WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2012

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ENROLLED

House Bill No. 4315

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

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Passed March 10, 2012

To Take Effect Ninety Days From Passage
AN ACT to amend and reenact §8-2-6 and §8-2-7 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §8-3A-1 and §8-3A-2, all relating to Class IV towns or villages; permitting a new class IV town or village to select a form of government; and permitting a current Class IV town or village to change its form of government.

Be it enacted by the Legislature of West Virginia:

That §8-2-6 and §8-2-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new article, designated §8-3A-1 and §8-3A-2, all to read as follows:

ARTICLE 2. CREATION OF MUNICIPALITIES.

§8-2-6. Same — Qualified electors; form of ballot or ballot label; election officials; certification; canvass; declaration of results; recount.

Class I, II, or III city
(a) On the date named in the notice for the taking of the vote, each qualified elector of the territory sought to be incorporated as a Class I, II, or III city, may cast his or her vote for or against such incorporation at the precinct in which he or she resides, by depositing a ballot in a ballot box, or by use of a voting machine, to be provided by the county commission for that purpose. Each ballot, or ballot label where voting machines are used, shall be without party designation and shall have written or printed thereon the following words:

- □ For Incorporation
- □ Against Incorporation

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

(b) The election shall be held and conducted under the supervision of the commissioners and clerks of election appointed by the county commission and shall be conducted as nearly as may be in accordance with the laws of this state governing general elections. The results of the election shall be certified as in general elections, and the returns shall be canvassed and the results declared by the county commission. If any commissioner or clerk designated to serve in the election shall fail or refuse to serve, the vacancy may be filled in like manner as vacancies in the positions are filled in general elections under the laws of this state governing general elections. A recount may be had, as in general elections, upon the party or parties desiring a recount providing adequate assurance to the county commission that the party or parties will pay all costs of the recount.
(c) Each qualified elector of the territory sought to be incorporated as a Class IV town or village may cast his or her vote for or against the incorporation at the precinct in which he or she resides, by depositing a ballot in a ballot box or by use of a voting machine to be provided by the county commission for that purpose, on the date named in the notice for the taking of the vote. Each ballot, or ballot label where voting machines are used, shall be without party designation and shall have written or printed thereon the following words:

- □ For Incorporation
- □ Against Incorporation

The form of governance:

- □ Plan I -- "Mayor-Council Plan"
- □ Plan II -- "Strong-Mayor Plan"
- □ Plan III -- "Manager Plan"
- □ Plan IV -- "Manager-Mayor Plan"

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

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

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

(a) Class I, II, or III city. -- If the proceeding be for the incorporation of a city, and it appears to the county commission, upon the returns being canvassed, that a majority of the legal votes cast on the question of incorporation were in favor of the incorporation and the commission is satisfied that all of the applicable provisions of this article have been complied with, the commission shall by order duly made and entered of record declare that the territory in question (reciting the boundaries) shall thereby become a body corporate, and shall thenceforth be known as the city of ......................, but that until a charter is framed and adopted as provided in article three of this chapter, the city shall have and exercise no powers of a municipality except the power to frame and adopt a charter as therein provided.

(b) Class IV town or village. -- If the proceeding be for the incorporation of a town or village, and it appears to the county commission, upon the returns being canvassed, that a majority of the legal votes cast on the question of incorporation were in favor of the incorporation and the commission is satisfied that all of the applicable provisions of this article have been complied with, the commission shall by
order duly made and entered of record, direct the clerk of the
commission to issue a certificate of incorporation in form or
in substance as follows:

"It appearing to the commission that under the provisions
of article two, chapter eight of the Code of West Virginia,
1931, as amended, at an election duly held on the .......... day
of ............., 20....., a majority of the legal votes cast on the
question of incorporation by the qualified voters of the
following territory, to wit: Beginning, etc. (here recite the
boundaries), were cast in favor of the incorporation of the
town or village of ....................... , in the County of
............... , bounded as herein set forth; adopting the
................. form of government, and it appearing to the
satisfaction of the commission that all of the provisions of
article two, chapter eight of the Code of West Virginia, as
amended, have been complied with by the petitioners for
incorporation, the town or village is declared to be a body
corporate, duly authorized to exercise all of the corporate
powers conferred upon towns or villages by chapter eight of
the Code of West Virginia, 1931, as amended, from and after
the date of this certificate. (Signed) ........................., Clerk
County Commission."

(c) Thereupon, the first election of officers shall be held
as provided in sections two, three and four, article five of this
chapter.

(d) If, on the returns being canvassed on the question of
incorporation, a majority of the legal votes cast be against
incorporation, the proceeding shall be dismissed, and no
subsequent proceeding for incorporation of the same or any
portion of the territory shall be considered or election had
within a period of three years.
ARTICLE 3A. GOVERNMENT OF CLASS IV TOWNS OR VILLAGES.

§8-3A-1. Class IV town or village form of government.

In the absence of any charter or official declaration to the contrary, a Class IV town or village shall be the mayor-council form of government, as set out in section two, article three of this chapter. The Class IV town or village form of government may be changed pursuant to the provisions of section two of this article.

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

(a) A Class IV town or village may change its form of government upon the submission of a petition containing the signatures of twenty-five percent of the qualified voters.

(b) After receipt and verification of the petition, the question shall be submitted to the voters of the Class IV town or village at the next general or primary election.

(c) A Class IV town or village shall select from the following government plans:

Plan 1 -- “Mayor-Council Plan”. Under this plan:

(1) There shall be a town or village council, elected at large or by wards, or both at large and by wards, by the qualified voters of the town or village; a mayor elected by the qualified voters of the town or village; and such other elective officers as set by ordinance; and

(2) The mayor and council shall be the governing body and administrative authority.
Plan II -- "Strong-Mayor Plan". Under this plan:

1. There shall be a mayor elected by the qualified voters of the town or village; and a town or village council elected at large or by wards, or both at large and by wards, by the qualified voters of the town or village;

2. The council shall be the governing body;

3. The mayor shall be the administrative authority; and

4. Other officers and employees shall be appointed by the mayor or by his or her order in accordance with this chapter, but the appointments by the mayor or by his or her order may be made subject to the approval of the council.

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

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

2. There shall be a mayor elected by the council from among its membership who shall serve as the presiding officer of the council; and a town or village manager who shall be appointed by the council;

3. The council shall be the governing body; and
(4) The manager shall be the administrative authority and shall manage the affairs of the town or village under the supervision of the council and shall be responsible to the council. The manager shall appoint or employ, in accordance with this chapter, all subordinates and employees for whose duties or work the manager is responsible to the council.

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

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

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

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

(4) The manager shall be the administrative authority and shall manage the affairs of the town or village under the supervision of the council and shall be responsible to the council. The manager shall appoint or employ, in accordance with this chapter, all subordinates and employees for whose duties or work the manager is responsible to the council.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

To take effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within bill approved this the 30th day of March, 2012.

Governor
PRESENTED TO THE GOVERNOR

JUNE 21, 2012

Time 1:30 pm