

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1937



ENROLLED

SENATE BILL No. 325

(By Mr. _____)



PASSED March 13th 1937

In Effect 10 days from Passage

ENROLLED

JOINT COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 325

(Originating in the Joint Committee on Municipal Home Rule.)

[Passed March 13, 1937 ; in effect ninety days from passage.]

AN ACT to give effect to the Municipal Home Rule Amendment
to the state constitution by adding a new chapter to the
code of West Virginia, one thousand nine hundred thirty-one,
to be designated as chapter eight-a.

Be it enacted by the Legislature of West Virginia:

That a new chapter designated eight-a be added to the code of
West Virginia, one thousand nine hundred thirty-one, to read as
follows:

CHAPTER 8-A

ARTICLE I. General Provisions.

Section 1. *Purpose; Short Title.* The purpose of this
chapter is to give effect to the "Municipal Home Rule
Amendment" to the state constitution. It may be cited as
the "Municipal Home Rule Law".

Sec. 2. *Definitions.* For the purpose of this chapter,
unless the context clearly requires a different meaning:

"Home rule charter" shall mean a charter adopted under
this chapter;

"Governing body" shall mean the council or commission
created by the charter which enacts ordinances and resolu-
tions and is responsible for the public policy of the city;

"Administrative authority" shall mean the officer or
body which is responsible for the conduct and management
of the affairs of the city in accordance with general law, the
charter and the ordinances, resolutions and orders of the
governing body;

"City" shall mean a municipal corporation with a popu-
lation in excess of two thousand;

15 "Town" or "village" shall mean a municipal corpora-
16 tion with a population of two thousand or less;
17 "Voter" shall mean a person qualified to vote in accord-
18 ance with the provisions of general law and the city charter.

Sec. 3. *Legislative Interpretation.* The legislature here-
2 by declares its interpretation of the Municipal Home Rule
3 Amendment to be that a single classification by population
4 of municipalities in this state is required which shall ex-
5 clude any other classification of municipalities by popula-
6 tion for any purpose. It is, therefore, the intention of the
7 legislature that the classification established by section four
8 of this article, shall give effect to the constitutional mandate
9 and shall be the only classification by population applying
10 to municipalities in this state. It is the further intention of
11 the legislature that subsequent legislation affecting muni-
12 cipalities in this state shall treat municipalities differently
13 upon the basis of population, only in accordance with the
14 general classification established by section four of this
15 article.

Sec. 4. *Classification of Municipal Corporations.* Pur-
2 suant to the mandate of the Municipal Home Rule Amend-

ment, municipal corporations are hereby classified by population into four classes as follows:

(1) Every municipal corporation, the population of which exceeds fifty thousand persons, shall be a class I city;

(2) Every municipal corporation, the population of which is more than ten thousand and not more than fifty thousand persons shall be a class II city;

(3) Every municipal corporation, the population of which is more than two thousand and not more than ten thousand persons shall be a class III city;

(4) Every municipal corporation not included in any of the foregoing classes shall be known as a town or village.

Transition from one to another class of municipal corporation shall occur automatically when the requisite population qualification has been met.

Sec. 5. *Prior Classification.* Provisions of general law establishing classifications by population in effect at the time of the adoption of the Municipal Home Rule Amendment or enacted prior to the adoption of this enabling act under the amendment shall operate as follows:

6 (1) The provisions of an act of the Legislature, regular
7 session, one thousand nine hundred thirty-seven, known and
8 designated as house bill number two, and chapter sixty of
9 the acts of the Legislature of one thousand nine hundred
10 thirty-three, regular session, and as amended, shall be in full
11 force and effect notwithstanding the provisions of this act as
12 to classifications by population, and nothing herein contained
13 shall supersede the provisions of said house bill number two,
14 or said chapter sixty of the acts of the Legislature, one thou-
15 sand nine hundred thirty-three, as amended, or to amend,
16 modify, or repeal any part thereof.

17 (2) The provisions of section seventeen, article four, chap-
18 ter eight of the official code shall apply only to class I, II and
19 III cities;

20 (3) The provisions of section eighteen, article four, chap-
21 ter eight of the official code shall apply only to class I, II,
22 and III cities;

23 (4) The provisions of sections nineteen and twenty, article
24 four, chapter eight of the official code shall apply only to
25 class I, II, and III cities;

26 (5) The provisions of section nine, as amended by the legis-
27 lature of West Virginia regular session, one thousand nine
28 hundred and thirty-seven article six, chapter eight of the
29 official code shall apply only to class I and II, and shall be
30 optional with class III cities;

31 (6) The provisions of section fifty-three, article twelve,
32 chapter eleven of the official code shall apply only to class
33 I, II, and III cities;

34 (7) The provisions of section fifteen, article one, chap-
35 ter forty-seven of the official code shall apply only to class
36 I, II, and III cities.

Sec. 6. *Population.* For the purposes of this chapter
2 population shall be determined by reference to the last
3 preceding census taken under the authority of the congress
4 of the United States or the legislature of West Virginia.

Sec. 7. *General Enumeration of Powers of Home Rule*
2 *Cities.* Every city from and after the effective date of a
3 charter adopted under this chapter, shall be empowered:

4 (1) To have and use a common seal;

5 (2) To contract and be contracted with and to institute,
6 maintain and defend any action or proceeding in any court;

7 (3) For any municipal purpose to take; purchase, hold
8 and lease real and personal property within and without
9 the limits of the city, and to acquire by condemnation real
10 and personal property within or without the limits of the
11 city for the purposes set forth in and in accordance with chap-
12 ter fifty-four of the official code;

13 (4) To take by gift, grant, bequest or devise and to hold
14 and administer real and personal property within and with-
15 out the limits of the city, absolutely or in trust for any
16 public or municipal purpose, upon such terms and con-
17 ditions as may be prescribed by the grantor or donor and
18 accepted by the city.

Sec. 8. *Manner of Exercise of Municipal Powers.* Sub-
2 ject to the provisions of this or any other general law,
3 the powers granted by this chapter shall be exercised, in
4 the manner prescribed, and by the officer, officers or official
5 body designated, by a charter or charter amendment
6 adopted under this chapter, but no provision hereof or of
7 any such charter or charter amendment shall operate to en-
8 large the grant of powers contained herein, or limit the
9 jurisdiction or power of any state officer or body under

10 general law. If the matter is not covered by general law
11 or by such a charter or charter amendment, the governing
12 body of the city shall have power to determine by ordinance
13 in what manner and by whom such powers shall be
14 exercised.

Sec. 9. *Existing Status of Cities Confirmed.* The corpo-
2 rate being and powers of every city now existing is hereby
3 confirmed. General and special laws and municipal char-
4 ters in effect upon the adoption of this chapter shall remain
5 in operation and effect unless amended or repealed by this
6 chapter, or until amended or repealed by a general law
7 hereafter enacted, or until a municipal charter is amended
8 in accordance with article two of this chapter.

Sec. 10. *Adoption of Powers Granted by this Chapter*
2 *by Amendment to Existing Charter.* A city which shall
3 continue to operate under a charter in force upon the
4 effective date of this chapter may by charter amendment
5 hereunder adopt any of the powers conferred by articles
6 four and five of this chapter. It shall derive none of
7 those powers from this chapter until so adopted. It shall
8 suffice that an amendment shall make an identifying re-

9 ference to the section or subsection of this chapter, as
 10 the case may be, sought to be adopted. Section three of
 11 article five hereof may be so adopted only as a whole. An
 12 amendment so adopted shall entirely supersede prior charter
 13 provisions on the same subject.

Sec. 11. *Application of other General Laws.* Except as
 2 otherwise expressly provided in this chapter none of the pro-
 3 visions of chapter eight of the official code shall apply to
 4 cities which adopt a charter under this chapter. To the
 5 extent that provisions of chapter eight constitute parts
 6 of the existing charter of a city they shall not be affected
 7 hereby but shall continue as such until superseded by a
 8 charter or charter amendment adopted under this chapter
 9 or by any other general law. All other general laws re-
 10 lating to municipal corporations shall continue to apply to
 11 cities except to the extent otherwise expressly provided in
 12 this chapter.

Sec. 12. *Sanctions, Enforcement of Ordinances.* The
 2 governing body of a city may provide by ordinance for
 3 penalties, in the form of fines, forfeitures and imprisonment
 4 in the city jail, for the violation of the ordinances of the

5 city. It may also maintain a suit in equity in the name of
6 the city to compel compliance with, or to restrain by injunction
7 the violation of any ordinance. The maximum fine and the
8 maximum imprisonment which may be provided shall be
9 five hundred dollars and six months, respectively, or both.
10 Provision may be made to contract for lodging city
11 prisoners in the jail of any county in which any part of the
12 city lies, or of an adjoining county, for part or all of their
13 terms of imprisonment. Police officers of a city shall have
14 the same authority of pursuit and arrest beyond their
15 normal jurisdiction as has a sheriff.

