

E N G R O S S E D
COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 435

(By Senators Snyder, Miller, Kessler (Mr. President),
Jenkins, Yost, Stollings, Plymale, McCabe,
Fitzsimmons, Palumbo and Beach)

[Originating in the Committee on Government Organization;
reported March 6, 2013.]

A BILL to amend and reenact §8-1-5a of the Code of West Virginia,
1931, as amended, relating to continuing the Municipal Home
Rule Pilot Program; legislative findings; authorizing Class I, II,
III and IV municipalities to participate in the program;
clarifying the voting privileges of members of the Municipal
Home Rule Board; clarifying the powers and duties of the
board; written plan requirements for municipalities; ordinance

requirements for municipalities; powers and duties of the participating municipalities; prohibiting certain acts by participating municipalities; amending the written plan; reporting requirements; termination date of the pilot program; and the effect of ordinances passed by the municipalities participating in the pilot program.

Be it enacted by the Legislature of West Virginia:

That §8-1-5a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 1. PURPOSE AND SHORT TITLE;
DEFINITIONS; GENERAL
PROVISIONS; CONSTRUCTION.**

§8-1-5a. Municipal Home Rule Pilot Program.

1 (a) *Legislative findings.* – The Legislature finds and
2 declares that:

3 (1) The initial Municipal Home Rule Pilot Program
4 brought positive results, including novel municipal ideas that
5 became municipal ordinances which later resulted in new
6 statewide statutes;

7 (2) The initial Municipal Home Rule Pilot Program also
8 brought some negative results, including novel municipal
9 ideas that resulted in court challenges against some of the
10 participating municipalities;

11 (3) The Municipal Home Rule Board was an essential
12 part of the initial Municipal Home Rule Pilot Program but it
13 lacked some needed powers and duties;

14 (4) Municipalities still face challenges delivering services
15 required by federal and state law, or demanded by their
16 constituents;

17 (5) Municipalities are sometimes restrained by state
18 statutes, policies and rules that challenge their ability to carry
19 out their duties and responsibilities in a cost-effective,
20 efficient and timely manner;

21 (6) Continuing the Municipal Home Rule Pilot Program
22 is in the public interest; and

23 (7) Increasing the powers and duties of the Municipal
24 Home Rule Board will enhance the Municipal Home Rule
25 Pilot Program.

26 (b) *Continuance of pilot program.* – The Municipal
27 Home Rule Pilot Program is continued until July 1, 2019.
28 The ordinances enacted by the four participating
29 municipalities pursuant to the initial Municipal Home Rule
30 Pilot Program are hereby authorized and may remain in effect
31 until the ordinances are repealed, but are null and void if
32 amended and such amendment is not approved by the
33 Municipal Home Rule Board: *Provided*, That any ordinance
34 enacting a municipal occupation tax is hereby null and void.

35 (c) *Authorizing participation.* – Commencing July 1,
36 2013, fourteen Class I, Class II, Class III and/or Class IV
37 municipalities, that are current in payment of all state fees,
38 may participate in the Municipal Home Rule Pilot Program
39 pursuant to the provisions of this section: *Provided*, That the
40 four municipalities participating in the pilot program on July
41 1, 2012, are hereby authorized to continue in the pilot
42 program and may amend current written plans and/or submit
43 new written plans in accordance with the provisions of this
44 section: *Provided, however*, That if any of the four

45 municipalities participating in the pilot program on July 1,
46 2012, do not want to participate in the pilot program, then the
47 municipality must submit a written letter to the board
48 indicating the municipality's desire not to participate.

49 (d) *Municipal Home Rule Board.* – The Municipal Home
50 Rule Board is hereby continued. The board members serving
51 on the board on July 1, 2012, may continue to serve, except
52 that the Chair of the Senate Committee on Government
53 Organization and the Chair of the House Committee on
54 Government Organization shall be ex officio nonvoting
55 members. Effective July 1, 2013, the Municipal Home Rule
56 Board shall consist of the following five voting members:

57 (1) The Governor, or a designee, who shall serve as chair;

58 (2) The Executive Director of the West Virginia
59 Development Office or a designee;

60 (3) One member representing the Business and Industry
61 Council, appointed by the Governor with the advice and
62 consent of the Senate;

63 (4) One member representing the largest labor
64 organization in the state, appointed by the Governor with the
65 advice and consent of the Senate; and

66 (5) One member representing the West Virginia Chapter
67 of American Institute of Certified Planners, appointed by the
68 Governor with the advice and consent of the Senate.

69 (e) *Board's powers and duties.* – The Municipal Home
70 Rule Board has the following powers and duties:

71 (1) Review, evaluate, make recommendations and
72 approve or reject, by a majority vote of the board, each aspect
73 of the written plan submitted by a municipality;

74 (2) By a majority vote of the board, select, based on the
75 municipality's written plan, up to ten new Class I, Class II,
76 Class III and/or Class IV municipalities to participate in the
77 Municipal Home Rule Pilot Program;

78 (3) Review, evaluate, make recommendations and
79 approve or reject, by a majority vote of the board, the
80 amendments to the written plans submitted by municipalities;

81 (4) Approve or reject, by a majority vote of the board,
82 each ordinance submitted by a participating municipality
83 pursuant to its written plan or its amendments to the written
84 plan;

85 (5) Consult with any agency affected by the written plans
86 or the amendments to the written plans; and

87 (6) Perform any other powers or duties necessary to
88 effectuate the provisions of this section.

