sees fit. The ballots or voting machine directions shall
15 bear advice to this effect. Any voter who shall vote against
16 incorporation may, nevertheless, vote for members of the charter
17 board, and the ballots or voting machine directions shall bear
18 advice to this effect.

19 If on the returns being canvassed on the question of
20 incorporation, such canvassing to be done by the county ~~court~~
21 commission, a majority of the legal votes cast be against
22 incorporation, the proceeding shall be dismissed as specified in
23 section seven, article two of this chapter, and no subsequent
24 proceeding for incorporation of the same territory or any portion
25 thereof shall be considered or election thereon had within a period
26 of three years thereafter.

27 **§8-3-2. Charter board for cities -- Organization; journal; quorum;**

1 **duties; time for draft of charter; form of city**
2 **government.**

3 If on the returns being canvassed on the question of
4 incorporation of a city, such canvassing to be done by the county
5 commission, a majority of the legal votes cast be in favor of such
6 incorporation, then the legal votes cast for members of the charter
7 board shall be counted and canvassed by the county commission, and
8 the candidates in the number to be chosen who received the highest
9 number of votes shall be declared elected. The charter board shall
10 be convened at a suitable place within the territory, by the member
11 receiving the highest number of votes, not less than five days nor
12 more than ten days after the canvass of the returns. He or she
13 shall notify the other members of the board in writing of the time
14 and place of the first meeting of the charter board. At such first
15 meeting, the board shall perfect its organization by electing a
16 chairman and secretary from its membership and by determining the
17 rules to govern its proceedings. Any vacancy in the membership of
18 the board occurring before a charter is approved by the qualified
19 voters of the incorporated territory shall be filled by appointment
20 by majority action of the remaining members, and any vacancy
21 occurring after approval of a charter as aforesaid shall be filled
22 as specified in section nine of this article. A journal shall be
23 kept by the secretary, in which journal shall be entered, upon
24 demand by any member, the vote by ayes and nays on any question.
25 A majority of the members of said board shall constitute a quorum.
26 The board shall specify the manner for nominating and electing
27 candidates for the first elective offices provided for in the

1 proposed charter at the election to be held on the question of
2 approval of the charter. It shall fix the date of said election
3 and it shall do and provide all other things necessary for making
4 nominations and holding and conducting such election. Any
5 qualified voter and any freeholder of the incorporated territory
6 may file with said charter board any written material bearing upon
7 the purposes of the board, and the board shall give such material
8 so filed such consideration as it may deem proper. The charter
9 drafting process may be carried on through committees, but their
10 work shall be advisory only. The charter board shall complete its
11 draft of a charter within ninety days after its first meeting. It
12 shall be the duty of the charter board to provide in the charter so
13 drafted for a form of city government in accordance with one of the
14 following plans:

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

16 (1) There shall be a city council, elected at large or by
17 wards, or both at large and by wards, by the qualified voters of
18 the city; a mayor elected by the qualified voters of the city; and
19 such other elective officers as the charter may prescribe; 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 city; and a city council elected at large or by wards, or both
25 at large and by wards, by the qualified voters of the city;

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

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

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

5 Plan III -- "*Commission Government.*" Under this plan:

6 (1) There shall be, except as hereinafter in this plan
7 provided, a commission of five members elected at large by the
8 qualified voters of the city;

9 (2) The members of the commission shall be a Commissioner of
10 Public Affairs, a Commissioner of Finance, a Commissioner of
11 Public Safety, a Commissioner of Public Works and a Commissioner
12 of Streets: *Provided*, That a charter for a Class I or Class II
13 city may, and a charter for a Class III city or Class IV town
14 shall, provide for a commission of three members, viz., a
15 Commissioner of Finance, a Commissioner of Public Works and a
16 Commissioner of Public Safety;

17 (3) The members of the commission shall elect a mayor from
18 among their membership;

19 (4) The commission shall be the governing body and
20 administrative authority; and

21 (5) Officers and employees, other than members of the
22 commission, shall be appointed in accordance with this chapter by
23 the commissioners or by each commissioner with respect to his or
24 her department, as the charter may prescribe.