Sec. 13. *Application of Levy Provisions.* A limitation
2 placed on the amount of taxes upon real and personal prop-
3 erty that may be levied, or the amount of a mandatory levy,
4 for the support of a specific municipal service or activity
5 by any provision of general law, shall not apply to cities
6 under this chapter in the exercise of powers granted to them
7 by this chapter. But the total amount of taxes upon real
8 and personal property levied for municipal purposes in any
9 year shall not exceed the limitations stipulated by article
10 eight, chapter eleven of the official code.

Sec. 14. *Reference.* A reference contained in this chapter
 2 to another provision of the official code shall be construed
 3 to mean the provision as amended. Where additional sec-
 4 tions are added to the subject matter of sections as referred
 5 to in this chapter, the reference shall include such additional
 6 sections.

ARTICLE II. Home Rule Procedure; Charter Elections.

Section 1. *Grant of Charter-making Power.* The voters of
 2 any city may frame, adopt and amend the charter of the cor-
 3 poration in the manner provided by this article.

Sec. 2. *Initiation of Proceedings for Framing a Charter.*
 2 The governing body of a city may, by the affirmative vote of
 3 two-thirds of its members, and shall, upon petition bearing
 4 the signatures, written in their own handwriting, of voters
 5 of the city equal in number to fifteen per centum, if a class I
 6 or class II city, and ten per centum, if a class III city, of the
 7 total registration of voters therein or if there be no registra-
 8 tion of voters then a like per centum of duly qualified voters
 9 for the last preceding general election, provided by
 10 ordinance for the submission at the next regular municipal

11 election, to the voters of the city of the question, "Shall a
12 charter be framed by representatives of the voters?"

13 The ordinance shall provide for a special election if a peti-
14 tion bearing the signatures of voters of the city equal in
15 number to twenty per centum, if a class I or class II city,
16 and fifteen per centum if a class III city, of such registration
17 or qualified voters and expressly requesting that a special
18 election be called for the purpose, shall be presented to the
19 governing body more than one hundred and twenty days
20 prior to the date of the next regular municipal election.
21 The special election shall be held not less than thirty nor
22 more than sixty days after the petition shall have been pre-
23 sented to the governing body.

Sec. 3. *The Ballot; Election of a Charter Board.* Pro-
2 vision shall be made for the election of a charter board con-
3 currently with the submission of the question whether a
4 charter shall be framed. The names of the candidates for
5 membership on the charter board shall be set out in alpha-
6 betical order beneath the question on a special ballot. A
7 voter who shall vote "No" on the question may, neverthe-
8 less, vote for such candidates. The ballot shall bear instruc-

9 tions to this effect, and also instructions which shall indicate
 10 that the names of the candidates are arranged alphabetically
 11 simply for convenience, the number of candidates for which
 12 the voter may vote (which shall be the same as the number
 13 of members to be elected), and that cumulative voting is
 14 permitted.

15 After such an election the votes on the question shall be
 16 counted and canvassed. If the result be in the affirmative
 17 the votes cast for members for the charter board shall be
 18 counted and canvassed and the candidates, in the number to
 19 be chosen, who received the highest number of votes shall be
 20 declared elected.

Sec. 4. *Notice of Election.* The notice of an election on
 2 the question whether a charter shall be framed shall consist
 3 of the initiatory ordinance and a brief prefatory statement
 4 setting out the purpose and date of the election, naming the
 5 candidates, if any, nominated by the governing body for
 6 membership on the charter board and stating how and within
 7 what time limit other nominations may be made. It shall
 8 be published once a week for three consecutive calendar weeks
 9 in two newspapers of opposite politics published in the city,

10 if there be such, and if not, it shall be published in the news-
11 paper having the largest circulation in the city and posted
12 at ten or more public places within the city not less than
13 thirty days prior to the date set for the election. The first
14 publication shall be made not less than thirty days prior to
15 the date fixed for the election.

Sec. 5. *Charter Board; Number, Qualifications and Nomi-*
2 *nation of Members.* A charter board shall consist of eleven
3 members in a class I or class II city and of seven members
4 in a class III city. Members shall be elected at large. Any
5 person who has been a qualified voter of a city for two years
6 at the date of the election of members shall be eligible for
7 membership on the charter board.

8 The governing body of a class I or class II city may nomi-
9 nate five candidates, and that of a class III city three candi-
10 dates for members of a charter board. Other nominations
11 may be made by petition bearing the signatures, written in
12 their own handwriting, of not less than two hundred regis-
13 tered voters of the city. Nominations by the governing body
14 shall be made in the initiatory ordinance. Nominating peti-
15 tions may be filed at any time after the adoption of an ini-

16 tiatory ordinance and not less than ten days prior to the
17 date fixed for the election.

Sec. 6. *Charter Board, Cumulative Voting for Members.*

2 Each voter entitled to vote on the question of framing a
3 charter may cast as many votes for members of the charter
4 board as there are members to be elected. He may cumulate
5 all his votes for one candidate or distribute them among the
6 several candidates as he sees fit.

Sec. 7. *Organization and Powers of Charter Board. A*

2 charter board shall convene within ten days after election
3 and perfect its organization by electing a chairman and clerk
4 from its membership and by determining the rules of its
5 proceedings. A journal shall be kept by the clerk upon
6 which shall be entered, upon demand by any member, the
7 vote by "ayes" and "nays" on any question. A majority
8 shall constitute a quorum. Any voter or taxpayer of a city
9 may file with a charter board thereof any written material
10 bearing upon the purposes of the board that he sees fit and
11 the board shall give material so filed such consideration as it
12 merits. The charter drafting process may be carried on
13 through committees but their work shall be advisory only.

14 A charter board shall complete its draft of charter within
15 one hundred and twenty days after the date of its organiza-
16 tion meeting.

Sec. 8. *Reference of Draft of Charter to the Attorney*

2 *General.* A draft of charter shall, upon its completion, be
3 certified at once to the attorney general of the state. It shall
4 be his duty to examine the draft to determine whether it is
5 consistent in all respects with the constitution and general
6 laws of the state. Within thirty days after receipt of such a
7 draft he shall certify to the charter board in what particu-
8 lars, if any, the draft is, in his opinion, inconsistent or in
9 conflict with the constitution or general laws of the state.

Sec. 9. *Public Hearing on Draft of Charter.* When it

2 shall have completed its draft of charter a charter board
3 shall conduct a public hearing thereon. Notice of the time,
4 place and purpose of the hearing shall be given by publica-
5 tion at least ten days prior to the date set for the hearing in
6 two newspapers of opposite politics published in the city, if
7 there be such, and if not, by publication in a newspaper of
8 general circulation in the city. Notice shall also be posted
9 in at least ten public places in the city at least ten days

10 prior to the date set for the hearing. The notice shall state
 11 where copies of the draft of charter may be obtained. The
 12 hearing may be continued by the charter board by adjourn-
 13 ments over a period not exceeding fourteen days.

Sec. 10. *Completion, Authentication and Filing of Draft*
 2 *of Charter.* A charter board shall have thirty days after
 3 the conclusion of the hearing required by section nine of this
 4 article, or the receipt of the certificate of the attorney general,
 5 required by section eight of this article, whichever shall occur
 6 later, to make any changes it may consider necessary or de-
 7 sirable in its draft of charter.

8 The completed draft of charter shall be signed in triplicate
 9 by at least a majority of the members of the board and two
 10 copies shall be filed with the clerk or other recording officer
 11 of the city, and one with the clerk of the county court.

Sec. 11. *First Charter Board a Continuing Body.* The
 2 members of the first charter board elected in a city under
 3 this act shall hold office for a period of six years, in the
 4 event their draft of charter is adopted. Any vacancy occur-
 5 ring during that period shall be filled temporarily by appoint-
 6 ment by majority action of the remaining members. A suc-

7 cessor shall be elected at the next regular municipal election
8 in the same manner as elective city officers, to hold office for
9 the remainder of the term.

10 The board shall make a continuing study of the functioning
11 of the city government under a home rule charter adopted
12 during its life and may, by a two-thirds vote of its members
13 and not less than four years after such charter shall have
14 taken effect, require the submission to the voters of the city
15 of the question whether the charter shall be revised. By a
16 like vote and at any time not less than one year after the
17 charter shall have taken effect the board may require the
18 submission of one or more proposed charter amendments to
19 the voters of the city. In the event revision is voted pursuant
20 to such submission the board as then constituted shall proceed
21 to prepare a revision of the charter and the process of revision
22 as so initiated shall be the same as that for the framing
23 and adoption of a new charter under this chapter.

