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SPECIAL REPORT

MUNICIPAL HOME RULE PILOT PROGRAM

Report Finding

The Municipal Home Rule Pilot Program Has Been Effective in Improving Local Governance, and Broad-Based Home Rule Should Be Extended Statewide



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WEST VIRGINIA LEGISLATIVE AUDITOR

PERFORMANCE EVALUATION & RESEARCH DIVISION

Building 1, Room W-314
State Capitol Complex
Charleston, West Virginia 25305
(304) 347-4890

Aaron Allred	John Sylvia	Derek Hippler	Derek Thomas
Legislative Auditor	Director	Research Analyst	Referencer

CONTENTS

Executive Summary 5

Introduction 7

Background 9

List of Tables

Table 1: Summary of Home Rule Proposals 11

List of Appendices

Appendix A: Objective, Scope and Methodology 19

Appendix B: Details of Legal Challenges, Partially, and Non-Implemented Home
Rule Proposals..... 21

Appendix C: City Proposals by Implementation Status..... 27

Appendix D: City Proposals That Faced Legal Challenges or Became State Law 31

Appendix E: City Proposals and Affected State Statutes and Regulations 35

EXECUTIVE SUMMARY

The Legislative Auditor conducted an evaluation of the effectiveness of the Municipal Home Rule Pilot Program as authorized and required under West Virginia Code §8-1-5a. The report contains the following findings:

Report Highlights

- In 2007, the Legislature created the Municipal Home Rule Pilot Program and the Municipal Home Rule Board to oversee the program. The program gave broad-based home rule authority to participating municipalities (Bridgeport, Charleston, Huntington, and Wheeling) by allowing them to implement ordinances, acts, resolutions, rules and regulations without regard to state laws, rules and regulations, with the exception that proposals had to comply with the U.S. Constitution, the West Virginia Constitution, federal law, chapters sixty-a (“Uniform Controlled Substance Act”), sixty-one (“Crimes and Their Punishment”), and sixty-two (“Criminal Procedure”) of the West Virginia Code.
- The Board has been diligent in its review of each municipality’s application and subsequent proposals. The Board also facilitated dialogue between the pilot cities and affected state agencies, and it monitored the progress of city proposals through quarterly reporting. One issue was encountered in that the legislative members attended board meetings but they recused themselves from voting because they questioned the constitutionality of having legislative members on the Board.
- The Board approved all 25 proposals. Of these, 20 proposals, or 80% of the total, were either fully or partially implemented. These proposals have proven beneficial to the participating municipalities by increasing revenue, streamlining administrative matters, strengthened city fee collections practices, simplified business licenses, and more. The program has also proven beneficial to the entire state, as several proposals were either implemented into state law or resulted in the modification of state regulations.
- Given the success of the program and the benefits to the participating municipalities and the state, the Legislature should consider granting broad-based home rule to all Class I, II, and III municipalities. The Legislative Auditor assumes that the intent of the Legislature was to determine if home rule authority could be expanded to all Class I, II, and III municipalities without the continuation of the Home Rule Board; therefore it is recommended that the Home Rule Board be discontinued if home rule is expanded statewide. The Legislature can choose to maintain the current restrictions on home rule authority or further restrict the authority if it believes it desirable or necessary; however, the Legislative Auditor does not find it immediately necessary for the Legislature to further restrict home rule authority.

Recommendations

1. *The Legislative Auditor recommends that the Legislature consider providing broad-based home rule authority to all Class I, II, and III municipalities.*
2. *If home rule is extended to all Class I, II, and III municipalities, the Legislative Auditor recommends that it be provided with the current restrictions as stipulated in the pilot program.*
3. *The Legislative Auditor recommends that the Home Rule Board be discontinued if broad-based home rule is granted statewide.*

INTRODUCTION

On March 10, 2007, the West Virginia Legislature passed Senate Bill 747, which added a new section of West Virginia Code (§8-1-5a) thereby creating the Municipal Home Rule Pilot Program. Essentially, the Home Rule Pilot Program allowed pilot cities to implement changes in all matters of local governance without regard for state laws or rules as long as the changes did not violate the following provisions:

- the U.S. Constitution,
- the West Virginia Constitution,
- federal law, and
- chapters sixty-a (“Uniform Controlled Substance Act”), sixty-one (“Crimes and Their Punishment”), and sixty-two (“Criminal Procedure”) of the West Virginia Code.

Given the limited statutory restrictions listed above, the Home Rule Pilot Program granted relatively broad-based home rule to each pilot city.

The purposes of the legislation are expressed in the following two findings of the Legislature:

WVC §8-1-5a(a)(4):

Authorizing pilot municipalities and metro governments in West Virginia to exercise broad-based home rule will allow the Legislature the opportunity to evaluate the viability of allowing municipalities to have broad-based state home rule to improve urban and state development.

WVC §8-1-5a(b):

It is the intent of the Legislature in enacting this section to establish a framework for municipalities within which new ideas can be explored to see if they can or should be implemented on a statewide basis.

The Municipal Home Rule Pilot Program is scheduled to terminate on July 1, 2013. However, prior to the termination date, the Joint Committee on Government and Finance is required to conduct an evaluation of the effectiveness of the pilot program and report the findings to the Joint Committee on Government Organization by January 1, 2013 (§8-1-5a(k)). The evaluation is required to include the following items:

- An evaluation of the effectiveness of expanded home rule on the participating municipalities and/or metro governments;
- A recommendation as to whether the expanded home rule should be continued, reduced, expanded or terminated;

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The Municipal Home Rule Pilot Program is scheduled to terminate on July 1, 2013. However, prior to the termination date, the Joint Committee on Government and Finance is required to conduct an evaluation of the effectiveness of the pilot program and report the findings to the Joint Committee on Government Organization by January 1, 2013 (§8-1-5a(k)).

- A recommendation as to whether any legislation is necessary;
and
- Any other issues considered relevant.

The Performance Evaluation and Research Division (PERD) conducted the evaluation by communicating with officials of the Municipal Home Rule Board, affected state agencies, participating municipalities, and the West Virginia Municipal League. PERD also evaluated each city's Home Rule application, their proposals, quarterly reports and data showing the impact from the proposals. PERD did not perform an audit on impact data to test their validity. In addition, this report does not contain legal analysis on the constitutionality of any proposal including those that have become the matters of any court of the state. Furthermore, no legal analysis was performed to address the constitutionality of legislators being members of the Board.

