
WEST VIRGINIA CODE CHAPTER 8
ARTICLE 3

WV Legislature

PART I. FRAMING AND ADOPTING CHARTER -- GENERAL.**§8-3-1. Charter board for cities -- Number of members; qualifications of members; nominations; ballots and ballot labels; dismissal of proceeding.**

At every election on the question of incorporation of a city, under article two of this chapter, each qualified voter entitled to vote shall also be entitled to vote for a charter board consisting of eleven members if it is to be a Class I or Class II city, and of seven members if it is to be a Class III city. Members shall be elected at large and shall receive no compensation for their services, but shall be reimbursed by the city for all reasonable and necessary expenses actually incurred in the discharge of their duties. Any individual who has been a resident of the territory sought to be incorporated for at least two years prior to the date of said election and who shall have been qualified to vote in state-county elections for at least two years prior to the date of said election shall be eligible for membership on said charter board. Nominations for said charter board shall be made by petition to the county court bearing the signatures, written in their own handwriting, of not less than two hundred qualified voters of the territory. All nominating petitions shall be filed with the county court at least twenty days prior to the date of the election on the question of incorporation. In the event of a vacancy in the nominations which shall reduce the number of candidates below the number of members to be elected, the vacancy shall be filled by the county court. The ballots, or ballot labels where voting machines are used, shall be prepared by or at the direction of the clerk of the county court. The ballots or ballot labels for members of the charter board shall be separate from the ballots or ballot labels on the question of incorporation. Such ballots or ballot labels for members of the charter board shall be special ballots or ballot labels without party designation. The position of the names of the candidates upon the ballots or voting machines shall be interchanged, as provided in the general election laws of this state. The ballots or voting machine directions shall bear instructions specifying the number of candidates to be voted for, and each qualified voter entitled to vote on the question of framing a charter may cast as many votes for members of the charter board as there are members to be elected. He may cumulate all of his votes for one candidate, or distribute them among several candidates as he sees fit. The ballots or voting machine directions shall bear advice to this effect. Any voter who shall vote against incorporation may, nevertheless, vote for members of the charter board, and the ballots or voting machine directions shall bear advice to this effect.

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

§8-3-2. Charter board for cities -- Organization; journal; quorum; duties; time for draft of charter; form of city government.

If on the returns being canvassed on the question of incorporation of a city, such canvassing to be done by the county commission, a majority of the legal votes cast be in favor of such incorporation, then the legal votes cast for members of the charter board shall be counted and canvassed by the county commission, and the candidates in the number to be chosen who received the highest number of votes shall be declared elected. The charter board shall be convened at a suitable place within the territory, by the member receiving the highest number of votes, not less than five days nor more than ten days after the canvass of the returns. He shall notify the other members of the board in writing of the time and place of the first meeting of the charter board. At such first meeting, the board shall perfect its organization by electing a chairman and secretary from its membership and by determining the rules to govern its proceedings. Any vacancy in the membership of the board occurring before a charter is approved by the qualified voters of the incorporated territory shall be filled by appointment by majority action of the remaining members, and any vacancy occurring after approval of a charter as aforesaid shall be filled as specified in section nine of this article. A journal shall be kept by the secretary, in which journal shall be entered, upon demand by any member, the vote by ayes and nays on any question. A majority of the members of said board shall constitute a quorum. The board shall specify the manner for nominating and electing candidates for the first elective offices provided for in the proposed charter at the election to be held on the question of approval of the charter. It shall fix the date of said election and it shall do and provide all other things necessary for making nominations and holding and conducting such election. Any qualified voter and any freeholder of the incorporated territory may file with said charter board any written material bearing upon the purposes of the board, and the board shall give such material so filed such consideration as it may deem proper. The charter drafting process may be carried on through committees, but their work shall be advisory only. The charter board shall complete its draft of a charter within ninety days after its first meeting. It shall be the duty of the charter board to provide in the charter so drafted for a form of city government in accordance with one of the following plans:

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

- (1) There shall be a city council, elected at large or by wards, or both at large and by wards, by the qualified voters of the city; a mayor elected by the qualified voters of the city; and such other elective officers as the charter may prescribe; and
- (2) The mayor and council shall be the governing body and administrative authority.

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

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

- (2) The council shall be the governing body;
- (3) The mayor shall be the administrative authority; and
- (4) Other officers and employees shall be appointed by the mayor or by his order in accordance with this chapter, but such appointments by the mayor or by his order may be made subject to the approval of the council.