Sec. 12. *Submission of Charter to the Voters.* The proposed
2 posed charter shall be submitted to the voters at a special
3 election to be held at the time determined by the charter
4 board. Notice of the time, place and purpose of a charter

5 election shall be given by publication once a week for three
 6 consecutive calendar weeks in two newspapers of opposite
 7 politics published in the city, if there be such, and if not, in
 8 a newspaper of general circulation in the city. Notice shall
 9 be posted at ten or more public places within the city not
 10 less than thirty days prior to the date set for the election.
 11 The first of said publications shall be made not less than
 12 thirty days prior to the date fixed for the election. Each such
 13 notice of election shall state that any qualified voter of the
 14 city may obtain a copy of the proposed charter from a desig-
 15 nated officer and place upon request.

Sec. 13. *When a Home Rule Charter Takes Effect.* A
 2 home rule charter shall take effect on the first day of the
 3 fiscal year next after the date of its adoption, if the interim
 4 exceeds sixty days; and otherwise on the first day of the sec-
 5 ond fiscal year after its adoption.

6 If a proposed charter shall be approved by the voters of a
 7 city one of the signed copies on file with the recording officer
 8 of the city, with a certified copy of the declaration of result
 9 of the election showing the total votes cast for and against
 10 adoption attached, shall be certified forthwith to the clerk

11 of the house of delegates of the legislature, in his capacity
12 as keeper of the rolls. The same shall be preserved by said
13 clerk as an authentic public record. After the effective date
14 of a charter so filed all courts shall take judicial notice of
15 its provisions.

16 A copy of the declaration of the result of the election
17 showing the total votes cast for and against adoption shall
18 be certified to the clerk of the county court for filing with
19 the signed copy of the charter previously deposited with
20 him.

Sec. 14. *Home Rule Charter Supersedes Existing*
2 *Charter; Effect on Local Legislation and Administrative*
3 *Law.* A home rule charter shall entirely supersede the **prior**
4 charter of a city. All legislative and administrative acts or
5 rules theretofore adopted by the governing body and ad-
6 ministrative agencies of a city which are inconsistent or in
7 conflict with a home rule charter, shall continue in force for
8 sixty days after the effective date of the home rule charter,
9 unless sooner modified or repealed by competent authority;
10 but at the end of this period, shall to the extent of such
11 inconsistency or conflict, be of no further force or effect.

Sec. 15. *Charter Amendment.* The voters of a city may
2 amend an existing special charter or a charter adopted under
3 the provisions of this chapter. An amendment may be ini-
4 tiated in the same manner as for the adoption of a charter.
5 An amendment to a charter adopted hereunder may also
6 be initiated in the manner provided in section eleven of this
7 article.

8 A special election shall be called to pass upon a proposed
9 charter amendment if (1) the date of the next regular mu-
10 nicipal election shall be more than ninety days after the date
11 fixed for such special election; (2) the governing body by
12 the affirmative vote of two-thirds of its members shall deter-
13 mine as a fact that an emergency exists which requires that
14 the proposal be submitted without delay; or (3) a petition
15 expressly requesting the election, which has been signed by
16 twenty per centum of the total registration of the voters
17 in the city for the last preceeding general election, in case of
18 a class I or class II city, or by fifteen per centum thereof, in
19 case of a class III city, has been filed with the governing
20 body. In any other case a proposed charter amendment shall
21 be submitted at the next regular municipal election. The

22 petition or ordinance proposing a charter amendment shall
23 set it out in full.

24 The date of a special election for the purpose shall be fixed
25 by the initiatory ordinance. The notice of the election shall
26 state the time, place and purpose thereof and shall set out the
27 proposed amendment or amendments at length or state that
28 copies may be obtained by any qualified voter from a desig-
29 nated officer at a stated place upon request. Notice shall
30 be published and posted, as in the case of a charter election.

31 A charter amendment shall take effect on the date that
32 the canvass and declaration of result showing approval by
33 the voters has been made and entered in the minutes of the
34 governing body, and one copy thereof with a copy of the
35 canvass and declaration of result attached shall be certified
36 to the clerk of the house of delegates, as keeper of the rolls,
37 and another to the clerk of the county court.

Sec. 16. *Charter Revision.* A charter adopted pursuant
2 to this article may be revised in like manner as framed and
3 adopted but no revision shall be made within four years of
4 the effective date of such a charter or of the last preceding
5 revision, as the case may be.

Sec. 17. *Submission of Alternative Provisions.* A charter,
2 charter revision or charter amendment may be proposed with
3 alternative provisions for submission to the voters and the
4 same may be voted upon separately without prejudice to
5 the primary question whether the proposed charter, charter
6 revision or amendment shall be adopted or to other provisions
7 thereof.

Sec. 18. *Qualifications for Voting Registration.* The
2 qualifications for voting at an election held under this article
3 shall be those prescribed by the constitution and by chapter
4 three of the official code.

5 For purposes of any election in a city under this article
6 the latest registration of voters for regular municipal elec-
7 tions shall be used.

Sec. 19. *Requisite Vote; Ballot.* A simple majority of
2 the votes cast on the question shall be determinative of any
3 proposition submitted to the voters of a city under this arti-
4 cle. A separate, special ballot without party designation
5 shall be used at every election held under this article even
6 though conducted at the same time as another election,
7 whether general or special.

Sec. 20. *Conduct of Elections; Canvass and Declaration*

2 of Result. A special election held under this article shall
3 be conducted in like manner as a regular municipal election.

4 The governing body of a city shall canvass the returns at
5 relatively the same time with reference to an election held
6 hereunder and in the same manner as county courts are
7 required to do with respect to general elections, and shall
8 declare the result of the election. This requirement shall
9 apply to any election held under this article whether it be
10 special or conducted in conjunction with a regular municipal
11 election. The canvass and declaration of result shall be en-
12 tered in the minutes of the governing body on the date
13 made.

Sec. 21. *Expense of Proceeding.* The governing body of

2 a city shall make full provision for the expense of advertising
3 and holding any election and all other proper expenses in-
4 curred in complying with the provisions of this article, in-
5 cluding the expenses of a charter board, but the members of
6 a charter board shall receive no compensation.

Sec. 22. *Election Officials.* In a special election held

2 under this article, election officials shall be of the number

3 and shall perform the duties prescribed by general law.
 4 Election officials shall be appointed by the local governing
 5 body, but the proponents and opponents of the new charter
 6 or charter amendment shall be entitled to representation
 7 among the election officials at each polling place. Election
 8 officials shall be designated as follows:

9 (1) The proponents and the opponents, or either, of a
 10 new charter or a charter amendment, if organized, may not
 11 less than ten days prior to the date of the special election
 12 file with the local governing body a list of persons nomi-
 13 nated as election officials to represent their organization.
 14 The governing body shall appoint as election officials the
 15 persons so nominated. If the proponents or opponents, or
 16 either, of a new charter or charter amendment desire rep-
 17 resentation at a special charter or charter amendment
 18 election as an organization they shall, within ten days
 19 after the official notice of the election has been published
 20 for the first time, submit to the governing body a state-
 21 ment showing the name, officers and members of their
 22 organization. An organization shall have as members at
 23 least five per cent of the registered voters of the city.

24 A person shall not be a member of more than one such
25 organization;

26 (2) If the proponents and opponents, or either, of a new
27 charter or charter amendment are not organized, the govern-
28 ing body shall not less than eight days prior to the special
29 election appoint as representatives of proponents and op-
30 ponents or either as the case may be an equal number of
31 persons known to be in favor of the proposed charter or
32 amendment and of persons known to be opposed to the
33 proposed charter or amendment, to act at each polling place.

ARTICLE III.—Home Rule Charters; Ordinances.

Section 1. *Home Rule Charters.* A home rule charter
2 shall provide for a form of city government in accordance
3 with Plans, I, II, III or IV of this article. The intention of
4 sections two through five inclusive of this article is to
5 establish basic requirements of alternative plans of structure
6 and organization. The structure and organization of a city
7 government under a home rule charter may be specified by
8 the charter in respects other than those enumerated, and in
9 elaboration of the basic requirements, in so far as such pro-

visions do not conflict with the purpose and the provisions of the alternative plans prescribed.

Sec. 2. *Plan I: "Mayor-council Plan."* A home rule charter may provide for a form of government as follows:

(1) A city council, elected at large or by wards, or both, by the voters of the city;

(2) A mayor elected by the voters of the city;

(3) Such other elective officers as the charter may prescribe;

(4) The mayor and council shall be the governing body.