BACKGROUND

In creating the Municipal Home Rule Pilot Program, the Legislature also created the Home Rule Board. The Board was granted the power to select the municipalities for the program; review, evaluate and make recommendations to the plans; consult with state agencies affected by the plans; approve plans; and authorize amendments. As required by statute, the Board consists of the following members:

1. The Governor, or a designee, who shall serve as chair;
2. The Executive Director of the West Virginia Development Office or a designee;
3. The chair of the Senate Committee on Government Organization or a designee;
4. The chair of the House of Delegates Committee on Government Organization or a designee;
5. A representative of the Business and Industry Council;
6. A representative of the largest labor organization in the state; and
7. A representative of the West Virginia Chapter of American Institute of Certified Planners.

Only Class I, Class II, Class III municipalities or a metro government were eligible to participate in the pilot program. Up to five municipalities could have applied for the program, but only four submitted applications, which are the cities of Bridgeport, Charleston, Huntington, and Wheeling. Each municipality provided a written plan detailing the state laws, policies, rules and regulations that prevented the municipality from carrying out its duties in the most cost-efficient, effective, and timely manner. Each plan also detailed the problems created by these laws, policies, rules or regulations, and proposed solutions to the problems, including possible changes to ordinances, acts, resolutions, rules and regulations.

If the Board approved the proposals, the municipalities were able to implement them by passing ordinances, acts, resolutions, rules, and regulations as long as the proposals did not violate any of the restrictions stipulated in the program. In addition, no municipality could create a defined contribution employee pension or retirement plan for its employees currently covered by a defined benefit pensions plan.

Home Rule Board's Operation

As previously mentioned, the Board is responsible for reviewing, evaluating, amending and approving both the municipal applications and

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If the Board approved the proposals, the municipalities were able to implement them by passing ordinances, acts, resolutions, rules, and regulations as long as the proposals did not violate any of the restrictions stipulated in the program.

proposals. The Board provides cities with the authority to modify the relevant ordinances, acts, resolutions, rules and regulations. It is implied that the authority to review and approve proposals granted to the Board was intended to safeguard against proposals being unconstitutional or in violation of federal or state law. As such, the Board's review process served as an internal control mechanism to produce the desired outcome of the program.

PERD finds that the Board has been diligent in its evaluation of each municipality's application and subsequent proposals. The Board developed an application form for municipalities that strictly adhered to the requirements established by §8-1-5a. The Board also contacted the state agencies affected by home rule proposals and requested their participation in board meetings. At no point did any state agency refuse to provide input on the proposals. Furthermore, the Board reviewed legal arguments on proposals that presented potential legal or constitutional issues.

However, the legislative members of the Board have not been voting because they have concerns regarding the constitutionality of having legislators on the Board. Senator Bowman first raised this issue in the first board meeting, which occurred on November 2, 2007. At the next board meeting, which occurred on January 30, 2008, Senator Bowman and Delegate Morgan made it known that they will continue to be part of the meetings and discussion, but they would abstain from voting on all official actions of the Board. Senator Snyder also abstained from voting on all official actions when he replaced Senator Bowman on the Board.

PERD finds that the Board has been diligent in its evaluation of each municipality's application and subsequent proposals.

On May 21, 2008, the Board approved the proposals presented by Bridgeport, Charleston, Huntington, and Wheeling.

The Effectiveness of the Home Rule Pilot Program

On May 21, 2008, the Board approved the proposals presented by Bridgeport, Charleston, Huntington, and Wheeling. After subsequent amendments, the number of proposals presented by each pilot city was as follows:

1. Bridgeport: 5 proposals
2. Charleston: 12 proposals
3. Huntington: 4 proposals
4. Wheeling: 4 proposals

Table 1 below shows a breakdown of each proposal in terms of implementation. Twenty (20) of the 25 proposals were either implemented completely or partially. Five proposals were not implemented despite

being approved by the Board. Proposals that were fully or partially implemented had varying degrees of success. There are various reasons why some proposals were only partially implemented, including resource allocation needs, legal challenges to a part of the proposal, logistical issues, and one case in which the proposal was no longer relevant. Five proposals were not implemented in any capacity, again for various reasons such as an unresolved legal challenge to the entire proposal, a failed referendum, lack of interest from businesses, and two that could possibly conflict with federal regulations. Eight proposals became a model for subsequent state laws. Overall, the implementation of broad-based home rule has resulted in positive results, which will be explained in greater detail in the next section of this report.

Overall, the implementation of broad-based home rule has resulted in positive results.

Appendix B discusses the reasons that some home rule proposals were partially or non-implemented, including those that faced legal challenges. Appendix C shows each proposal by implementation status for each city. Appendix D shows home rule proposals by city that faced legal challenges or that were implemented statewide. Appendix E shows each proposal and the affected statute or state regulation.

City	Number of Home Rule Proposals	Number of Proposals Fully Implemented	Number of Proposals Partially Implemented	Number of Proposals Not Implemented	Number of Proposals Implemented Statewide	Number of Proposals Legally Challenged
Bridgeport	5	2	1	2	1	1
Charleston	12	7	3	2	2	0
Huntington	4	1	2	1	2	3
Wheeling	4	4	0	0	3	0
Total	25	14	6	5	8*	4

Source: PERD compilation of data from reports provided by the Home Rule Board and confirmed by each city.

*Only five separate proposals were implemented statewide (four statutorily and one administratively). Two proposals that were implemented statewide were proposed by multiple cities.

The Overall Benefits of the Home Rule Pilot Program

We find that the Municipal Home Rule Pilot Program has been beneficial to the participating municipalities. To demonstrate this point, positive outcomes resulting from proposals of each city are listed below.

Bridgeport

1. As a result of an annexation proposal, Bridgeport has annexed several residential and commercial properties, many of which were already receiving Bridgeport’s city services and had petitioned the City for annexation.
2. As a result of its business license proposal, Bridgeport has reduced the number of business license classifications from 81 to 1 (excluding ABC licenses), and one flat \$15 fee instead of a wide range of license fees previously. The City has received positive comments from local business owners. As the City proposed, it reports that this proposal has been relatively revenue-neutral.

Bridgeport has reduced the number of business license classifications from 81 to 1 (excluding ABC licenses), and one flat \$15 fee instead of a wide range of license fees previously.

