

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1949



ENROLLED

HOUSE BILL No. 278

(By Mr. Greenlee)



PASSED March 11 1949

In Effect Ninety days from Passage



278

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**(By MR. GREENLEE)**

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AN ACT to amend and reenact article two, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, relating to the creation, alteration and dissolution of municipal corporations; and to amend and reenact sections one and two, article three, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, relating to the election of officers thereof.

*Be it enacted by the Legislature of West Virginia:*

That article two, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, and sections one and two, article three, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, be amended and reenacted to read as follows:

**Article 2. Creation, Alteration and Dissolution of Municipal Corporations.**

Section 1. *Requirements for Incorporation; Territory;*

2 *Population.*—Any part of any district or districts not in-  
3 cluded within any incorporated municipality and contain-  
4 ing a resident population of not less than one hundred per-  
5 sons, if such part shall include within its boundaries a  
6 territory of not less than one-quarter of one square mile  
7 and an amount of territory not disproportionate to the  
8 number of residents thereof (the exact extent of the ter-  
9 ritory to be included therein to be within the reasonable  
10 discretion of the county court granting the charter based  
11 on the reasonable benefits expected to be derived from  
12 such incorporation by the majority of the residents there-  
13 of), may be incorporated as a city, town or village, of  
14 any classification defined by section four, article one,  
15 chapter eight-a of the code, as enacted by section four,  
16 article one, chapter fifty-six, acts of the Legislature, reg-  
17 ular session, one thousand nine hundred thirty-seven, un-  
18 der the applicable provisions of this article.

Sec. 2. *Survey and Map; Verification.*—The persons in-

2 tending to make application for the incorporation of such  
3 municipality shall cause an accurate survey and map of

4 the territory intended to be embraced therein to be made  
5 by a practical surveyor. Such survey and map shall show  
6 the courses and distances of the boundaries thereof, and  
7 the amount of territory contained therein. The accuracy  
8 of such survey and map shall be verified by the affidavit  
9 of such surveyor annexed thereto.

Sec. 3. *Public Examination of Survey and Map.*—Such  
2 survey and map, when completed and verified as afore-  
3 said, shall be left at the residence or place of business,  
4 within such territory, of some person residing therein, and  
5 shall be subject to examination at all reasonable hours,  
6 by every person interested in such application for the  
7 period of four weeks at least from the posting of first pub-  
8 lication of the notice of such application, as hereinafter  
9 provided.

Sec. 4. *Notice of Application for Charter.*—The persons  
2 intending to make such application shall give notice that,  
3 on some day specified in such notice, they will apply by  
4 petition to the county court of the county in which such  
5 territory lies, or, if it lies in more than one county, to  
6 the county court of one of the counties to be named in

7 such notice, for a certificate of incorporation of such ter-  
8 ritory as a city, town or village, by a name to be therein  
9 specified. Such notice shall describe the boundaries of  
10 such territory by courses and distances, and specify the  
11 district or districts in which it lies; and it shall state where  
12 such survey and map have been left for examination, as  
13 aforesaid.

Sec. 5. *Publication of Notice.*—If there be a newspaper  
2 printed within such territory, such notice shall be pub-  
3 lished in such newspaper once a week for three succes-  
4 sive weeks previous to the time specified therein for mak-  
5 ing such application; and, if there be no such paper, the  
6 notice shall be posted and kept posted in at least three  
7 of the most public places in such territory, for at least  
8 three weeks before the time so specified therein.

Sec. 6. *Application to County Court.*—Such application  
2 shall be made to the county court on the day specified  
3 in the aforesaid notice by petition to be subscribed by  
4 at least ten residents of the territory sought to be incor-  
5 porated. The petition shall set forth the boundaries of  
6 the territory, the quantity of land embraced therein, and

7 the estimated population of the said territory. It shall  
8 have attached thereto a copy of the said survey and map  
9 of said territory, verified as aforesaid, a copy of the afore-  
10 said notice with the affidavit attached thereto of some  
11 credible person with knowledge thereof that said notice  
12 had been published as hereinbefore required and that  
13 public examination of the said survey and map had been  
14 afforded as required. The petition shall be verified by  
15 one or more of the petitioners.