Sec. 3. *Plan II: "Strong-mayor Plan."* A home rule charter may provide for a form of government as follows:

(1) A mayor elected by the voters of the city;

(2) A city council elected at large or by wards, or both, by the voters of the city;

(3) The council shall be the governing body;

(4) The mayor shall be the administrative authority;

(5) Other officers and employees shall be appointed by the mayor or by his order in accordance with this chapter.

Appointments by the mayor or by his order may be made subject to the approval of the council.

Sec. 4. *Plan III: "Commission Government."* A home

rule charter may provide for a form of government as follows:

(1) A commission of three or five members elected at large by the voters of the city;

(2) The commissioners shall be as follows: A commissioner of public affairs, a commissioner of finance, a commissioner of public safety, a commissioner of public works, and a commissioner of streets. A charter for a class III city shall, and a charter for a class I or class II city may provide for a commission of three members to be 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 of the city;

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

Sec. 5. *Plan IV: "Manager Plan."* A home rule charter

2 may provide for a form of government as follows:

3 (1) A council of not to exceed seven members elected at
4 large by the voters of the city;

5 (2) A mayor elected by the council from among its
6 membership, who shall serve as the presiding officer of the
7 council;

8 (3) A city manager who shall be appointed by the
9 council;

10 (4) The council shall be the governing body;

11 (5) The manager shall be the administrative authority.

12 He shall manage the affairs of the city under the super-
13 vision of the council and he shall be responsible to them.

14 He shall appoint or employ in accordance with this chapter
15 all subordinates and employees for whose duties or work he
16 is responsible to the council.

Sec. 6. *Municipal Officers and Employees.* Subject to

2 the provisions of the state constitution, general law and this
3 chapter, a home rule charter or, in the absence of charter
4 provisions, a governing body may determine and regulate
5 the number, method of selection, tenure, qualifications, com-

6 pensation, and powers and duties of city officers and em-
7 ployees.

Sec. 7. *Elections.* Regular city elections under a home
2 rule charter shall be held on the first Tuesday in June at
3 which elective city officers shall be chosen to take office
4 upon the first day of July next ensuing for a term of as
5 many years, not to exceed four, as the charter may pre-
6 scribe.

7 Persons shall be eligible to vote at city elections who are
8 qualified to vote at general elections in this state and who
9 have resided in the city for at least sixty days. But a
10 charter may provide that a person shall be ineligible to
11 vote in city elections who has not lived within the city for
12 at least six months.

13 A home rule charter shall provide a method and time of
14 registering voters, nominating candidates, conducting elec-
15 tions, and determining and certifying results of elections.

16 A charter may prescribe that county registration books be
17 used for the purposes of registration, and that the pro-
18 visions of general law with respect to primary and general
19 elections, so far as applicable, shall apply to city elections.

20 The provisions of article seven, chapter three of the official
21 code relating to offenses and penalties shall apply to all
22 elections held under this chapter.

Sec. 8. *Initiative Referendum and Recall.* A home rule

2 charter may provide for any or all of the following:

3 (1) The initiation of ordinances by petition of not less
4 than ten per cent of the voters;

5 (2) The submission to the voters of a proposed ordinance
6 at a regular or special election upon the petition of not less
7 than ten per cent of the voters or upon resolution of the
8 governing body;

9 (3) The holding of a special election to submit to the
10 voters the question of the recall of an elected officer upon
11 petition of not less than twenty per cent of the voters. Not
12 more than one recall election shall be held with respect to
13 an officer during his term of office.

Sec. 9. *Ordinances.* In the following enumerated cases

2 the action of a governing body shall be by ordinance:

3 (1) Levying taxes or providing for the collection of fees
4 of any kind;

5 (2) Requiring a license to do business;

- 6 (3) Relating to offenses and penalties;
- 7 (4) Authorizing the issuance of bonds or other forms of
- 8 indebtedness;
- 9 (5) Providing for a public improvement;
- 10 (6) Providing for the purchase of private property by
- 11 the city or for the sale of property belonging to the city;
- 12 (7) Laying out or vacating a public street, alley, or way;
- 13 (8) Relating to zoning;
- 14 (9) Granting franchises to public utilities;
- 15 (10) Providing for a contractual or other agreement with
- 16 another jurisdiction;
- 17 (11) Relating to such other matters as the charter may
- 18 require;
- 19 (12) Any other case in which an ordinance is required
- 20 by this chapter.

Sec. 10. *Ordinance Procedure.* The governing body of

2 a city shall enact an ordinance in the cases specified by sec-

3 tion nine of this article in accordance with the following

4 requirements:

- 5 (1) An ordinance shall be read at not less than two meet-

6 ings with at least one week intervening between each meet-
7 ing;

8 (2) Before final passage an ordinance shall be published
9 in two newspapers of opposite politics published in the city,
10 if such there be, and otherwise in one newspaper so pub-
11 lished. If no newspaper is published in the city, publica-
12 tion shall be in a newspaper of general circulation in the
13 city;

14 (3) An ordinance shall not be finally passed until after
15 three days have elapsed after the date of publication and
16 persons interested have been given an opportunity to attend
17 a meeting of the council and be heard with respect to the
18 ordinance;

19 (4) An ordinance shall not be materially amended at the
20 same meeting at which finally passed. If materially amend-
21 ed after publication the ordinance shall be republished and
22 considered as though publication had not taken place.

23 A home rule charter may prescribe a procedure for the
24 enactment of ordinances in greater detail than prescribed
25 by this section, but the provisions of this section shall be
26 required. A governing body may enact an ordinance under

27 suspension of the rules prescribed by this section only in the
28 case of a pressing public emergency making a procedure in
29 accordance with the section dangerous to the public health,
30 safety, or morals, and by the affirmative vote of two-thirds
31 of the members elected to the governing body. The nature
32 of the emergency shall be set out in full in the ordinance.

ARTICLE IV. Powers of Home Rule Cities.

Section 1. *General Provisions.* Every city, from and
2 after the adoption of a charter under this chapter shall
3 have all the powers conferred by this chapter upon cities
4 of the class to which it belongs. A city operating under
5 a home rule charter may exercise its powers beyond the
6 boundaries of the city so far as may be necessary to assure
7 the effective exercise of its powers within the city, but no
8 authority is conferred hereby to exercise governmental
9 powers within the limits of any other municipality.

Sec. 2. *General Provisions; Police Power.* A city shall
2 have the power to protect and promote the public safety,
3 health, morals and welfare by the exercise of the powers
4 granted by this article. The enumeration of powers in this
5 article shall not operate to exclude the exercise of other

6 powers fairly incidental thereto or reasonably implied and
7 within the purposes of this chapter; and the provisions of
8 this article shall be given full effect without regard to the
9 common law rule of strict construction.

Sec. 3. *Public Morals, Peace and Good Order.* A city
2 may exercise its police power to protect the public morals,
3 safety and good order. It may prevent and suppress con-
4 duct and practices which are immoral, disorderly, lewd,
5 obscene and indecent.

Sec. 4. *Police Department.* A city may provide for and
2 maintain a police department. The department shall be
3 subject to authority, control and discipline of the local
4 administrative authority.

Sec. 5. *Police Court.* A city may provide for the creation
2 and maintenance of a police court and for the selection by
3 appointment or by election of a police judge. The police
4 court shall have criminal jurisdiction over violations of city
5 ordinances and the criminal jurisdiction of a justice of the
6 peace. A person convicted in a police court shall have the
7 right to an appeal *de novo* to the court having jurisdiction
8 over appeals from justice of the peace courts in the county

9 in the same manner as provided by law for appeals from
10 justice of the peace courts.

Sec. 6. *Fire Department.* A city may provide for, equip
2 and maintain a fire department. The department shall be
3 subject to the authority, control and discipline of the local
4 administrative authority.

5 A city may contribute to the support of a volunteer fire
6 department by providing a fire house, fire fighting equip-
7 ment, necessary paid personnel and incidental requirements
8 to maintain the department upon an efficient basis. A
9 volunteer fire department shall be subject to the authority
10 of the local governing body.

Sec. 7. *Public Library.* A city may provide for the
2 establishment and maintenance of a public library by
3 ordinance or may submit the question to the voters of the
4 municipality in accordance with article one, chapter ten of
5 the official code.

Sec. 8. *Public Recreation.* A city may provide for the
2 establishment and maintenance of public recreation and play-
3 grounds by ordinance or in accordance with article two,
4 chapter ten of the official code.