Charleston

1. As a result of the authority to issue liens for delinquent city fees, Charleston has collected \$202,258 through lien letters and property sales. The City also collected \$30,000 by publishing a list of the top 15 delinquent city service fee accounts.
2. As a result of the Urban Deer Hunt proposal, Charleston and the DNR negotiated and agreed on an expanded season and “bag limit” for Charleston, which the DNR then implemented statewide.
3. As a result of the architect-engineering procurement proposal, for most projects similar in scope to previous contracts, the City has saved at least a month of project time, all associated advertising costs, the time spent qualifying three firms, and the time spent conducting interviews and negotiating with these firms.
4. As a result of the authority to issue “on-the-spot” citations for external sanitation violations and common nuisances, Charleston inspectors have reported faster compliance, and only two of the sixty-three issued citations were appealed to the Municipal Court.

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As a result of the Urban Deer Hunt proposal, Charleston and the DNR negotiated and agreed on an expanded season and “bag limit” for Charleston, which the DNR then implemented statewide.

5. As a result of negotiations with the DNR over dredge-and-fill permits, the DNR will grant Charleston an annual, renewable “blanket” permit for dredge and fill activities in Charleston streams. This reduces the number of times the City would have to request separate permits for multiple projects.
6. As a result of discussion with the DEP over “per load” solid waste permits as it relates to dredge and fill loads, the DEP stated the City does not need to conduct tests on a per load basis unless potential sources of contamination are adjacent to the dredging area.
7. As a result of the disposition of its city property proposal, Charleston used its authority to directly sell a plot of connecting land to a Kroger store at Ashton Place without auctioning off the property. This store will use the land for a \$9.6 million expansion.
8. As a result of its proposal to streamline the design-build process, Charleston believes the authority to fully control the scheduled timeline was vital to meeting federal funding milestones in the Riverfront Canopy project.
9. As a result of the proposal to allow contracts with other jurisdictions via resolution, 35 contracts have been approved at least two weeks faster than would have otherwise occurred.

As a result of the Fire Insurance proposal and subsequent Fire Insurance Proceeds Bill, Huntington has saved approximately \$165,000 in demolition costs.

As a result of the authority to issue liens for delinquent city fees, Huntington filed 422 statutory liens in 2011 and sent out 2,290 lien notices in 2012. The 422 statutory liens have generated over \$100,000 in fee collections. In addition, the City has also collected \$305,000 worth of delinquent fees at sale closings, and collected \$400,000 from certified mailings sent between August 2010 and July 2011.

Huntington

1. As a result of the Fire Insurance proposal and subsequent Fire Insurance Proceeds Bill, Huntington has saved approximately \$165,000 in demolition costs, retained nearly \$250,000 in property value, every owner has taken responsibility for demolition without city intervention, and there has been a reduction in the number of fires associated with arson.
2. As a result of the authority to issue liens for delinquent city fees, Huntington filed 422 statutory liens in 2011 and sent out 2,290 lien notices in 2012. The 422 statutory liens have generated over \$100,000 in fee collections. In addition, the City has also collected \$305,000 worth of delinquent fees at sale closings, and collected \$400,000 from certified mailings sent between August 2010 and July 2011.

3. As a result of Huntington's local 1% sales tax, the City generated \$2,225,745 through October 4, 2012. With this additional revenue, the City eliminated the B&O tax on manufacturing, reduced the tax on service businesses from 1.00% to 0.50% and reduced the tax on retail business from 0.50% to 0.25%. According to Huntington, these measures have saved Huntington businesses \$2,085,000 from January-June 2012.

Wheeling

1. As a result of the authority to issue liens for delinquent city fees, Wheeling has reduced the delinquency rate, increased compliance, and has had no issues with collections. The City has issued several dozen liens for the maintenance of property (mowing lawns, boarding up vacant buildings, etc.) and several hundred liens for fire service fees and water/utility collections, though the City was filing liens for fire service fees prior to Home Rule.
2. As a result of its vacant property registration program, Wheeling has registered 155 properties and removed 19 properties by demolition. In total, this proposal has generated \$15,800 and property owners still owe \$33,600 more.
3. As a result of utilizing the proposal to modify zoning regulations, Wheeling has issued five Conditional-Use permits.
4. As a result of the business license proposal and subsequent state law, Wheeling has reduced the number of business license classifications from 77 to 7, and most of the fees are a flat \$15 as opposed to numerous fee amounts previously. The City has received positive comments from local business owners. As the City anticipated, this proposal has been relatively revenue-neutral.

As a result of Huntington's local 1% sales tax, the City generated \$2,225,745 through October 4, 2012.

In addition to the benefits provided to the participating municipalities, the Municipal Home Rule Pilot Program has proven beneficial to municipalities throughout the state, because some proposals have become state law for other cities.

Home Rule Proposals That Were Implemented Statewide

In addition to the benefits provided to the participating municipalities, the Municipal Home Rule Pilot Program has proven beneficial to municipalities throughout the state. Some proposals were codified into state law, allowing the benefits of this program to spread beyond Wheeling, Huntington, Bridgeport, and Charleston. The statewide benefits include the following:

1. With the passage of H.B. 4038 (2011) creating West Virginia Code §38-10E-1, all municipalities and counties are granted a lien of \$5,000 or 10%, whichever is greater, of fire insurance policy proceeds to help with the removal of burned-out structures.
2. With the passage of H.B. 2723 (2009) modifying West Virginia Code §8-13-13, all municipalities have the authority to file a lien on property within city limits for unpaid and delinquent fire, police, or street fees.
3. With the passage of H.B. 2075 (2011) modifying West Virginia Code §8-13-4, all municipalities have the authority to create an annual general municipal business license for multiple purposes.
4. With the passage of H.B. 4034 (2010) creating West Virginia Code §8-12-16c, all municipalities have the authority to establish a vacant building registration program and file liens on property for unpaid and delinquent vacant building registration fees.
5. As a result of negotiations between Charleston and the DNR, the DNR has expanded the Urban Deer Hunt season and “bag limit” for all municipalities.

This evaluation of the Home Rule Pilot Program finds that it has been effective as a forum for municipalities to test new ideas, most of which have been implemented locally and statewide with positive results.

Proposals That Have Been Considered for Statewide Implementation

During the 2012 legislative session, three of Charleston’s proposals were considered for statewide implementation but ultimately failed: HB 4312 allowing contracts with other jurisdictions by resolution; HB 4463 allowing conveyance of property to non-profits for less than market value and without auction; and HB 4661 providing for on-the-spot citations for external sanitation and nuisance violations. See Appendix C for the implementation status of all home rule proposals.