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

- (1) There shall be, except as hereinafter in this plan provided, a commission of five members elected at large by the qualified voters of the city;
- (2) The members of the commission shall be a commissioner of public affairs, a commissioner of finance, a commissioner of public safety, a commissioner of public works and a commissioner of streets: Provided, That a charter for a Class I or Class II city may, and a charter for a Class III city shall, provide for a commission of three members, viz., a commissioner of finance, a commissioner of public works and a commissioner of public safety;
- (3) The members of the commission shall elect a mayor from among their membership;
- (4) The commission shall be the governing body and administrative authority; and
- (5) Officers and employees, other than members of the commission, shall be appointed in accordance with this chapter by the commissioners or by each commissioner with respect to his department, as the charter may prescribe.

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

- (1) There shall be a council of not less than five nor more than eleven members, elected either at large or from such geographical districts as may be established by the charter, or partly at large and partly from such geographical districts, and the charter may empower the council to change, from time to time, such districts without amending the charter: Provided, That the change of such districts shall not take effect during the terms of office of the members of such council making such change;
- (2) There shall be a mayor elected by the council from among its membership who shall serve as the presiding officer of the council; and a city manager who shall be appointed by the council;
- (3) The council shall be the governing body; and
- (4) The manager shall be the administrative authority. He shall manage the affairs of the city under the supervision of the council and he shall be responsible to such council. He shall appoint or employ, in accordance with this chapter, all subordinates and employees for

whose duties or work he is responsible to the council.

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

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

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

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

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

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

§8-3-3. City charters -- Approval and certification by attorney general.

The draft of said charter shall, upon completion, be certified by the secretary of said charter board to the Attorney General of the state. It shall be his duty to examine the draft and advise whether it is consistent in all respects with the Constitution and general law of this state. The Attorney General, if satisfied that the proposed charter is consistent in all respects with the Constitution and general law of this state, shall so certify to the charter board within thirty days after receipt of such draft. If the Attorney General is not satisfied that the proposed charter is consistent in all respects with the Constitution and general law of this state, he shall certify, within thirty days after receipt of such draft, to the charter board in what respects the same does not conform to the Constitution or general law of this state.

§8-3-4. Same -- Hearing and notice.

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

§8-3-5. Same -- Changes; time for changes; signatures; filing.

A charter board shall have thirty days after the conclusion of the hearing required by section four of this article or receipt of the certificate of the Attorney General required by section three of this article, whichever shall occur later, to make any changes it may consider necessary or desirable in its charter draft.

At least three copies of the completed charter draft shall be signed by at least a majority of the members of the board, and two copies shall be filed with the clerk of the county court.

§8-3-6. Same —Time for election; notice; voting precincts; supplies; officials; certification; canvass; declaration of results; recount.

The proposed charter shall be submitted to the qualified voters of the incorporated territory for approval or rejection at a special election ordered by the county commission to be held concurrently with the next regularly scheduled primary or general election if there are more than 90 days preceding such election, and, if not, then, at the next succeeding regularly scheduled primary or general election, and at which election the officers provided for by said proposed charter and to be elected shall be voted upon in the manner provided in said proposed charter. The county commission shall cause notice of the date, hours, place, and purpose of such election to be given by publication thereof as a Class II-0 legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code, and the publication area for such publication shall be the incorporated territory. The first of said publications shall be made not less than 30 days prior to the date fixed for the election. Each such notice of election shall state that upon request any qualified voter and any freeholder of the incorporated territory may obtain a copy of the proposed charter from a designated person at a designated place.

For the purpose of holding and conducting said election, the county commission shall divide the incorporated territory into one or more temporary precincts, consisting of not more than 500 qualified voters in each temporary precinct; shall arrange for and provide at its expense polling places, registration books, challenges, and other election supplies as provided for by law in general elections; and shall appoint three commissioners of election and two clerks from the qualified voters of said incorporated territory for each temporary precinct so established, subject, however, to the provisions of §8-4-11 of this code. Such election shall be held and conducted under the supervision of the commissioners and clerks of election appointed by the county commission as aforesaid and shall be conducted as nearly as may be in accordance with the laws of this state governing general elections. The results of such election, both as to approval or rejection of the proposed charter and the election of officers, shall be certified as in general elections, and the returns shall be canvassed and the results declared by the county commission. In the event any commissioner or clerk designated to serve in said election shall fail or refuse to serve, such vacancy may be filled in like manner as such vacancies are filled in general elections under the laws of this state governing general elections. A recount may be had, as in general elections, upon the party or parties desiring such recount providing adequate assurance to the county commission that the party or parties shall pay all costs of such recount.