25 Plan IV -- "*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

1 geographical districts as may be established by the charter, or
2 partly at large and partly from such geographical districts, and
3 the charter may empower the council to change, from time to time,
4 such districts without amending the charter: *Provided*, That the
5 change of such districts shall not take effect during the terms of
6 office of the members of such council making such change;

7 (2) There shall be a mayor elected by the council from among
8 its membership who shall serve as the presiding officer of the
9 council; and a city manager who shall be appointed by the council;

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

11 (4) The manager shall be the administrative authority. He or
12 she shall manage the affairs of the city under the supervision of
13 the council and ~~he~~ the manager shall be responsible to such
14 council. ~~He~~ The manager shall appoint or employ, in accordance
15 with this chapter, all subordinates and employees for whose duties
16 or work ~~he~~ the manager is responsible to the council.

17 Plan V -- "*Manager-Mayor Plan.*" Under this Plan:

18 (1) There shall be a council of not less than five nor more
19 than eleven members, elected either at large or from such
20 geographical districts as may be established by the charter, or
21 partly at large and partly from such geographical districts, and
22 the charter may empower the council to change, from time to time,
23 such districts without amending the charter: *Provided*, That the
24 change of such districts shall not take effect during the terms of
25 office of the members of such council making such change.

26 (2) There shall be a mayor elected at large by the qualified
27 voters of the municipality as may be established by the charter,

1 who shall serve as a member and the presiding officer of the
2 council; and a city manager who shall be appointed by the council;

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

4 (4) The manager shall be the administrative authority. He or
5 she shall manage the affairs of the city under the supervision of
6 the council and ~~he~~ the manager shall be responsible to such
7 council. ~~He~~ The manager shall appoint or employ, in accordance
8 with this chapter, all subordinates and employees for whose duties
9 or work ~~he~~ the manager is responsible to the council.

10 The purpose of the provisions of this section pertaining to
11 Plan I, Plan II, Plan III, Plan IV and Plan V is to establish
12 basic requirements of alternative plans of structure and
13 organization of city government. The structure and organization
14 of a city government may be specified by the charter in respects
15 other than those enumerated, and in elaboration of the basic
16 requirements, insofar as such charter provisions do not conflict
17 with the purpose and the provisions of the alternative plans
18 prescribed.

19 **§8-3-3. City charters -- Approval and certification by Attorney**

20 **General.**

21 The draft of said charter shall, upon completion, be
22 certified by the secretary of said charter board to the Attorney
23 General of the state. It shall be ~~his~~ the Attorney General's duty
24 to examine the draft and advise whether it is consistent in all
25 respects with the Constitution and general law of this state. The
26 Attorney General, if satisfied that the proposed charter is
27 consistent in all respects with the Constitution and general law

1 of this state, shall so certify to the charter board within thirty
 2 days after receipt of such draft. If the Attorney General is not
 3 satisfied that the proposed charter is consistent in all respects
 4 with the Constitution and general law of this state, ~~he~~ the
 5 Attorney General shall certify, within thirty days after receipt
 6 of such draft, to the charter board in what respects the same does
 7 not conform to the Constitution or general law of this state.

8 **§8-3-4. Same -- Hearing and notice.**

9 When it shall have completed its draft of a charter, the
 10 charter board shall conduct a public hearing thereon. The county
 11 ~~court~~ commission shall cause notice of the date, time, place and
 12 purpose of the hearing to be given by publication thereof at least
 13 ten days prior to the date set for the hearing as a Class I legal
 14 advertisement in compliance with the provisions of article three,
 15 chapter fifty-nine of this code, and the publication area for such
 16 publication shall be the incorporated territory. The notice shall
 17 state where copies of the draft of the charter may be obtained.
 18 The hearing may be continued by the charter board by adjournments
 19 over a period not exceeding fourteen days.