Conclusions

In 2007, the Legislature granted extensive home rule authority to select pilot municipalities with two primary objectives. One objective was to explore new ideas from cities to determine if they can be implemented statewide. This evaluation of the Home Rule Pilot Program finds that it has been effective as a forum for municipalities to test new ideas, most of which have been implemented locally and statewide with positive results.

The cities of Charleston, Huntington, and Wheeling have indicated that the authority to issue liens on delinquent city fees has increased collections of delinquent fees. Wheeling's Vacant Property Registration Program has been a source of revenue and a means to manage against blighted areas. Bridgeport and Wheeling have significantly reduced business license classifications resulting in administrative simplicity for the cities, and greater convenience for the business community. Huntington's implementation of its fire insurance proposal has lowered the city's demolition costs of fire-damaged structures by \$165,000. Each of these four proposals has been amended into state code for the benefit of other cities. In addition, Charleston's urban deer hunt proposal resulted in statewide implementation through administrative policy changes issued by the Division of Natural Resources. Moreover, other proposals that have not been implemented statewide have nevertheless proven beneficial to the pilot cities, three of which were introduced during the 2012 legislative session but died in committee.

Given the positive results from many of the home rule proposals, the logical conclusion is to expand home rule to all Class I, II, and III municipalities.

The second objective of the Home Rule Pilot Program was to give the Legislature an opportunity to determine the viability of granting broad-based home rule statewide. Given the positive results from many of the home rule proposals, the logical conclusion is to expand home rule to all Class I, II, and III municipalities. Under the pilot program, home rule ideas have been limited to the unique issues of the pilot cities. By expanding the program beyond the pilot cities, a wider range of ideas can be implemented due to the unique issues and priorities of other cities. This in turn will widen the benefits of broad-based home rule throughout the state. Furthermore, as more cities implement positive changes, state law can be amended to incorporate those changes so that other cities can make use of them without each city having to separately create new ordinances. As such, home rule will continue to evolve and improve state laws for the foreseeable future.

By expanding the program beyond the pilot cities, a wider range of ideas can be implemented due to the unique issues and priorities of other cities.

The authority granted under the pilot program is relatively extensive, with the understandable restrictions that changes to city ordinances, rules, and regulations could not violate:

1. the U.S. Constitution,
2. the West Virginia Constitution,
3. federal law, and
4. chapters sixty-a ("Uniform Controlled Substance Act"), sixty-one ("Crimes and Their Punishment"), and sixty-two ("Criminal Procedure") of West Virginia Code.

Since only three chapters of the West Virginia Code could not be violated, a significant amount of state law was available for pilot cities to have home rule. However, the Legislature can allow home rule statewide with more restrictions than what is allowed by the pilot program. Additional statutory restrictions can be added to those listed above such as certain taxation laws. **However, given the success of the program under the current restrictions, the Legislative Auditor does not find it necessary to further restrict home rule authority if it is extended statewide.**

In determining the viability of broad-based home rule statewide, the Legislative Auditor assumes that this would be without the continuation of the Home Rule Board. The purpose of the Board was to oversee the process, provide guidance in implementing proposals, facilitate dialogue between the cities and affected state agencies, and to monitor the progress and results of the cities' implementation of proposals. If home rule is expanded to all Class I, II, and III municipalities, the function of the Board may be impractical and unnecessary. Over the course of the program, the pilot municipalities have proposed carefully thought-out plans. Although some proposals either met with legal challenges, were only partially or non-implemented (see Appendix B for details of these proposals), this should not be a reflection on the Board's review of the proposals or on the proposals themselves. Legal challenges will likely occur even for proposals that are within the requirements of home rule authority. In fact, no proposal to date has been found unconstitutional. In the long term, legal challenges of ideas that emerge from home rule authority will ultimately strengthen the process. As such, if the Legislature chooses to grant broad-based home rule authority statewide, the Legislative Auditor recommends that the Home Rule Board be discontinued.

Given the success of the program under the current restrictions, the Legislative Auditor does not find it necessary to further restrict home rule authority if it is extended statewide.

As such, if the Legislature chooses to grant broad-based home rule authority statewide, the Legislative Auditor recommends that the Home Rule Board be discontinued.

Recommendations

1. *The Legislative Auditor recommends that the Legislature consider providing broad-based home rule authority to all Class I, II, and III municipalities.*
2. *If home rule is extended to all Class I, II, and III municipalities, the Legislative Auditor recommends that it be provided with the current restrictions as stipulated in the pilot program.*
3. *The Legislative Auditor recommends that the Home Rule Board be discontinued if broad-based home rule is granted statewide.*

Appendix A: Objective, Scope and Methodology

The Performance Evaluation and Research Division (PERD) within the Office of the Legislative Auditor conducted an evaluation of the Municipal Home Rule Pilot Program as required and authorized by West Virginia Code §8-1-5a.

Objective

The purpose of this report, as stipulated in West Virginia Code §8-1-5a(k), is to evaluate the effectiveness of broad-based home rule on the participating municipalities as a means to determine whether expanded home rule should be continued, reduced, expanded or terminated. In addition, this review must make recommendations as to whether any legislation is necessary or if other issues need to be addressed.

Scope

The scope of this review included the Municipal Home Rule Board's internal procedures, meeting minutes, the proposals of the pilot municipalities, their applications, communications, quarterly reports, and other actions of the participating cities (Bridgeport, Charleston, Huntington, and Wheeling).

Methodology

The primary methodology for this review included communication with and receipt of information from the cities of Bridgeport, Charleston, Huntington, and Wheeling. Discussions were also held with members and staff of the Municipal Home Rule Board, the West Virginia Municipal League, the Department of Environmental Protection, the Division of Natural Resources, the Department of Health and Human Resources, the Department of Revenue, the West Virginia Fire Commission, the West Virginia Insurance Commission, and attorney Mike Farrell of Farrell, White & Legg, PLLC. Interviews and verbal comments made by individuals were confirmed by written statements and in many cases were confirmed by corroborating evidence. To evaluate the Municipal Home Rule Board, PERD staff reviewed the Board's meeting minutes, procedures, application requirements, and asked some board members specific questions related to the Board's actions. Our office used this information to assess the overall performance of the Board compared to the requirements established in West Virginia Code §8-1-5a. To evaluate the overall effectiveness of the program, PERD staff reviewed each municipality's application, proposals, ordinances, legal opinions, quarterly reports, correspondence with state agencies, and relevant financial data and performance metrics. PERD staff also examined court documents, research papers, legal opinions, state laws, state regulations, and the West Virginia Constitution. The information from participating municipalities concerning the outcomes of their proposals was not audited by the Legislative Auditor. In addition, PERD did not conduct legal analysis on the constitutionality of any city proposal or on the constitutionality of legislators being members of the Board.