Sec. 9. *Public Health Unit.* A city may establish and
2 maintain a public health unit in accordance with section two,
3 article two, chapter sixteen of the official code. A public
4 health unit shall exercise its powers subject to the super-
5 vision and control of the state public health council and
6 the state department of health.

Sec. 10. *Purchasing.* A city may provide for the central-
2 ized purchasing of materials, supplies and equipment. A
3 city may, by agreement with the state director of purchases,
4 purchase through the state department of purchases or may
5 make agreements with one or more other municipalities,
6 counties, and/or county boards of education, for centralized
7 purchasing for all governmental units which are parties to
8 such an agreement.

Sec. 11. *Retirement Pensions for Policemen and Firemen.*
2 Cities of class I and class II shall, and cities of class III
3 may provide for pension and relief funds for firemen or
4 policemen, or both, by charter provisions, or by ordinance,
5 in accordance with sections ten through twenty-one, article
6 six, chapter eight of the official code. Amounts paid into
7 a pension and relief fund shall be held in trust for the pur-

8 poses of the fund, and shall not be used for or diverted to
9 any other purpose. A city may extend a pension and relief
10 fund to include all or specific classes of other city employees.

Sec. 12. *Regulatory Licenses.* A city may regulate the
2 business of and require a special license to be obtained
3 by:

4 (1) Hawkers, peddlers, solicitors and other persons sell-
5 ing from door to door;

6 (2) Persons maintaining or operating pool rooms, audi-
7 toriums, theaters, and other places of public gathering and
8 recreation;

9 (3) Persons dealing in second hand or used articles, in-
10 cluding pawn brokers and junk dealers;

11 (4) Businesses or activities affecting the public health
12 or safety;

13 (5) Any other business or practice to which the police
14 power extends.

Sec. 13. *Municipal Inspection.* A city may provide for
2 the entering and inspection of private premises for the pur-
3 pose of the enforcement of state law and city ordinances.
4 This section shall not be construed to authorize an unreason-

5 able search or seizure in violation of section six, article
6 three of the state constitution.

Sec. 14. *Permits for Construction and Alteration.* The
2 city may require a permit as a condition precedent to the
3 construction, alteration or repair of any structure or of any
4 equipment or parts of structures that are regulated by state
5 law or city ordinance.

Sec. 15. *Hazards to Life and Property: Abatement of*
2 *Nuisances.* The city may provide for the elimination of
3 hazards to public health and safety and may define and abate
4 public nuisances.

Sec. 16. *Animals Within City Limits.* A city may regu-
2 late or prohibit the keeping of animals within the city
3 limits. A city may provide for the impounding, sale and
4 destruction of animals kept contrary to law or found running
5 at large.

Sec. 17. *Articles Unfit for Human Use or Consumption.*
2 A city may regulate or prohibit the purchase or sale of
3 articles which are unfit for human use or consumption or
4 which may be contaminated or otherwise unsanitary.

Sec. 18. *Accumulation of Refuse.* A city may prohibit

2 the accumulation and require the disposal of garbage, refuse,
3 waste, ashes, trash and any other similar matter.

Sec. 19. *Building Regulation: General and Special*
2 *Codes.* A city may, by ordinance, or by a code of ordinances:

3 (1) Regulate the erection, construction, repair and alter-
4 ation of structures of every kind within the city. A city
5 may prohibit, within specified territorial limits the erection,
6 construction, repair and alteration of structures of wood or
7 other combustible material. Regulations may extend to
8 excavations upon private property;

9 (2) Regulate electric wiring prescribing minimum specifi-
10 cations to be followed in installation, alteration or repairs;

11 (3) Regulate plumbing by prescribing minimum specifi-
12 cations to be followed in the installation, alteration or repair
13 of plumbing including equipment, water and sewer pipe,
14 traps, drains, cesspools and septic tanks.

Sec. 20. *Opening of Streets.* A city may provide for the
2 opening and excavation of public streets, and ways, and
3 public places of the city, and may regulate the conditions
4 under which such openings may be made. Regulations shall
5 apply to streets maintained by the state only in the absence

6 of regulations applying thereto prescribed by the state road
7 commission pursuant to general law.

Sec. 21. *Regulation of Traffic.* A city may regulate the
2 use of public streets and ways, and public places of the
3 city. Regulations applying to streets or ways maintained
4 by the state shall be subject to provisions of law relating
5 to state roads and the regulations prescribed by the state road
6 commission.

Sec. 22. *Conservation; Shade Trees, Lowlands and Water*
2 *Courses.* A city may provide for:

3 (1) The protection and conservation of shade or orna-
4 mental trees whether on public or private property and
5 the removal of trees or limbs of trees in dangerous con-
6 dition;

7 (2) The construction and maintenance of water drains
8 and the drainage of swamps or marsh lands;

9 (3) The construction, maintenance and covering over of
10 water courses.

Sec. 23. *Signs, Billboards and Advertising.* A city may
2 regulate by ordinance the location and placing of signs,
3 billboards, posters and similar advertising.

Sec. 24. *Planning and Zoning.* A city may provide for
city planning and zoning in accordance with article five,
chapter eight of the official code.

Sec. 25. *Public Property and Improvements.* A city
shall have power:

(1) To establish and maintain public buildings, including
a city hall, public auditoriums and a city jail, necessary
or appropriate for the performance of municipal functions;

(2) To lay out, establish, construct, maintain, operate,
alter and discontinue streets, sewers and drainage systems,
sewage disposal plants and street lighting systems;

(3) To establish, construct and maintain, operate, alter
and discontinue bridges, tunnels and ferries, and approaches
thereto;

(4) To establish, construct, maintain and operate markets,
parks, recreation grounds, municipal camps, and parking
lots, and upon the discontinuance thereof to sell and convey
the same;

(5) To control and administer the water front and water-
ways of the city, and to establish, maintain, operate and
regulate flood control works, wharves and public landings,

19 warehouses and all adjuncts and facilities for navigation and
20 commerce and the utilization of the water front and water-
21 ways and adjacent property;

22 (6) To establish, maintain, manage and administer
23 hospitals, sanitarium, dispensaries and public baths;

24 (7) To establish, maintain and operate airports as pro-
25 vided by article eleven, chapter eight of the official code;

26 (8) To establish, maintain and operate cemeteries;

27 (9) To establish, maintain, manage and administer ab-
28 batoirs, incinerators and all other facilities for the efficient
29 removal and destruction of garbage, refuse and other offensive
30 matter;

31 (10) To exercise its police powers to protect the water-
32 shed and water supply of the city and to exercise general
33 police jurisdiction over any territory beyond its limits
34 owned by the city or over which it has a right-of-way.

Sec. 26. *Municipal Ownership and Operation of Public*

2 *Utilities.* Subject to general law a city shall have power to
3 acquire or establish, improve, operate, maintain and repair,
4 within or without the city, water systems and electric and gas
5 systems for the production and distribution of light, heat

6 and power primarily for the benefit of the city and con-
7 sumers therein. A city may acquire watersheds, water
8 and riparian rights, plant sites, rights-of-way and any and all
9 other property and appurtenances necessary or appropriate
10 for such a system. The products and services of any such
11 utility may be sold to consumers outside the city limits to
12 the extent, in the judgment of the governing body, that they
13 are not required to satisfy the needs of consumers within
14 the city.

15 A city may purchase the franchises and properties of a
16 privately owned public utility which the city would have
17 the authority to acquire and construct as an original under-
18 taking.

Sec. 27. *Alienation of Municipal Public Utilities.* No
2 city shall alienate the franchises and properties of a munici-
3 pal public utility or lease the same for a period in excess of
4 ten years unless the proposition shall first have been sub-
5 mitted to the voters of the city in the manner provided by
6 this chapter for the submission of proposed charter amend-
7 ments and shall have been approved by a majority of the
8 voters voting thereon. This limitation does not apply to such

9 parts of the franchises or properties of a municipal utility
10 system as the governing body shall determine to be unneces-
11 sary for the efficient rendering of the services to the city
12 and consumers within the city.

Sec. 28. *Franchises.* A city shall have power to grant
2 franchises or rights to use the streets, waters, water front,
3 public ways and public places in the city. No franchise shall
4 be granted for a period in excess of twenty-five years, nor
5 until after a public hearing has been held thereon after notice
6 of the time, place and purpose of the hearing shall have been
7 given once a week for four successive calendar weeks in a
8 newspaper of general circulation in the city.