Sec. 7. *Hearing on Petition.*—Upon the filing of said  
2 petition with the court upon the day specified, the court  
3 shall proceed as expeditiously as possible to determine  
4 to its satisfaction that the amount of territory proposed  
5 to be incorporated is not disproportionate to the number  
6 of residents thereof; that the map and survey accurately  
7 show and describe the territory to be incorporated; that  
8 said map and survey were subject to examination in the  
9 manner and for the time hereinbefore prescribed; and  
10 that the requirements of this act have been fully com-  
11 plied with; and by its order shall appoint not less than  
12 two qualified persons to take a census of the inhabitants

13 of said territory, as hereinafter provided, at a time to be  
14 specified in said order not exceeding thirty days from the  
15 entry thereof, and shall also specify a day not exceeding  
16 sixty days from the entry of said order, on which all the  
17 qualified voters residing within such territory will meet  
18 at a place to be named therein within the hours named  
19 therein, to vote upon the question of such incorporation.  
20 Not less than three commissioners of election to be named  
21 by the court in said order, shall preside over such election  
22 and make return thereof as hereinafter provided.

Sec. 8. *Census; Verification.*—On the day named in the  
2 foregoing order, the persons appointed therein shall  
3 proceed to take the census of the residents of said terri-  
4 tory. Such census shall exhibit the name of every head  
5 of a family residing in such territory on such day, and  
6 the number of persons then belonging to every such  
7 family; and it shall be verified by the affidavit of the per-  
8 sons taking the same, annexed thereto. Upon completion  
9 of said census the same shall be returned to the county  
10 court and become a part of the record in the cause.

Sec. 9. *Notice of Election for Incorporation.*—Notice of

2 the day named by the court for voting on the question  
3 of incorporation shall be published once in each week  
4 for three successive weeks previous to said day, if there  
5 be a newspaper published within such territory; and, if  
6 there be no such paper, the notice shall be posted and  
7 kept posted in at least three of the most public places  
8 in such territory, for at least three weeks before the  
9 time so specified therein.

Sec. 10. *Election for Incorporation.*—On the day named  
2 in such notice for the taking of the vote hereinbefore  
3 mentioned, the qualified voters who have resided within  
4 the proposed bounds of such corporation for sixty days  
5 preceding such election shall meet at the place named  
6 in such notice and cast their votes for, or against, such  
7 incorporation. Each voter shall deposit a ballot in a bal-  
8 lot box to be provided for that purpose. Each ballot shall  
9 have written or printed thereon the words:

10  For Incorporation

11  Against Incorporation

12 Such election shall be held under the superintendance  
13 of the commissioners of election appointed by the county



14 court, and the result of such election shall be certified  
15 under oath and returned by them to the county court  
16 as soon as may be after such election. In the event of  
17 vacancy due to the failure or refusal to act of any election  
18 commissioner, such vacancy may be filled by the other  
19 commissioners.

Sec. 11. *Certificate of Incorporation.*—Upon the filing  
2 of the certificate of election aforesaid, and upon satisfac-  
3 tory proof that all the provisions of the foregoing sections  
4 of this article have been complied with, if it appear that  
5 a majority of the legal votes cast on the question were in  
6 favor of such incorporation, the county court shall, by an  
7 order entered of record, direct the clerk of the said court  
8 to issue a certificate of incorporation in form or in sub-  
9 stance, as follows: A certificate under oath of A - B -,  
10 C - D -, and E - F - was this day filed, showing that a  
11 majority of all the qualified voters residing in the follow-  
12 ing boundary, to-wit:

13 Beginning, etc. (here recite the boundaries), have voted  
14 in due form of law, in favor of the incorporation of the  
15 city (town or village) of \_\_\_\_\_, in the county

16 of \_\_\_\_\_, bounded as herein set forth. And as  
17 it appears to the satisfaction of the court that all the  
18 provisions of chapter eight of the code of West Virginia  
19 have been complied with by the applicants of said in-  
20 corporation, said city (town or village) is a body cor-  
21 porate, duly authorized within the corporate limits afore-  
22 said, or as otherwise provided, to exercise all the corpor-  
23 ate powers conferred by the said chapter from and after  
24 the date of this certificate.