Appendix B: Details of Legal Challenges, Partially, and Non-Implemented Home Rule Proposals

Although the majority (14) of home rule proposals was fully implemented with positive results, 11 proposals were either partially implemented or not implemented at all. In some cases legal challenges prevented implementation or full implementation. The partially implemented proposals nevertheless had some positive results. This appendix discusses the reasons for partial or non-implementation of home rule proposals, and the legal issues that were raised.

Partially Implemented Proposals

Bridgeport

In Bridgeport's only partially implemented proposal, the City requested the authority to establish and enforce fire service fees outside city limits. In July 2007, Bridgeport began to assess fire service fees to residents and businesses within city limits. Yet Bridgeport's Fire Service District extends beyond city limits to 2,700 additional residential and utility structures and almost 900,000 square additional feet of commercial structures. Thus Bridgeport was providing fire services to the entire Fire Service District, while only those within city limits were paying the fire service fee. Through this proposal, Bridgeport requested the authority to issue fire service fees outside city limits but within the Fire Service District, and the authority to file, assess, and collect a lien on property within said district for unpaid and delinquent fire service fees. The fee for non-city residents raises about \$200,000 per year or 8% of the Fire Department's annual budget, despite a lawsuit questioning the city's legal authority to charge the fee. However, the City has stated that it is not using its Home Rule authority to issue these fees as this authority is provided in West Virginia Code §8-13-13. The City did not include the authority to issue liens in the fire service fee ordinance; thus, the city is not issuing liens for the collection of fire service fees. While the current practice partially matches the desired original outcome, the proposal is operating under existing state law.

Charleston

Three of Charleston's proposals were only partially implemented. In the first proposal, Charleston requested the authority to repair, alter, or demolish property, and/or mow unkempt grass, the cost of which would constitute a lien against the property. The City stated that West Virginia Code §8-12-16 did not allow municipalities to address any property maintenance issues that do not constitute a threat to public safety. That particular section of code also limited the lien amount municipalities could assess for the repair or demolition of a structure to the assessed value of the property. Furthermore, to attach a lien, the City stated it would need to obtain a court judgment, and West Virginia Code §8-13-13 might prohibit the City from attaching a lien for sidewalk repairs. While the City has fully implemented this proposal by enacting City Code Section 3-27, it has not fully utilized the authority provided. Since implementation in 2009, the City has not had to exercise its authority related to the demolition of structures, the repair of sidewalks, or issued a lien for mowing unkempt grass. So far the City has focused its efforts to the abatement or repair of exterior sanitation and common nuisance violations.

In its second proposal, Charleston requested that DEP provide the City an annual permit for recurring landfill loads, rather than file permits on a "per load" basis. Under DEP regulations, commercial enterprises were allowed an annual permit if the loads consisted of the same material, were disposed in the same facility, and were generated by similar activity. These same regulations, however, required cities to obtain solid waste permits on a "per load" basis and pay the DEP to test each load. Thus, the City requested the authority

to contract with a private DEP-certified laboratory and that DEP should grant the City an annual permit for recurring loads. On April 3, 2008, the DEP sent a letter to the Home Rule Board explaining why the City is ineligible for single-source annual permits because dredge-and-fill activities would constitute multiple sources. The City and the DEP met to discuss the proposal, and the DEP then clarified that the City did not need to test on a per load basis unless there was a possible source of contamination. As a result, the City achieved part of its desired outcome through the Home Rule process, but without Home Rule Authority. This has eliminated the potential cost of a private laboratory; thus, the City has not implemented that provision of the proposal.

Lastly, Charleston's third proposal contained two requests related to the disposition of city property: the authority to sell or lease buildings or land to non-profit organization at less than fair market value, and the authority to convey property at fair market value without having to follow auction procedures. Many non-profits who lease property from the City also request monetary support, which essentially means the City makes donations to non-profits and receives this money back in the form of rent payments. Furthermore, the City must hold auctions for the sale of all real property, which means the City cannot convey the property directly to any specific type of business that will provide necessary or convenient resources to the citizenry. Since implementation of this proposal, the City has used its authority in relation to the expansion of the Kroger store at Ashton Place. The City states an auction could have resulted in an artificially inflated price and either delayed or prevented the planned expansion. The City believes the economic impact of the \$9.6 million construction project, the additional available jobs, and the benefit of an expanded Kroger store were sufficient reason to exercise their Home Rule authority. Thus, the City has used its authority to convey property without following auction procedures, but it has not sold or leased buildings or land to non-profit organizations at less than fair market value.

Huntington

Huntington has two proposals that are only partially implemented through home rule. The first proposal is similar to Charleston and Wheeling's proposal regarding the creation of liens for the purpose of collecting delinquent fees. The main provision of the proposal was implemented, which required all landowners to pay any past-due fees prior to transfer of property. As a result, the City filed 422 statutory liens in August, sent lien notices to 2,290 customers, and collected \$305,000. However, Huntington's proposal contains an additional provision that was not implemented: the "joint collection of delinquent municipal taxes/fees with collection of delinquent property taxes and fees in the same manner that payment of personal property taxes is a condition precedent to the issuance of motor vehicle registration."

The second proposal requested the authority to impose a Municipal Occupation Tax and a Municipal Retail Sales/Use tax. Huntington noted that West Virginia Code §8-13C permits both Municipal Occupation Tax and a Municipal Sales/Use tax; however, the Municipal Occupation Tax is only permitted for cities with "severe" under-funded police and fire pension funds, and the revenue from the tax can only be used to pay down the pension's unfunded liability. Likewise, the Municipal Sales/Use tax is only permitted if a city repeals its entire B&O tax. The purpose of these taxes was to reduce the current B&O taxes paid by businesses and eliminate the city's user fee. In a subsequent amendment, Huntington asked that revenue from the Occupation Tax in excess of \$7 million be used for "much-needed capital improvements." The City implemented the 1% sales tax in January 2012, which has thus far generated \$2,225,745. As a result, the City eliminated the B&O tax on manufacturing, reduced the tax on service businesses from 1.00% to 0.50%, and reduced the tax on retail businesses from 0.50% to 0.25%; all of which resulted in \$2,085,000 in savings for Huntington businesses. However, Huntington has not implemented the Municipal Occupation Tax, choosing instead to

enter into a voluntary injunction when faced with lawsuits over the constitutionality of the proposal. The lawsuits were brought by the County Commission of Cabell County; Steel of West Virginia, Inc; Petitioner Service Employees International Union, CTW, CLC, Local Union No. 1199; and Teamsters Local Union No. 505. These lawsuits were consolidated into a single case, and proceedings began on October 5th, 2011 under Judge Jennifer Bailey. As of this report, Judge Bailey has not issued a ruling on the case, and Huntington has chosen to remain under a voluntary injunction.