Sec. 29. *General Welfare; Miscellaneous Powers.* A city
2 shall have power:

3 (1) To investigate and inquire into all matters of concern
4 to the city or its inhabitants;

5 (2) To establish, maintain, manage and administer instru-
6 mentalities other than free public schools for the instruction,
7 enlightenment, improvement, entertainment, recreation and
8 welfare of its inhabitants as it may deem appropriate or neces-
9 sary for the public interest;

10 (3) To create, maintain and administer a system or sys-
11 tems for the enumeration, identification and registration, or
12 either, of the inhabitants of the city and visitors thereto, or
13 such classes thereof as may be deemed advisable;

14 (4) To appropriate and expend not exceeding twenty-five
15 cents per capita per annum for advertising the city and the
16 entertainment of visitors.

Sec. 30. *Civil Service.* A city may provide by charter
2 provision for a merit system for all or any class of city
3 employees in addition to those classes for which a merit
4 system is made mandatory by general law.

Sec. 31. *Intermunicipal Contracts and Agreements.* Two
2 or more cities, a city and a town or village, a city and a
3 county whether the city is located within the county or not,
4 or a city and a county board of education may engage jointly
5 in the exercise of any power, the making of any improvement,
6 or the promotion and maintenance of any undertaking which
7 the several parties are empowered to exercise or undertake
8 separately under this chapter or by any other provision of
9 general law or special act.

10 The contract or agreement shall be reduced to writing,
11 and before final approval by the governing bodies involved,
12 shall be submitted to the attorney general. After approval,
13 by the governing bodies concerned certified copies of the con-
14 tract or agreement shall be filed in the office of the county
15 clerk of the county or counties in which the local jurisdictions
16 are located, and in the office of the state tax commissioner.
17 A contract or agreement shall be limited in duration to one
18 fiscal year unless ratified by popular vote of the qualified
19 voters of the several jurisdictions voting separately at a
20 regular or special election.

Sec. 32. *Special Powers of Class I and Class II Cities.*

2 A class I or class II city shall have the power:

3 (1) To operate and maintain passenger transportation
4 lines and facilities. Such lines may be operated for a dis-
5 tance of not exceeding three miles beyond the limits of the
6 city, but may not be operated within the limits of another
7 municipality without the consent of the governing body
8 thereof;

9 (2) For the purpose of inquiring into and investigating
10 matters of concern to the city and its inhabitants, to require

11 the attendance and testimony of witnesses and the produc-
12 tion of evidence. In case of failure or refusal of a witness to
13 appear and testify, or to produce evidence, the governing
14 body may invoke the aid of the circuit court of the county.
15 Upon proper showing, the circuit court shall issue an order
16 requiring a witness to appear and to produce evidence and
17 to give testimony concerning the matter in question. A per-
18 son who fails or refuses to obey the order of the circuit court
19 may be punished by the court as for contempt.

20 A claim that any such testimony or evidence may tend to
21 incriminate the person giving the testimony or evidence shall
22 not excuse the witness, but such testimony or evidence shall
23 not be used against the witness in any criminal prosecution
24 under the laws of the state or a municipal ordinance;

25 (3) To provide for a sealer of weights and measures who
26 shall exercise his powers in accordance with article one, chap-
27 ter forty-seven of the official code.

ARTICLE V. Taxation and Finance.

Section 1. *General Property and Benefit Taxes.* A city
2 shall have power:

3 (1) To levy and collect taxes on real and personal prop-

erty for any municipal purpose within the limitations and subject to the classifications prescribed by the constitution and general laws of the state. The assessment, levy and collection of such taxes shall be governed by chapter eleven of this code;

(2) To finance public improvements by the levy and collection of special assessments or other benefit taxes in the manner and to the extent permitted by articles eight and nine of chapter eight of this code and by any other general law. The entire cost of sidewalk construction, including curbing, may be imposed upon the owners of abutting property and made a lien thereon which shall have priority over all other liens except tax liens.

Sec. 2. *Capitation Taxes.* A city shall have power to levy and collect an annual capitation tax upon all inhabitants who have attained the age of twenty-one years. The governing body may exempt from such tax all persons who are dependent in whole or in part upon public assistance for their support. The rate of such tax shall not exceed two dollars per person and the revenue so produced shall be applied pri-

8 marily to the maintenance and repair of streets and other
9 public ways and places.

Sec. 3. *License and Privilege Taxes.* A city may levy
2 and collect an annual license tax upon businesses, occupations,
3 or economic activities regularly conducted within the city,
4 and a special license tax upon an itinerant or transitory busi-
5 ness occupation or economic activity conducted within the
6 city, as follows:

7 (1) Upon any public utility business exercising a fran-
8 chise from the city. The annual tax shall not exceed five
9 hundred dollars in class I cities, three hundred fifty dollars
10 in class II cities, and two hundred dollars in class III cities;

11 (2) Upon any manufacturing or other production busi-
12 ness or activity. The annual tax shall not exceed two hundred
13 dollars in class I cities, one hundred fifty dollars in class II
14 cities, and one hundred dollars in class III cities;

15 (3) Upon any wholesale or other intermediate distribution
16 business or activity. The annual tax shall not exceed one
17 hundred fifty dollars in class I cities, one hundred twelve
18 dollars fifty cents in class II cities and seventy-five dollars
19 in class III cities;

20 (4) Upon any amusement or entertainment business or
 21 activity, other than literary, dramatic, musical, or benevolent
 22 societies not conducted for private profit or gain. The annual
 23 tax shall not exceed two hundred dollars in class I cities,
 24 one hundred fifty dollars in class II cities, and one hundred
 25 dollars in class III cities;

26 (5) Upon the business of selling tangible personal prop-
 27 erty at retail, except farmers selling products produced by
 28 them, and upon any service business, agency or calling. The
 29 annual tax shall not exceed one hundred dollars in class I
 30 cities, seventy-five dollars in class II cities, and fifty dollars
 31 in class III cities;

32 (6) Upon any profession, recognized and regulated as
 33 such by the laws of this state. The annual tax shall not ex-
 34 ceed twenty-five dollars in a class I or class II city and fifteen
 35 dollars in a class III city;

36 (7) If the business, occupation, or activity taxed under
 37 this section is conducted at two or more separate places, or
 38 locations, each of which is a distinct branch or business unit,
 39 a separate license tax may be imposed and collected for each
 40 place or location;

41 (8) A license tax levied under this section may be further
42 classified within the classes for which maximum amounts of
43 taxes are fixed to the extent that such further classifications
44 are not unreasonable or discriminatory in effect.

Sec. 4. *Motor Vehicle Operator's Tax.* A city may levy
2 and collect an annual motor vehicle operator's license tax of
3 not exceeding two dollars. The tax shall apply only to inhab-
4 itants of the city.

Sec. 5. *Amusement Tax.* A city may levy and collect an
2 admission and amusement tax upon any public amusement
3 or entertainment conducted for private profit or gain. The
4 tax shall be added to and collected with the price of admis-
5 sion, or other charge for the amusement or entertainment.
6 The tax shall not exceed three per cent of the admission price
7 or charge, but a tax of one cent may be levied and collected
8 in any case.

Sec. 6. *Domestic Animals.* A city may levy and collect
2 an annual license tax upon the privilege of keeping a domestic
3 animal.

Sec. 7. *Preservation of Prior Taxing Powers.* A city may
2 include within a home rule charter, and may continue to

3 exercise under a home rule charter, powers of taxation, other
 4 than property taxes, which are contained in a special charter
 5 in effect upon the adoption of this chapter, and which are
 6 not in conflict with general law.

Sec. 8. *Fees and Charges for Municipal Services.* A city
 2 shall have power to charge and collect reasonable rates, fees
 3 and charges for municipal services other than those rendered
 4 as fire and police protection, subject to the provisions of
 5 chapter twenty-four, of the official code of West Virginia as
 6 amended. In the case of police power services, which may
 7 be mandatory upon those served, the charge shall be based
 8 upon and shall not substantially exceed the cost of render-
 9 ing the same.

Sec. 9. *Borrowing Power.* A city shall have power to
 2 borrow money on the general faith and credit of the city for
 3 any municipal purpose in the manner and subject to the limi-
 4 tations provided by article nine of chapter eight and by chap-
 5 ter thirteen of this code.

Sec. 10. *Audits and Accounts.* The provisions of article
 2 nine, chapter six of the official code shall apply to cities under
 3 this chapter. A home rule charter or, in the absence of char-

4 ter provision, a governing body of a city may provide for a
5 system of budgeting, accounting, and record-keeping, and for
6 the conduct of the transactions of the city, but such provi-
7 sion shall not conflict with article nine, chapter six of the
8 official code or with the regulations or orders promulgated
9 under it by the state tax commissioner.

CONSOLIDATION

ARTICLE VI.