25 C\_\_\_\_\_H\_\_\_\_\_, Clerk

Sec. 12. *Costs of Incorporation.*—All reasonable costs  
2 incurred in procuring incorporation under this chapter  
3 shall be paid by the corporation. In case of failure to  
4 obtain incorporation, all such costs shall be paid by the  
5 petitioners: *Provided*, That the petitioners shall furnish  
6 bond of sufficient surety to cover all costs involved in  
7 holding such election and ascertaining results thereof.

Sec. 13. *Change of Corporate Boundary.*—Any five or  
2 more freeholders residing in any municipal corporation,  
3 desiring to change the corporate limits thereof may file  
4 their petition in writing with the council thereof setting

5 forth the change proposed in the metes and bounds of  
6 such corporation, and asking that a vote be taken upon  
7 the proposed change. The council shall thereupon order  
8 a vote of the qualified voters residing in such corporation  
9 to be taken upon the proposed change at a time and place  
10 therein to be named in the order, not less than twenty  
11 nor more than thirty days from the date thereof, and if  
12 it be proposed to include any additional territory within  
13 such corporate limits, the council shall at the same time  
14 order a vote of all the qualified voters residing on such  
15 additional territory, and of all such voters owning any  
16 part of such territory, whether they reside therein or  
17 not, to be taken upon the question on the same day, at  
18 some convenient place on or near such additional terri-  
19 tory. The election shall be held, superintended and con-  
20 ducted, and the result thereof ascertained, certified and  
21 returned, in the same manner and by the same persons  
22 as elections for town officers. The ballots cast on such  
23 question shall have written or printed on them the  
24 words:

25  For change of corporate limits

26      Against change of corporate limits

27     If a majority of all the votes so cast within such cor-  
28     poration be in favor of the proposed change, and no addi-  
29     tional territory is proposed to be included therein, the  
30     corporate limits of such town shall thereafter be as pro-  
31     posed by such petition. But, if additional territory is pro-  
32     posed to be included in such corporate limits, such change  
33     shall not take effect unless a majority of all the votes cast  
34     by the persons residing in such territory and owning any  
35     portion thereof be also in favor of such change.

Sec. 14. *Council to Certify Change of Boundary; Order.*

2     —The council of such town shall enter the result of such  
3     election upon its minutes, and, when the change pro-  
4     posed is adopted, as provided in the preceding section,  
5     shall certify the same to the county court of the county;  
6     and such court may thereupon, at its discretion, enter  
7     an order in substance as follows:

8     A certificate of the council of the city (town or village,  
9     as the case may be) of \_\_\_\_\_, was this day filed  
10    showing that a change has been made, in the manner re-  
11    quired by law, in the corporate limits thereof, and that

12 by such change the said corporate limits are as follows:  
13 Beginning at (here recite the boundaries, as changed).  
14 It is, therefore, ordered that such change in said corporate  
15 limits be, and the same is hereby approved and confirmed,  
16 and the clerk of the court is directed to deliver to the said  
17 council a certified copy of this order as soon as practicable  
18 after the rising of this court. And after the date of such  
19 order the corporate limits of such town shall be as set  
20 forth therein.

Sec. 15. *Forfeiture of Charters, Dissolution of Municipal*  
2 *Corporation.*—Any town heretofore incorporated under  
3 the provisions of this chapter or which shall hereafter be  
4 incorporated under the provisions of this chapter, and  
5 which has no bonded indebtedness, and which shall fail  
6 for one year to exercise its corporate powers and privi-  
7 leges, or which has not twenty legal voters residing there-  
8 in, or in which there were not twenty legal votes cast  
9 at its last election, or the population of which shall be  
10 reduced below seventy-five persons and so remain for six  
11 months, shall in either event thereby forfeit its charter  
12 so granted, and all rights, powers and privileges so con-