Wheeling

The city of Wheeling did not have any partially-implemented proposals.

Proposals Not Implemented

Bridgeport

Two of Bridgeport's proposals were never implemented. First, the City requested the authority to participate in projects and share funds with the Board of Education in order to better assist schools. According to Bridgeport, the City has two elementary schools and a high school that are "very old and, in some cases, deplorable." The City states the school board has been unable and unwilling to provide the necessary relief in bringing those schools up to proper standards. Bridgeport is unable to use municipal funds to aid these schools on mutually beneficial projects because of a 1985 ruling by the West Virginia Tax Department stating that West Virginia Code 8-12-5 does not permit such an action. Therefore, the City requested the authority to work jointly with the Board of Education. However, the school district took this proposal to county voters for a vote, and the referendum failed to pass. As a result, the City has taken no further action on this proposal.

Second, Bridgeport requested the authority to issue Tax Increment Financing, which is currently prohibited to all Class III cities. West Virginia Code §7-11B-4 only allows "a county commission or governing body of a Class I or II municipality" to issue Tax Increment Financing. Bridgeport has specific projects in mind when proposing this project, such as a major expansion of the Meadowbrook Mall. The City stated it needed the ability to move these projects forward, and TIF would serve that purpose. In the end, the mall owners did not feel the TIF would generate sufficient revenues, and the City couldn't secure full cooperation from property owners on other potential projects. As a result, home rule was not utilized for this proposal.

Charleston

Two of Charleston's proposals were never implemented. First, the City requested the authority to determine rates, classifications, and exemptions with regard to its B&O tax structure. West Virginia Code §8-13-15 and related laws limit a municipality's flexibility in regards to B&O taxes. The actual details of the proposal would need to be developed later, as the City could not propose specific changes due to the time constraints of the Home Rule application. In subsequent communication with the Board, the City indicated that this authority would allow it to levy B&O taxes on credit unions, wireless telephone providers, and internet service providers. In the end, the City of Charleston B&O Taxing Authority Sub-Committee determined that federal regulations regarding credit unions and wireless telephone providers would likely preclude the City's proposal.

In its second proposal, Charleston requested the authority to adopt and collect a healthcare provider tax to increase the amount of Medicaid matching funds available to Charleston Hospitals. Charleston included this proposal at the request of Charleston Area Medical Center (CAMC) and Highland Hospital. These hospitals hoped the proposal could reduce their losses for uncompensated care and potentially reduce healthcare costs. The City stated the implementation of the proposal, if approved by the Board, would be contingent upon the approval of the Department of Health and Human Resources (DHHR) and the Centers of Medicare and Medicaid Services (CMS). On May 7, 2008, the DHHR sent a letter to the Home Rule Board raising concerns with this proposal. The CEO of CAMC sent Charleston a letter responding to these concerns, but thus far the DHHR and CMS have not approved of the proposal.

Huntington

Huntington has one proposal that is not currently implemented: the Land Bank Fast Track Authority. The City finds that current state law regarding property taxes (§11A-1) has resulted in a “slow-moving process.” When a property has over a year’s worth of delinquent taxes, the property’s tax lien (constituting owed back-taxes and a 1% per month interest rate) is put up for auction. The lien is usually purchased by out-of-state investment companies who have no desire to own the property itself, which does not provide much incentive for the property owners to pay the back-taxes they owe to the City. As Cabell County’s Chief Tax Deputy Tom Bell noted, this process can take up to three-and-a-half years and it is “teaching people to not pay their taxes.” The City proposed a solution based on Flint, Michigan’s model in which the County forecloses on the property and gives the property owner one year to redeem the property by paying unpaid taxes, interest, penalties and fees. All payments would go to the County, rather than a third-party purchaser, and if the property owner does not pay to redeem the property, the County auctions off the property but not the lien. If nobody purchases the property at auction, the property goes to a Land Bank Fast Track Authority, which is responsible for renovating the property for productive use. However, this proposal has not been implemented because an investment firm, Prospector, LLC, has filed for a writ of mandamus against the Cabell County Sheriff. The proposal allows the city to purchase liens prior to the county’s annual auctions, but Prospector argues that this conflicts with the Constitution of West Virginia. Because of the lawsuit, the City is not able to foreclose properties and abolish tax lien auctions. Instead, the Huntington Urban Renewal Authority (HURA), established to serve as Huntington’s Land Bank Fast Track Authority, will purchase as many liens as possible at the tax lien auctions. In November 2009, HURA purchased 236 liens for \$443,000, and redeemed \$154,000 of its initial investment by March 2010. In November 2010, HURA purchased 246 liens for \$430,786.55.

Wheeling

The city of Wheeling did not have any non-implemented proposals.

Legal Challenges

Bridgeport

Bridgeport only had one proposal face legal challenges: the proposal to establish and enforce fire service fees outside Bridgeport’s corporate limits. Two separate parties filed lawsuits in relation to this proposal. In the first case, the County Commission of Harrison County filed suit against the Municipal Home Rule Board, alleging that Bridgeport’s fire service fee ordinance is unconstitutional and the Board, therefore,

should not have approved the proposal. The presiding Judge Kaufman dismissed this case because the lawsuit was not filed against Bridgeport. In the second case, Adam Davisson and Stacey Davisson filed suit against Bridgeport, alleging the City cannot invoke §8-13-13 to enact a fire service fee against property outside the corporate limits. In Bridgeport's original proposal, the City requested Home Rule authority to issue a fire service lien outside the corporate limits and the authority to issue liens to enforce collection of said lien. Yet, when Bridgeport actually passed the ordinance to issue the fire service lien, it did not include the lien provision and argued that Bridgeport had the statutory authority to issue the fee under §8-13-13. Therefore, Bridgeport was not invoking Home Rule authority in any capacity. The Davisson suit argues that §8-13-13 does not give Bridgeport the authority to charge a fire protection fee to residents outside of corporate limits. This case is still in progress.

