

ENGROSSED

H. B. 4315

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

1 **label; election officials; certification; canvass;**
 2 **declaration of results; recount.**

3 (a) On the date named in ~~such~~ 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, ~~shall have the right to~~
 6 may cast his or her vote for or against such incorporation at the
 7 precinct in which he or she resides, by depositing a ballot in a
 8 ballot box, or by use of a voting machine, to be provided by the
 9 county ~~court~~ commission for that purpose. Each ballot, or ballot
 10 label where voting machines are used, shall be without party
 11 designation and shall have written or printed thereon the following
 12 words:

13 / / For Incorporation

14 / / Against Incorporation

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

17 ~~Such~~ The election shall be held and conducted under the
 18 supervision of the commissioners and clerks of election appointed
 19 by the county ~~court~~ commission ~~as aforesaid~~ and shall be conducted
 20 as nearly as may be in accordance with the laws of this state
 21 governing general elections. The results of ~~such~~ the election
 22 shall be certified as in general elections, and the returns shall
 23 be canvassed and the results declared by the county ~~court~~
 24 commission. ~~In the event~~ If any commissioner or clerk designated

1 to serve in ~~said~~ the election shall fail or refuse to serve, ~~such~~
 2 the vacancy may be filled in like manner as vacancies in ~~such~~ the
 3 positions are filled in general elections under the laws of this
 4 state governing general elections. A recount may be had, as in
 5 general elections, upon the party or parties desiring ~~such~~ a
 6 recount providing adequate assurance to the county ~~court~~ commission
 7 that ~~he or they~~ the party or parties will pay all costs of ~~such~~ the
 8 recount.

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

18 / / For Incorporation

19 / / Against Incorporation

20 The form of governance:

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

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

23 / / Plan III -- "Manager Plan."

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

1 The ballot or ballot label shall be a separate, special ballot
2 or ballot label.

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

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

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

1 of this article have been complied with, the ~~court~~ commission shall
2 by order duly made and entered of record declare that the territory
3 in question (reciting the boundaries) shall thereby become a body
4 corporate, and shall thenceforth be known as the city of
5, but that until a charter ~~shall be~~ is framed
6 and adopted as provided in article three of this chapter, ~~such~~ the
7 city shall have and exercise no powers of a municipality except the
8 power to frame and adopt a 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~~ the
13 incorporation and the ~~court~~ commission is satisfied that all of the
14 applicable provisions of this article have been complied with, the
15 ~~court~~ commission shall by order duly made and entered of record,
16 direct the clerk of ~~said court~~ the commission to issue a
17 certificate of incorporation in form or in substance as follows:

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

1 village of, in the County of
 2, bounded as herein set forth; adopting the
 3 form of government, and it appearing to the
 4 satisfaction of the ~~court~~ commission that all of the provisions of
 5 article two, chapter eight of the Code of West Virginia, as
 6 amended, have been complied with by the petitioners for ~~said~~
 7 incorporation, ~~said the~~ town or village is hereby declared to be a
 8 body corporate, duly authorized to exercise all of the corporate
 9 powers conferred upon towns or villages by chapter eight of the
 10 Code of West Virginia, as amended, from and after the date of this
 11 certificate. (Signed), Clerk County
 12 ~~Court~~ commission." Thereupon, the first election of officers shall
 13 be held as provided in sections two, three and four, article five
 14 of this chapter.

15 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 ~~or any portion thereof~~ shall be considered ~~or election~~
 20 ~~thereon had~~ within a period of three years. ~~thereafter.~~

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

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

23 In 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, unless changed by the provisions of section two
 2 of this article.

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

4 A town or village may revise its form of city government, upon
 5 the submission of a petition containing twenty-five percent of the
 6 qualified voters. The question shall be submitted to the voters of
 7 town or village at the next general or primary election. A town or
 8 village shall select from the following plans:

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

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

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

16 Plan II -- "Strong-Mayor Plan." Under this plan:

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

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

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

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

1 subject to the approval of the council.

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

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

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

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

15 (4) The manager shall be the administrative authority and
16 shall manage the affairs of the city under the supervision of the
17 council and shall be responsible to the council. The manager shall
18 appoint or employ, in accordance with this chapter, all
19 subordinates and employees for whose duties or work the manager is
20 responsible to the council.

21 Plan IV -- "Manager-Mayor Plan." Under this plan:

22 (1) There shall be a council of not less than five nor more
23 than eleven members, elected either at large or from such
24 geographical districts as may be established by the charter, or

1 partly at large and partly from such geographical districts, and
2 the charter may empower the council to change these districts, from
3 time to time, without amending the charter: *Provided*, That the
4 change of these districts may not take effect during the terms of
5 office of the members of the council making the change.

6 (2) There shall be a mayor elected at large by the qualified
7 voters of the municipality as may be established by the charter,
8 who shall serve as a member and 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 and
12 shall manage the affairs of the city under the supervision of the
13 council and shall be responsible to the council. The manager shall
14 appoint or employ, in accordance with this chapter, all
15 subordinates and employees for whose duties or work the manager is
16 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.