89 (f) *Written plan.* – On or before June 1, 2014, a Class I,
90 Class II, Class III or Class IV municipality desiring to
91 participate or continue to participate in the Municipal Home
92 Rule Pilot Program shall submit a written plan to the board
93 stating in detail the following:

94 (1) The specific laws, acts, resolutions, policies, rules or
95 regulations which prevent the municipality from carrying out
96 its duties in the most cost-efficient, effective and timely
97 manner;

98 (2) The problems created by the laws, acts, resolutions,
99 policies, rules or regulations;

100 (3) The proposed solutions to the problems, including all
101 proposed changes to ordinances, acts, resolutions, rules and
102 regulations: *Provided*, That the specific municipal ordinance
103 instituting the solution does not have to be included in the
104 written plan; and

105 (4) A written opinion, by an attorney licensed to practice
106 in West Virginia, stating that the proposed written plan is
107 constitutional and does not violate the provisions of this
108 section.

109 (g) *Public hearing on written plan.* – Prior to submitting
110 its written plan to the board, the municipality shall:

111 (1) Hold a public hearing on the written plan;

112 (2) Provide notice at least thirty days prior to the public
113 hearing by a Class II legal advertisement;

114 (3) Make a copy of the written plan available for public
115 inspection at least thirty days prior to the public hearing; and

116 (4) After the public hearing, adopt an ordinance
117 authorizing the municipality to submit a written plan to the
118 Municipal Home Rule Board after the proposed ordinance
119 has been read two times.

120 (h) *Selection of municipalities.* – On or after June 1,
121 2014, by a majority vote, the Municipal Home Rule Board
122 may select from the municipalities that submitted written
123 plans and were approved by the board by majority vote up to
124 ten new Class I, Class II, Class III and/or Class IV
125 municipalities to participate in the Municipal Home Rule
126 Pilot Program.

127 (i) *Ordinance, act, resolution, rule or regulation.* – After
128 being selected to participate in the Municipal Home Rule
129 Pilot Program and prior to enacting an ordinance, act,
130 resolution, rule or regulation based on the written plan, the
131 municipality shall:

132 (1) Hold a public hearing on the proposed ordinance, act,
133 resolution, rule or regulation;

134 (2) Provide notice at least thirty days prior to the public
135 hearing by a Class II legal advertisement;

136 (3) Make a copy of the proposed ordinance, act,
137 resolution, rule or regulation available for public inspection
138 at least thirty days prior to the public hearing;

139 (4) After the public hearing, submit the comments, either
140 in audio or written form, to the Municipal Home Rule Board;

141 (5) Obtain approval, from the Municipal Home Rule
142 Board by a majority vote, for the proposed ordinance, act,
143 resolution, rule or regulation; and

144 (6) After obtaining approval from the Municipal Home
145 Rule Board, read the proposed ordinance, act, resolution, rule
146 or regulation at least two times.

147 (j) *Powers and duties of municipalities.* – The
148 municipalities participating in the Municipal Home Rule
149 Pilot Program have the authority to pass an ordinance, act,
150 resolution, rule or regulation, under the provisions of this
151 section, that is not contrary to:

152 (1) The provisions of this section; and

153 (2) The municipality's written plan.

154 (k) *Prohibited acts.* – The municipalities participating in
155 the Municipal Home Rule Pilot Program do not have the
156 authority to pass an ordinance, act, resolution, rule or
157 regulation, under the provisions of this section, pertaining to:

- 158 (1) The Constitutions of the United States or West
159 Virginia;
- 160 (2) Federal law or crimes and punishment;
- 161 (3) Chapters sixty-a, sixty-one and sixty-two of this code
162 or state crimes and punishment;
- 163 (4) Pensions or retirement plans;
- 164 (5) Annexation;
- 165 (6) Taxation: *Provided*, That a participating municipality
166 may enact a municipal sales tax up to one percent if it
167 reduces or eliminates its municipal business and occupation
168 tax;
- 169 (7) Tax increment financing;
- 170 (8) Environmental laws;
- 171 (9) Extraction of natural resources; and
- 172 (10) Persons or property outside the boundaries of the
173 municipality: *Provided*, That this prohibition under the
174 Municipal Home Rule Pilot Program does not affect a
175 municipality's powers outside its boundary lines under this
176 chapter, this code or court decisions.

177 (l) *Amendments to written plans.* – A municipality
178 selected to participate in the Municipal Home Rule Pilot
179 Program may amend its written plan at any time.

180 (m) *Reporting requirements.* – Commencing December
181 1, 2015, and each year thereafter, each participating
182 municipality shall give a progress report to the Municipal
183 Home Rule Board, and commencing January 1, 2016, and
184 each year thereafter, the Municipal Home Rule Board shall
185 give a summary report of all the participating municipalities
186 to the Joint Committee on Government and Finance.

187 (n) *Termination of the pilot program.* – The Municipal
188 Home Rule Pilot Program terminates on July 1, 2019. No
189 ordinance, act, resolution, rule or regulation may be enacted
190 by a participating municipality after July 1, 2019, pursuant to
191 the provisions of this section. An ordinance, act, resolution,
192 rule or regulation enacted by a participating municipality
193 under the provisions of this section during the period of the
194 Municipal Home Rule Pilot Program shall continue in full
195 force and effect until repealed, but is null and void if it is

196 amended and such amendment is not approved by the

197 Municipal Home Rule Board.