

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

**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  
label; election officials; certification; canvass;**

1                   **declaration of results; recount.**

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

12           / / For Incorporation

13           / / Against Incorporation

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

16           ~~Such~~ The election shall be held and conducted under the  
 17 supervision of the commissioners and clerks of election appointed  
 18 by the county ~~court~~ commission ~~as aforesaid~~ 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 ~~such~~ the election  
 21 shall be certified as in general elections, and the returns shall  
 22 be canvassed and the results declared by the county ~~court~~  
 23 commission. ~~In the event~~ If any commissioner or clerk designated  
 24 to serve in ~~said~~ the election shall fail or refuse to serve, ~~such~~

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

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

17 / / For Incorporation

18 / / Against Incorporation

19 The form of governance:

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

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

22 / / Plan III -- "Manager Plan."

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

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

1 or ballot label.

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

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

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

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

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

17       "It appearing to the ~~court~~ commission that under the  
18 provisions of article two, chapter eight of the Code of West  
19 Virginia, as amended, at an election duly held on the .....  
20 day of ....., 19....., a majority of the legal votes  
21 cast on the question of incorporation by the qualified voters of  
22 the 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 ~~court~~ 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 ~~said~~  
 6 incorporation, ~~said~~ the town or village is ~~hereby~~ declared to be a  
 7 body corporate, duly authorized to exercise all of the corporate  
 8 powers conferred upon towns or villages by chapter eight of the  
 9 Code of West Virginia, as amended, from and after the date of this  
 10 certificate. (Signed) ....., Clerk County  
 11 ~~Court~~ commission." Thereupon, the first election of officers shall  
 12 be held as provided in sections two, three and four, article five  
 13 of this chapter.

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

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

21 **§8-3A-1. Class IV town or village form of governance.**

22 Notwithstanding any charter or official declaration to the  
 23 contrary, a Class IV town or village shall be the mayor-council  
 24 form of government, unless changed by the provisions of section two

1 of this article.

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

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

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

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

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

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

16 (1) There shall be a mayor elected by the qualified voters of  
17 the city; and a city council elected at large or by wards, or both  
18 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 the  
22 mayor or by his or her order in accordance with this chapter, but  
23 the appointments by the mayor or by his or her order may be made  
24 subject to the approval of the council.

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

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

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

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

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

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

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



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

5 (2) There shall be a mayor elected at large by the qualified  
6 voters of the municipality as may be established by the charter,  
7 who shall serve as a member and the presiding officer of the  
8 council; and a city manager who shall be appointed by the council;

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

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