Charleston

The city of Charleston reported no legal challenges of its home rule proposals.

Huntington

Out of the four participating municipalities, Huntington faced the most legal challenges with three out of four proposals prompting lawsuits. First, in the Land Bank Fast Track Authority, an investment firm, Prospector, LLC, filed for a writ of mandamus against the Cabell County Sheriff. As previously mentioned, the proposal grants Huntington the authority to purchase liens prior to sale at the county's annual auctions. Prospector argues this provision violates Article 6, Section 39 of the West Virginia Constitution. As a result of the litigation, Circuit Court Judge Husted entered an injunction against the City of Huntington's ordinance prior to the 2009 tax sale. Huntington has not taken steps to oppose the injunction; thus, Prospector's writ of mandamus remains in effect. This means the City is not able to foreclose properties and abolish tax lien auctions. Instead, the Huntington Urban Renewal Authority (HURA), established to serve as Huntington's Land Bank Fast Track Authority, purchases as many liens as possible at the tax lien auctions.

Second, in the "Local options for addressing fire damage to residential/commercial structures," the West Virginia Insurance Federation filed a lawsuit alleging that the ordinance was contrary to established state insurance law. During the lawsuit, the City and the Insurance Federation met with Governor Manchin and members of his administration to resolve the matter. In the end, Governor Manchin signed the Fire Insurance Proceeds Bill, which effectively nullified the need for Huntington's Home Rule proposal. The Circuit Court entered an Agreed Order of Dismissal, dismissing West Virginia Insurance Federation's Petition as moot.

Third, in the Municipal Occupation Tax, the County Commission of Cabell County; Steel of West Virginia, Inc; Bob Bailey; Tommie L. Kelly, Sr.; and Petitioner Service Employees International Union, CTW, CLC, Local Union No. 1199 all filed identical civil lawsuits alleging that both the tax and the Municipal Home Rule statute (§8-1-5a) violate the West Virginia Constitution. Huntington agreed not to implement the Municipal Occupation Tax, choosing instead to enter into a voluntary injunction. These lawsuits were consolidated into a single case, with the addition of Teamsters Local Union 505 and Nina Barret. Proceedings began on October 5th, 2011 under Judge Jennifer Bailey. According to court documents, the petitioners argued the Municipal Home Rule statute violates the West Virginia Constitution on three accounts.

1. The inclusion of Legislators as Members of the Board, an agency of the Executive Branch;
2. The express inclusion of Legislators as Members of the Board, which allegedly deprived the Governor of his authority to make agency appointments;
3. The alleged granting of legislative powers to the Board without adequate guidance.

The petitioners also challenged the constitutionality of the Municipal Occupation Tax, saying it allegedly:

1. Violates the Equal Protection Clause, as special legislation, because it does not apply equally to all residents of Huntington;
2. Violates the Uniformity Clause, because it does not apply equally to all residents of Huntington; and,
3. Is in conflict with other sections of West Virginia Code.

As of this report, Judge Bailey has not issued a ruling on the case, and Huntington has chosen to remain under a voluntary injunction. The City has not implemented the Municipal Occupation Tax, and the \$3-a-week City Service Fee remains in place.

Wheeling

The city of Wheeling reported no legal challenges of its home rule proposals.

Appendix C: City Proposals by Implementation Status

Proposals by Implementation Status				
City of Bridgeport				
	Proposal	Fully Implemented	Partially Implemented	Not Implemented
1	Annexation of property within the city but separated by “shoestring annexation”	X		
2	TIF Projects			X
3	Working in partnership with schools			X
4	The establishment and enforcement of fire service fees outside the fire area		X	
5	Simplification of business licenses	X		

Proposals by Implementation Status				
City of Charleston				
Proposal		Fully Implemented	Partially Implemented	Not Implemented
1	Delinquent fees	X		
2	Urban Deer Hunt	X*		
3	“Eyesores” and dilapidated structures		X	
4	Procurement of architect-engineering services	X		
5	B&O taxing authority			X
6	Building and zoning administration enforcement provisions	X		
7	Relief from Division of Natural Resources “per-project” permitting	X*		
8	Relief from “per load” Department of Environmental Protection testing costs and permitting		X*	
9	Disposition of city property		X	
10	Relief from Design-Build Procurement Act requirements	X		
11	Allow contracts with other jurisdictions via resolution	X		
12	Municipal Healthcare Provider Tax			X
*These proposals were heavily modified from its original. As a result of meetings between city officials, state officials, and the Home Rule Board, negotiations and agreements were reached without invoking Home Rule Authority. See Appendix A for more details.				
Proposals by Implementation Status				
City of Huntington				
Proposal		Fully Implemented	Partially Implemented	Not Implemented
1	Land Bank Fast Track Authority			X
2	Local options for addressing fire damage to residential/commercial structures	X		
3	Increased capacity to collect city fees/taxes		X	
4	Municipal occupation tax/municipal retail sales-use tax		X	

Proposals by Implementation Status				
City of Wheeling				
Proposal		Fully Implemented	Partially Implemented	Not Implemented
1	Vacant structure registration	X		
2	Placing liens to collect unpaid fees	X		
3	Modifying state zoning regulations	X		
4	Simplification of business licenses	X		

Appendix D: City Proposals That Faced Legal Challenges or Became State Law

City Proposals That Faced Legal Challenges or Became State Law			
City of Bridgeport			
	Proposal	Legally Challenged	Now Statewide
1	Annexation of property within the city but separated by “shoestring annexation”		
2	TIF Projects		
3	Working in partnership with schools		
4	The establishment and enforcement of fire service fees outside the fire area	X	
5	Business License taxes simplified to a smaller number of licenses and license fees		X