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

If the proposed charter shall be approved by a majority of the legal votes cast at the election thereon, the charter shall take effect on July 1, next after the date of the election, if the interim exceeds sixty days; otherwise on July 1 of the second fiscal year after its approval. If approved as aforesaid, one of the signed copies of the charter on file with the clerk of the county court, together with a certified copy of the declaration of the results of the election showing the total legal votes cast for and against approval, shall be certified forthwith by the clerk of the county court to the Clerk of the House of Delegates, in his capacity as keeper of the rolls. The same shall be preserved by said Clerk of the House of Delegates as an authentic public record. After the effective date of a charter so filed, all courts shall take judicial notice of its provisions.

The clerk of the county court shall certify to the county court the other signed copy of the charter previously filed with him, which copy so certified shall be spread upon the records of said court for public examination.

§8-3-8. Same -- Rejection; rewriting or altering draft; new charter board.

If the proposed charter shall be rejected by a majority of the legal votes cast at the election thereon, the election of officers shall be void, except that the candidate who shall receive the highest number of legal votes cast for the office of mayor, if a mayor is to be elected, otherwise the candidate for any city office who shall receive the highest number of legal votes cast at the election, shall, within ten days thereafter, require such charter board to reconvene for the purpose of rewriting or altering the draft of the rejected charter in such manner as to it shall seem proper. Any three hundred qualified voters of said incorporated territory may, however, within ten days after the determination of the results of the election at which such charter is rejected, petition the clerk of the county court for the election of a new charter board, in which case the court shall thereupon call a new election for members of the charter board in the same manner as the original election and with nominations to be made and any vacancies to be filled in the same manner as in the first instance, as provided in section one of this article. The duties of the new charter board shall be the same as those of the former board, and as many successive charter boards may be elected as may be necessary until a charter for such territory is framed and approved by the qualified voters of the incorporated territory. The rewritten or altered proposed charter or the charter draft of a new or any succeeding charter board, as the case may be, shall be submitted to the Attorney General and the qualified voters of said incorporated territory in the same manner and with like notice and proceedings as required in the first instance, and such proceedings shall continue until the qualified voters of said incorporated territory have by a majority vote approved a charter.

**PART II. CONTINUING DUTIES -- REVISING OR
AMENDING A CHARTER.**

§8-3-9. Continuing duties of charter boards; revising or amending a charter.

The members of the charter board of a city elected under the provisions of this article whose draft of a charter is approved by the qualified voters of the city shall hold office for a term of six years following the approval of such charter. Any vacancy occurring during that period shall be filled temporarily by appointment by majority action of the remaining members, and a successor shall be elected at the next regular municipal election in the same manner as elective city officers, such successor to hold office for the remainder of the term.

During such six-year period as aforesaid, the board shall make a continuing study of the functioning of the city government and may, by a two-thirds vote of its members, not less than four years after such charter shall have taken effect, require the submission to the qualified voters of the city of the question of whether the charter shall be revised as a whole, such submission to be in accordance with the pertinent provisions of article four of this chapter. In the event revision as a whole is voted pursuant to such submission, the board as then constituted shall proceed to prepare a revision of the charter as a whole and the process of revision as a whole as so initiated shall be the same as that for the framing and adoption of a charter under the pertinent provisions of said article four of this chapter. During such six-year period as aforesaid, by a two-thirds vote of its members, at any time not less than one year after such charter shall have taken effect, the board may require the submission of one or more proposed charter amendments to the qualified voters of the city, in accordance with the pertinent provisions of article four of this chapter.

PART III. EXPENSES OF INCORPORATION.

§8-3-10. Expenses of incorporation.

The first governing body of any municipality incorporated under the provisions of article two of this chapter shall provide for reimbursement to the county court of all costs of incorporation, including, but not limited to, the cost of publishing notices, of taking the enumeration of inhabitants, of ascertaining the qualification of electors, and of holding, conducting and superintending the elections called for thereunder and the returning, certifying and canvassing of the results thereof. The first governing body of any city incorporated under said article two shall also provide for reimbursement of the charter board or boards and the members thereof for all reasonable and necessary expenses actually incurred in the performance of its and their duties.