Section 1. *Authority to Consolidate.* Any two or more
2 adjoining municipalities in this state, lying in the same
3 county, may consolidate and become one municipality in the
4 manner provided in this article.

Sec. 2. *Petition and Resolution.* Upon the presentation
2 to the governing body of a municipality of a petition, signed
3 by twenty per cent of the qualified voters thereof, requesting
4 consolidation with one or more municipalities and setting
5 forth the name by which the consolidated municipality is to
6 be known, the governing body shall forthwith adopt a
7 resolution proposing such consolidation.

Sec. 3. *Order for Elections.* The governing body shall
2 forthwith present a copy of the resolution to the circuit court

3 of the county or the judge in vacation. If the court, or
4 judge receives copies of such resolutions from the respective
6 governing bodies of two or more municipalities proposing
7 to consolidate with each other, it shall be the duty of the
8 court or judge to call, by written order, an election to be
9 held within such municipalities for a determination, by the
10 qualified voters of the respective municipalities, upon the
11 question of consolidation. The order shall set the date for the
12 elections, which date shall be not less than thirty nor more
13 than sixty days from the date of the order, and shall be on
14 the same day in each of the municipalities concerned.

15 The order shall state the names of the municipalities, the
16 object of the election, and the name by which the con-
17 solidated municipality is to be known.

18 The order shall forthwith be filed in the office of the clerk
19 of the county court, and true copies shall at once be served
20 upon the clerk, or other recording officer, of each of the
21 municipalities concerned.

* Sec. 4. *Elections.* The elections shall be held as are
2 other municipal elections. The provisions of law governing

3 regular municipal elections shall, except as otherwise pro-
4 vided herein, apply to those held under this article.

5 The question of the consolidation of the same municipalities
6 shall not be submitted to the voters thereof more often than
7 once in two years.

Sec. 5. *Ballots; Expenses of Elections.* The ballots to
2 be used shall be in substantially the following form:

3 Shall (name
4 the municipalities) be consolidated and become one munici-
5 pality, to be known as?
6 (name of the proposed new municipality).

7 For consolidation ☐

8 Against consolidation ☐

9 The expenses of the elections shall be borne by the separate
10 municipalities.

Sec. 6. *Counting and Canvassing; Certificate of Results.*

2 The county court shall furnish sealed ballot boxes to the
3 proper officers of the municipalities wherein the elections are
4 to be held. The municipal officers responsible for the custody
5 of the ballots, shall, immediately upon the closing of the
6 elections, transmit the ballot boxes to the county court, sealed

7 and unopened. The county court shall proceed to count and
8 canvass the votes cast, and shall forthwith certify over their
9 signatures to the circuit court or judge in vacation the result
10 of the canvass, showing distinctly in their certificate the
11 number of votes for and the number of votes against the
12 consolidation in each of the municipalities, and also the num-
13 ber of voters in each municipality who voted on the question.

Sec. 7. *Endorsement of Certificate; Filing.* If a majority
2 of the qualified voters in each of the municipalities are shown
3 by the county court's certificate to have voted in favor of the
4 consolidation, the circuit court or judge, if satisfied as to the
5 correctness of the returns evidenced by that certificate, shall
6 so certify upon the certificate. He shall cause the same to be
7 filed forthwith in the office of the clerk of the county court,
8 and to be published in a newspaper of general circulation in
9 the municipalities so voting.

Sec. 8. *Effective Date of Consolidation.* The consolida-
2 tion shall be effective at twelve o'clock noon of the first
3 day of the fiscal year next succeeding the date of the elections
4 unless that day is less than ninety days prior to such date,
5 in which event the consolidation shall be effective at twelve

6 o'clock noon of the first day of the fiscal year next but one
7 succeeding that date.

Sec. 9. *Charter and Ordinances of New Municipalities.*

2 When the consolidation becomes effective, the consolidated
3 municipalities shall constitute and be one municipality under
4 the name set forth in the initiatory petitions and the election
5 order.

6 The charter of the consolidating municipality having the
7 largest population shall, when the consolidation becomes
8 effective, be and remain the charter for the whole of the
9 consolidated territory, until supplanted.

10 The ordinances, resolutions, orders, rules and regulations
11 in force in the consolidating municipality having the largest
12 population when the consolidation becomes effective, shall
13 extend to and be in force throughout the newly consolidated
14 municipality, until they are supplanted. And the ordinances,
15 resolutions, orders, rules and regulations of the other
16 municipalities shall cease to be operative.

Sec. 10. *Ward Representation.* If the charter applying
2 to the new municipality provides for ward or other territorial
3 representation, in whole or in part, upon the membership

4 of the governing body, every ward or similar division in the
5 new municipality shall be entitled to representation upon
6 the governing body of the new municipality.

7 The commission provided for in section eleven of this
8 article shall give careful attention to this section before
9 commencing upon their prescribed duties.

Sec. 11. *Commission on Wards and Election Districts.*

2 Within one week after the filing and publication provided
3 for in section seven of this article, a joint commission shall
4 be formed consisting of the mayor or other chief executive
5 officer and the clerk or other recording officer of each
6 municipality to be consolidated, and three inhabitants thereof
7 appointed by the governing body.

8 The commission shall be called together by the mayor or
9 other chief executive of the consolidating municipality
10 largest in population, at a time and place fixed by him,
11 but not later than ten days from the formation of the
12 commission. The commission shall organize by selecting a
13 chairman and clerk. The clerk shall keep a record of all
14 proceedings and expenses and shall file the same, not more
15 than fourteen days after the commission has filed its report

16 and certificate hereinafter prescribed, in the office of the
17 clerk of the county court, together with an affidavit as to
18 the truth and correctness thereof.

19 The commission shall fix and determine the ward lines
20 (if the largest municipality is so divided) and election dis-
21 tricts of the new municipality. The commission shall, within
22 forty-five days from the date of its organization, make a
23 report and certificate over the signatures of a majority of
24 its members, and shall file the same in the office of the
25 clerk of the county court. The certificate shall set forth
26 and accurately describe the ward lines, if any, and election
27 district lines fixed by the commission, and shall contain a
28 proper map of the new municipality with such lines set out
29 thereon. The clerk of the commission shall cause a copy
30 of the certificate to be filed in the office of the secretary
31 of state.

32 The lines fixed and determined by the commission shall
33 be those of the new municipality until changed in accord-
34 ance with law. Wards, if any, shall be formed of contiguous
35 territory. No election district shall be in more than one
36 ward. In dividing the new municipality into wards and

37 election districts, the commission shall have regard for, and
38 shall take into consideration, the election laws of the state,
39 as well as the area and population in all wards and election
40 districts, and shall divide and arrange the same so that
41 each will contain, as nearly as possible, an equal number of
42 inhabitants.

43 A notice setting forth the ward lines, if any, and election
44 district lines as fixed by the commission shall be published
45 by the clerk thereof, in at least one newspaper of general
46 circulation in the municipalities concerned, for two succes-
47 sive weeks next succeeding the filing of the certificate with
48 the clerk of the county court. The expenses of the publica-
49 tion shall be paid by the new municipality. Upon the com-
50 pletion of the publication, the wards and election districts
51 of the consolidating municipalities shall be superseded. The
52 commission shall appoint, in accordance with the charter
53 of the new municipality, election officers to serve at the
54 election provided for by section twelve of this article.

55 The commission may employ an engineer and an attorney
56 to assist in performing its duties. The commission may pro-
57 vide for compensation to be allowed to its clerk, engineer

58 and attorney, which shall be paid by the new municipality.
59 The commission members shall not receive compensation for
60 their services, but all expenses incurred by them in the
61 performance of their duties, when itemized and sworn to
62 by the chairman and clerk, shall be paid by the new
63 municipality.

Sec. 12. *Election of New Officers.* An election shall be
2 held upon the first Tuesday in June next preceding the
3 date when the consolidation becomes effective for the election
4 of officers for the new municipality. The officers shall be
5 elected and the election shall be conducted in accordance
6 with the charter which shall apply to the new municipality
7 and as though the consolidation had become effective.

8 Persons elected to office at the election held under this
9 section shall take office upon the day the consolidation be-
10 comes effective, for the term specified by the charter apply-
11 ing to the new municipality.

Sec. 13. *Officers and Employees of Old Municipalities.*
2 When the consolidation becomes effective, the terms of office
3 of all officers and officials of the consolidating municipalities,

4 elected or appointed, shall, except as herein otherwise pro-
5 vided, cease and be at an end.

6 Policemen and firemen of the consolidating municipalities
7 shall, when the consolidation becomes effective, continue as
8 policemen and firemen of the new municipality. They shall
9 be subject to the orders and control of the mayor or other
10 chief executive officer of the new municipality, until the
11 heads of the police and fire departments are chosen and
12 placed in charge thereof.