13 ferred upon such town. And the circuit court of the  
14 county where any such town is located within this state  
15 shall have jurisdiction to hear and determine all matters  
16 relating to the forfeiture and dissolution of all such char-  
17 ters granted as hereinbefore provided, upon the petition  
18 of one or more of its inhabitants, or any ten freeholders  
19 of the county wherein such town is located, to annul and  
20 declare forfeited such charter, and shall dissolve the cor-  
21 poration. Ten days' notice of the filing of such petition  
22 with the clerk of the circuit court of the county wherein  
23 such town is located, served upon the mayor and recorder  
24 thereof, shall be sufficient notice upon which the judge  
25 of such court shall so act, and upon proper proof of the  
26 allegations of such petition, all such charters so granted  
27 shall be declared forfeited and the corporation dissolved.  
28 But if the territory so incorporated, or a major part there-  
29 of, either in area or in population, shall, within one year  
30 next after such declaration of forfeiture and dissolution  
31 by the circuit court, be reincorporated as a city, town or  
32 village, then the auditor of the state of West Virginia  
33 shall convey unto such new corporation all of the rights

34 of the state of West Virginia in and to the corporate  
35 property moneys, claims, demands and taxes collected or  
36 uncollected, of the former corporation so dissolved.

Sec. 16. *Voluntary Discontinuance of Charters.*—Upon  
2 the petition of twenty-five per cent of the voters of any  
3 incorporated town containing not more than fifteen hun-  
4 dred inhabitants, the council thereof shall submit to the  
5 voters of such town at the next municipal election, or at a  
6 special election called for that purpose, the question of  
7 continuing or discontinuing the charter rights of such  
8 town. The ballots used in voting shall have written or  
9 printed upon them the words:

10  For continuance of charter.

11  For discontinuance of charter.

12 If a majority of the votes cast be “For discontinuance  
13 of charter,” then the charter rights and privileges of such  
14 town shall cease with the term of office of the council then  
15 in existence: *Provided*, That all debts or other obligations  
16 outstanding against such corporation shall be settled in  
17 full.

Sec. 17. *Appeals.*—An appeal may be taken to the cir-

2 cuit court from the final order of the county court as  
3 provided by article three, chapter fifty-eight of the code  
4 of West Virginia.

Sec. 18. *Charters Heretofore Granted Valid.*—This en-  
2 actment shall not affect the validity of any charter of  
3 incorporation heretofore granted to any city, town or  
4 village, under special act or general law.

**Article 3. Election, Appointment and Qualification of Officers**

Section 1. *First Election of Officers; Commissioners of*  
2 *Election.*—At the time of ordering the certificate men-  
3 tioned in section eleven, article two of this chapter, the  
4 court shall appoint three legal voters residing within such  
5 territory, who shall act as commissioners of election at  
6 the first election to be held in such town, as hereinafter  
7 provided, and, in case they shall fail or refuse to act,  
8 such election may be held, conducted, certified and re-  
9 turned by any three voters of such town appointed for  
10 that purpose by the voters present.

Sec. 2. *When First Election Held; Notice.*—The first  
2 election for officers of such corporation shall be held  
3 within sixty days from the date of the certificate men-



4 tioned in section eleven, article two of this chapter, and  
5 the commissioners of election appointed at the time of  
6 such order shall cause notice to be given of the time and  
7 place of holding such election, which notice shall specify  
8 the officers to be voted for, and shall be printed in a  
9 newspaper once a week for three weeks next preceding  
10 the day appointed for such election, if one be published in  
11 such town, and, if none be published therein, copies there-  
12 of shall be posted in at least three of the most public  
13 places in such town for three weeks next preceding such  
14 election.

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

*Frank L. McNear*

Chairman Senate Committee

*R. Matthews*

Chairman House Committee

Originated in the House of Delegates

Takes effect Ninety days from passage.

*Howard Meyer*  
Clerk of the Senate

*J. Smith*  
Clerk of the House of Delegates

*H. Randolph Brooke*  
President of the Senate

*W. E. Jarman*  
Speaker House of Delegates

The within APPROVED this the 18TH day of MARCH, 1949.

*Oliver L. Patterson*  
Governor.

Filed in the Office of the Secretary of State of West Virginia

MAR 18 1949

D. PITT O'BRIEN,  
SECRETARY OF STATE