20 **§8-3-6. Same -- Special election; time for election; notice;**
 21 **voting precincts; supplies; officials; certification;**
 22 **canvass; declaration of results; recount.**

23 The proposed charter shall be submitted to the qualified
 24 voters of the incorporated territory for approval or rejection at
 25 a special election ordered by the county ~~court~~ commission to be
 26 held not less than thirty days nor more than ninety days following
 27 the date on which the two copies of the completed charter were

1 filed with the clerk of the county ~~court~~ commission, at which
2 election the officers provided for by said proposed charter and to
3 be elected shall be voted upon in the manner provided in said
4 proposed charter. The county ~~court~~ commission shall cause notice
5 of the date, hours, place and purpose of such election to be given
6 by publication thereof as a Class II-0 legal advertisement in
7 compliance with the provisions of article three, chapter
8 fifty-nine of this code, and the publication area for such
9 publication shall be the incorporated territory. The first of
10 said publications shall be made not less than thirty days prior to
11 the date fixed for the election. Each such notice of election
12 shall state that upon request any qualified voter and any
13 freeholder of the incorporated territory may obtain a copy of the
14 proposed charter from a designated person at a designated place.

15 For the purpose of holding and conducting said election, the
16 county ~~court~~ commission shall divide the incorporated territory
17 into one or more precincts, consisting of not more than five
18 hundred qualified voters in each precinct; shall arrange for and
19 provide at its expense polling places, registration books,
20 challenges and other election supplies as provided for by law in
21 general elections; and shall appoint three commissioners of
22 election and two clerks from the qualified voters of said
23 incorporated territory for each precinct so established, subject,
24 however, to the provisions of section eleven, article four of this
25 chapter. Such election shall be held and conducted under the
26 supervision of the commissioners and clerks of election appointed
27 by the county ~~court~~ commission as aforesaid and shall be conducted

1 as nearly as may be in accordance with the laws of this state
2 governing general elections. The results of such election, both
3 as to approval or rejection of the proposed charter and the
4 election of officers, shall be certified as in general elections,
5 and the returns shall be canvassed and the results declared by the
6 county ~~court~~ commission. In the event any commissioner or clerk
7 designated to serve in said election shall fail or refuse to
8 serve, such vacancy may be filled in like manner as such vacancies
9 are filled in general elections under the laws of this state
10 governing general elections. A recount may be had, as in general
11 elections, upon the party or parties desiring such recount
12 providing adequate assurance to the county ~~court~~ commission that
13 ~~he or they~~ the party or parties will pay all costs of such
14 recount.

15 **§8-3-7. Same -- Approval; effective date; certification; judicial**
16 **notice; recordation.**

17 If the proposed charter shall be approved by a majority of
18 the legal votes cast at the election thereon, the charter shall
19 take effect on July 1, next after the date of the election, if the
20 interim exceeds sixty days; otherwise on July 1 of the second
21 fiscal year after its approval. If approved as aforesaid, one of
22 the signed copies of the charter on file with the clerk of the
23 county ~~court~~ commission, together with a certified copy of the
24 declaration of the results of the election showing the total legal
25 votes cast for and against approval, shall be certified forthwith
26 by the clerk of the county ~~court~~ commission to the Clerk of the
27 House of Delegates, in his or her capacity as keeper of the rolls.

1 The same shall be preserved by said Clerk of the House of
2 Delegates as an authentic public record. After the effective date
3 of a charter so filed, all courts shall take judicial notice of
4 its provisions.

5 The clerk of the county ~~court~~ commission shall certify to the
6 county court the other signed copy of the charter previously filed
7 with him or her, which copy so certified shall be spread upon the
8 records of said court for public examination.

NOTE: The purpose of this bill is to allow Class IV towns to create their own charter and operate in a similar manner to Class I, II and III cities.

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