13 Tenure of office and pension laws applicable to the em-
14 ployees of consolidating municipalities shall not be affected
15 by the provisions of this article.

Sec. 14. *Succession.* The new municipality shall, when
2 the consolidation becomes effective, be vested with all the
3 rights and properties of the municipality of which it was
4 formed, and shall be responsible and liable for all contracts,
5 debts and obligations of such municipalities. But the lands
6 and property in a municipality superseded under this article
7 shall not be taxed or assessed for the debts or obligations
8 of another municipality thus superseded. The lands and
9 properties in each of the constituent and superseded munic-

10 palities shall be taxed and assessed for the debts and obliga-
11 tions of its superseded government until the same shall be
12 paid and satisfied.

Sec. 15. *Obligations and Proceedings.* The taxes and
2 assessments, levied or imposed by one of the superseded
3 municipalities, remaining outstanding and unpaid, and all
4 other moneys due and owing such municipality when the
5 consolidation becomes effective shall be collected by the new
6 municipality and shall be applied to the purposes for which
7 raised or owing, and if not raised or owing for a specific
8 purpose, shall be applied to the reduction or payment of
9 the bonded or other indebtedness, if any, of the superseded
10 municipality.

11 Proceedings pending to enforce the payment or collection
12 of taxes and assessments in any of the consolidating munici-
13 palities shall be carried to completion by the proper officers
14 of the new municipality; and all taxes and assessments there-
15 tofore levied and assessed by any of the consolidating munici-
16 palities shall be valid and effectual as if originally levied
17 and assessed by the officers of the new municipality. The
18 governing body of the new municipality is authorized to

19 perform all necessary acts to confirm and effectuate such
20 levies and assessments.

Sec. 16. *Transfer of Funds and Property.* Immediately
2 upon the installation of the new municipal government the
3 officers having custody of the funds of the consolidated
4 municipalities shall deliver all funds in their possession
5 into the custody of the proper fiscal officer of the new munici-
6 pality, who shall acknowledge delivery by giving his receipt
7 therefor.

8 The mayor or other chief executive officer shall supervise
9 and direct the transfer of all personal property, books,
10 papers, vouchers, or other documents belonging to the con-
11 solidated municipalities, to the proper officers of the new
12 government. He shall also cause a complete inventory to
13 be made of all assets, real and personal, thus received by
14 the new government.

15 The tax commissioner shall cause an audit and settlement
16 of officers' accounts to be made forthwith.

Sec. 17. *Permits and Licenses.* Permits and licenses
2 granted to any place or person by any of the consolidating
3 municipalities shall, subject to their conditions, remain in

4 full force and effect and be recognized by the new munici-
5 pality until the expiration of the term for which they were
6 granted. But this section shall not be construed to prevent
7 the revocation of any such permit or license before its
8 expiration in the manner provided by law.

Sec. 18. *Legal Proceedings.* No suit, action or proceed-
2 ing pending in any court or before any board or department,
3 wherein one of the consolidating municipalities is a party,
4 or in which it is interested, or by the determination of which
5 it might be affected, shall abate by reason of the consolida-
6 tion, but the new municipality shall be substituted in the
7 place and stead of such consolidating municipality, and the
8 suit, action or proceeding shall continue as if the consolida-
9 tion had not taken place.

Sec. 19. *Municipalities in Different Counties.* Two or
2 more adjoining municipalities in different counties may
3 consolidate and become one municipality in the manner
4 provided in this article for the consolidation of adjoining
5 municipalities lying in the same county. But where a
6 county court or clerk, or circuit court is designated in this
7 article, it shall, as to municipalities in different counties, be

8 the county court or clerk, and the circuit court of the county
9 wherein the consolidating municipality or part thereof
10 having the largest population is located.

Sec. 20. *Annexation.* Unincorporated territory may be
2 annexed to and become part of a municipality contiguous
3 thereto in accordance with sections twenty to twenty-four
4 inclusive, of this article.

Sec. 21. *Petition.* Ten per cent of the inhabitants of the
2 municipality may file a petition, in writing and signed by
3 them, with the governing body, setting forth by metes and
4 bounds the territory proposed to be annexed and asking
5 that a vote be taken upon the proposed annexation. Upon
6 the filing of the petition, the governing body shall order a
7 vote of the qualified voters of the municipality to be taken
8 upon the proposed annexation at a time to be named in
9 the order, but not less than twenty nor more than sixty
10 days from the date of the order. The governing body shall,
11 at the same time, order a vote of all the qualified voters re-
12 siding in the contiguous territory, and of all the qualified
13 voters owning any part of such territory whether resident
14 thereon or not, to be taken upon the question on the same

15 day at some convenient place on or near such contiguous
16 territory. The orders shall be published, at the cost of the
17 municipality, in a newspaper of general circulation in the
18 municipality and the contiguous territory, once a week for
19 two successive weeks, the first publication to be at least
20 fourteen days prior to the day the vote is to be taken. The
21 orders so published shall contain an accurate description
22 by metes and bounds of the territory proposed to be an-
23 nexed, and, if practicable, shall contain also a popular de-
24 scription of such territory.

Sec. 22. *Ballots.* The ballots shall be in substantially the
2 following form:

3 (Here shall be a map showing plainly the municipality, and
4 the territory proposed to be annexed.)

5 Shall the territory indicated on the map be annexed to
6 and become part of? (name
7 of the municipality).

8 For annexation ☐

9 Against annexation ☐

Sec. 23. *Election.* The election shall, except as herein
2 otherwise provided, be held and conducted by the proper

3 officers of the municipality. The circuit court or judge of
4 the county wherein the municipality or the portion thereof
5 greatest in population lies, shall appoint persons to attend
6 the election, which persons shall have the right to challenge
7 the casting of any vote on the question of the annexation.
8 The court or judge shall appoint and designate three such
9 challengers to serve at each place of voting both in the
10 municipality and in the territory proposed to be annexed.
11 A challenger so appointed and designated shall be a resi-
12 dent of the municipality or territory where he officiates.

13 The county court of the county where the municipality or
14 portion thereof greatest in population lies, shall furnish
15 sealed ballot boxes, which at the close of the voting shall be
16 transmitted sealed and unopened to the county court, which
17 shall proceed to count and canvass the votes cast.

Sec. 24. *Certification of Results.* The county court shall
2 forthwith certify to the circuit court or judge, hereinbefore
3 designated, the results of the election. If a majority of the
4 votes cast by the qualified voters of the municipality, and
5 by a majority of the qualified voters residing in and owning
6 any portion of the contiguous territory are in favor of the

7 annexation, the circuit court or judge shall endorse the
8 certificate to that effect and shall file the endorsed certificate
9 in the office of the clerk of the county court. The annexa-
10 tion shall be effective as of the date of such filing.

Sec. 25. *Minor Boundary Adjustments.* In the case of a
2 minor boundary adjustment, the governing body of a muni-
3 cipality may apply to the circuit court, or judge in vacation
4 having jurisdiction over the area to be annexed. Applica-
5 tion shall show the metes and bounds of the area to be
6 annexed, the number of persons residing therein, and a
7 proper map of the area.

8 The court or judge, if satisfied that the annexation applied
9 for is only a minor boundary adjustment, shall order publi-
10 cation of a notice that annexation has been proposed, and
11 shall set a time for a hearing on the question. Publication
12 shall be as in the case of an annexation election. Notice
13 shall be prominently posted at not less than five public
14 places within the area to be annexed.

15 If the proposed annexation is not substantially opposed
16 at the hearing by a person having an interest in the land
17 within the area to be annexed, the court or judge may enter

18 an order changing the boundaries of the municipality to
19 embrace the annexed area. If the annexation is substantially
20 opposed at the hearing by a proper party the court or judge
21 shall dismiss the application. The municipality shall pay
22 the costs of the proceedings under this section.

Enrolled Joint Com. Sub. for S. B. No. 325] 72

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

Carl B. Culbreth

Chairman Senate Committee

Wm. S. O'Brien

Chairman House Committee

Originated in the.....

Takes effect..... passage.

Charles H. Hays

Clerk of the Senate

Wm. S. O'Brien

Clerk of the House of Delegates

Chas. E. Hays

President of the Senate

J. K. Thomas

Speaker House of Delegates

The within *Approved* this the *19th*

day of *March*, 1937.

James A. Holt

Governor

JARRETT PRINTING COMPANY, CHARLESTON, W. VA.



Filed in the office of the Secretary of State
of West Virginia. **MAR 19 1937**

Wm. S. O'BRIEN,
Secretary of State