City Proposals That Faced Legal Challenges or Became State Law			
City of Charleston			
	Proposal	Legally Challenged	Now Statewide
1	Delinquent fees		X
2	Urban Deer Hunt		X*
3	“Eyesores” and dilapidated structures		
4	Procurement of architect-engineering services		
5	B&O taxing authority		
6	Building and zoning administration enforcement provisions		
7	Relief from Division of Natural Resources “per-project” permitting		
8	Relief from “per load” Department of Environmental Protection testing costs and permitting		
9	Disposition of city property		
10	Relief from Design-Build Procurement Act requirements		
11	Allow contracts with other jurisdictions via resolution		
12	Municipal Healthcare Provider Tax		
*Charleston’s Urban Deer Hunt proposal precipitated changes in the Division of Natural Resources’ hunting regulations and went statewide administratively as opposed to a statutory change.			
City Proposals That Faced Legal Challenges or Became State Law			
City of Huntington			
	Proposal	Legally Challenged	Now Statewide
1	Land Bank Fast Track Authority	X	
2	Local options for addressing fire damage to residential/commercial structures	X	X
3	Increased capacity to collect city fees/taxes		X
4	Municipal occupation tax/municipal retail sales-use tax	X	

City Proposals That Faced Legal Challenges or Became State Law			
City of Wheeling			
Proposal		Legally Challenged	Now Statewide
1	Vacant structure registration		X
2	Placing liens to collect unpaid fees		X
3	Modifying state zoning regulations		
4	Simplification of business licenses		X

Appendix E: City Proposals and Affected State Statutes and Regulations

Bridgeport

1. Working in partnership with schools

§8-12-5 – Municipal Corporation > General and Specific Powers, Duties and Allied Relations of Municipalities, Governing Bodies and Municipal Officers and Employees; Suits Against Municipalities > General Powers of Every Municipality and the Governing Body Thereof

2. Simplification of business licenses and license fees.

§8-13-4 – Municipal Corporation > Taxation and Finance > Municipal License and Tax Thereon When State License Required

3. Annexation of property within the city but separated by “shoestring annexation.”

§8-6-1(a) – Municipal Corporations > Annexation > Annexation of Unincorporated Territory

4. TIF Projects

§7-11B-1 – County Commissions and Officers > West Virginia Tax Increment Financing Acts

5. The establishment and enforcement of fire service fees outside the fire area.

§8-13-13 – Municipal Corporation > Taxation and Finance > Special Charges for Municipal Services

Charleston

1. Delinquent city fees

§8-13-13 – Municipal Corporation > Taxation and Finance > Special Charges for Municipal Services

§11-10-5d – Taxation > West Virginia Tax Procedure and Administration Act > Confidentiality and Disclosure of Returns and Return Information

2. Urban Deer Hunt

CSR §58-45-3.3 – Division of Natural Resources > Hunting and Trapping Rule

3. “Eyesores” and Dilapidated Structures

§8-12-16 – Municipal Corporations > General and Specific Powers, Duties and Allied Relations of Municipalities, Governing Bodies and Municipal Officers and Employees; Suits Against Municipalities > Ordinance Regulating the Repair, Closing, Demolition, etc., of Dwellings or Buildings Unfit for Human Habitation; Procedures

4. Procurement of architect-engineering services

§5G-1-3 – Procurement of Architect-Engineer by State and Its Subdivision > Contracts for Architectural and Engineering Services; Selection Process Where Total Project Costs are Estimated to Cost \$25,000 or More

5. B&O taxing authority

§8-13-5– Municipal Corporation > Taxation and Finance > Business and Occupation or Privilege Tax; Limitation on Rates; Effective Date of Tax; Exemptions; Activity in Two or More Municipalities; Administrative Provisions

6. Building and zoning administration enforcement provisions

§8-12-16 – Municipal Corporations > General and Specific Powers, Duties and Allied Relations of Municipalities, Governing Bodies and Municipal Officers and Employees; Suits Against Municipalities > Ordinances Regulating the Repair, Closing, Demolition, Etc., of Dwellings or Buildings Unfit for Human Habitation; Procedures

7. Relief from Division of Natural Resources “per-project” permitting

§36B-1-1 – Uniform Common Interest Ownership Act

8. Relief from “per load” Department of Environmental Protection testing costs and permitting.

§22-15-1 – Environmental Resources > Solid Waste Management Act

9. Disposition of city property

§8-12-18 – Municipal Corporations > General and Specific Powers, Duties and Allied Relations of Municipalities, Governing Bodies and Municipal Officers and Employees; Suits Against Municipalities > Sale, Lease, or Disposition of Other Municipal Property

10. Relief from Design-Build Procurement Act requirements

§5-22A – General Powers and Authority of the Governor, Secretary of State and Attorney General; Board of Public Works; Miscellaneous Agencies, Commissions, Offices, Programs, Etc. > Design-Build Procurement Act

11. Allow contracts with other jurisdictions via resolution

§8-11-3(10) – Municipal Corporations > Powers and Duties with Respect to Ordinances and Ordinance Procedures > Cases Requiring Enactment of Ordinance

12. Municipal Healthcare Provider Tax

§11-27-1 – Taxation > Health Care Provider Taxes

Huntington

1. Land Bank Fast Track Authority

§11A-1-1 – Collection and Enforcement of Property Taxes > Accrual and Collection of Taxes)

2. Local options for addressing fire damage to residential/commercial structures

§33-17-1 – Property Insurance Declination, Termination and Disclosure

3. Increased capacity to collect city fees/taxes

§8-13-13 – Municipal Corporation > Taxation and Finance > Special Charges for Municipal Services

4. Municipal occupation tax/municipal retail sales-use tax

§8-13-13 – Municipal Corporation > Taxation and Finance > Special Charges for Municipal Services

Wheeling

1. Vacant structure registration

§8-12-5 – Municipal Corporations > General and Specific Powers, Duties and Allied Relations of Municipalities, Governing Bodies and Municipal Officers and Employees; Suits Against Municipalities > General Powers of Every Municipality and the Governing Body Thereof.

2. Placing liens to collect unpaid city fees

§8-13-13 – Municipal Corporation > Taxation and Finance > Special Charges for Municipal Services.

3. Modifying state zoning regulations

§8-12-18 – Municipal Corporations > General and Specific Powers, Duties and Allied Relations of Municipalities, Governing Bodies and Municipal Officers and Employees; Suits Against Municipalities > Sale, Lease, or Disposition of Other Municipal Property

4. Simplification of business licenses and license fees.

§8-13-4 – Municipal Corporations > Taxation and Finance > Municipal License and Tax Thereon When State License Required



WEST VIRGINIA LEGISLATIVE AUDITOR

PERFORMANCE EVALUATION & RESEARCH DIVISION

Building 1, Room W-314, State Capitol Complex, Charleston, West Virginia 25305

telephone: 1-304-347-4890 | www.legis.state.wv.us/Joint/PERD/perd.cfm | fax: 1-304-347-4939