

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 435**

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

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

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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, ten 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.

40 (d) *Municipal Home Rule Board.* – The Municipal Home  
41 Rule Board is hereby continued. The board members serving  
42 on the board on July 1, 2012, may continue to serve, except  
43 that the Chair of the Senate Committee on Government  
44 Organization and the Chair of the House Committee on  
45 Government Organization shall be *ex officio* nonvoting  
46 members. Effective July 1, 2013, the Municipal Home Rule  
47 Board shall consist of the following five voting members:

- 48 (1) The Governor, or a designee, who shall serve as chair;  
49 (2) The Executive Director of the West Virginia  
50 Development Office or a designee;

51 (3) One member representing the Business and Industry  
52 Council, appointed by the Governor with the advice and  
53 consent of the Senate;

54 (4) One member representing the largest labor  
55 organization in the state, appointed by the Governor with the  
56 advice and consent of the Senate; and

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

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

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

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

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

72 (4) Approve or reject, by a majority vote of the board,  
73 each ordinance submitted by a participating municipality  
74 pursuant to its written plan or its amendments to the written  
75 plan;

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

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

80 (f) *Written plan.* – On or before June 1, 2014, a Class I,  
81 Class II, Class III or Class IV municipality desiring to  
82 participate in the Municipal Home Rule Pilot Program shall  
83 submit a written plan to the board stating in detail the  
84 following:

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

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

91 (3) The proposed solutions to the problems, including all  
92 proposed changes to ordinances, acts, resolutions, rules and  
93 regulations: *Provided*, That the specific municipal ordinance  
94 instituting the solution does not have to be included in the  
95 written plan; and

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

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

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

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

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

107 (4) After the public hearing, adopt an ordinance  
108 authorizing the municipality to submit a written plan to the  
109 Municipal Home Rule Board after the proposed ordinance  
110 has been read two times.

111 (h) *Selection of municipalities.* – On or after June 1,  
112 2014, by a majority vote, the Municipal Home Rule Board  
113 may select from the municipalities that submitted written  
114 plans and were approved by the board by majority vote up to  
115 ten Class I, Class II, Class III and/or Class IV municipalities  
116 to participate in the Municipal Home Rule Pilot Program.

117 (i) *Ordinance, act, resolution, rule or regulation.* – After  
118 being selected to participate in the Municipal Home Rule  
119 Pilot Program and prior to enacting an ordinance, act,  
120 resolution, rule or regulation based on the written plan, the  
121 municipality shall:

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

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

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

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



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

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

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

142 (1) The provisions of this section; and

143 (2) The municipality's written plan.

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

148 (1) The Constitutions of the United States or West  
149 Virginia;

150 (2) Federal law or crimes and punishment;

151 (3) Chapters sixty-a, sixty-one and sixty-two of this code  
152 or state crimes and punishment;

153 (4) Pensions or retirement plans;

154 (5) Annexation;

155 (6) Taxation: *Provided*, That a participating municipality  
156 may enact a municipal sales tax up to one percent if it  
157 reduces or eliminates its municipal business and occupation  
158 tax;

159 (7) Tax increment financing;

160 (8) Environmental laws;

161 (9) Extraction of natural resources; and

162 (10) Persons or property outside the boundaries of the  
163 municipality: *Provided*, That this prohibition under the  
164 Municipal Home Rule Pilot Program does not affect a  
165 municipality's powers outside its boundary lines under this  
166 chapter, this code or court decisions.

167 (1) *Amendments to written plans.* – A municipality  
168 selected to participate in the Municipal Home Rule Pilot  
169 Program may amend its written plan at any time.

170 (m) *Reporting requirements.* – Commencing December  
171 1, 2015, and each year thereafter, each participating  
172 municipality shall give a progress report to the Municipal  
173 Home Rule Board, and commencing January 1, 2016, and  
174 each year thereafter, the Municipal Home Rule Board shall  
175 give a summary report of all the participating municipalities  
176 to the Joint Committee on Government and Finance.

177 (n) *Termination of the pilot program.* – The Municipal  
178 Home Rule Pilot Program terminates on July 1, 2019. No  
179 ordinance, act, resolution, rule or regulation may be enacted  
180 by a participating municipality after July 1, 2019, pursuant to  
181 the provisions of this section. An ordinance, act, resolution,  
182 rule or regulation enacted by a participating municipality  
183 under the provisions of this section during the period of the  
184 Municipal Home Rule Pilot Program shall continue in full  
185 force and effect until repealed, but is null and void if it is  
186 amended and such amendment is not approved by the  
187 Municipal Home Rule Board.

Com. Sub. for S. B. No. 435]

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(NOTE: The purpose of this bill is to continue the Municipal Home Rule Pilot Program and provides legislative findings. The bill authorizes certain municipalities to participate in the program. The bill further changes the membership of the Municipal Home Rule Board. The bill establishes the powers and duties of the board. The bill further establishes the written plan requirements for a municipality desiring to participate in the Municipal Home Rule Pilot Program and that there shall be a public hearing on the written plan. The bill establishes ordinance requirements for municipalities. The bill further provides the powers and duties of the participating municipalities. The bill prohibits certain acts by participating municipalities. The bill provides that municipalities may amend the written plans. The bill also provides reporting requirements for each participating municipality and provides a termination date of the pilot program.

This section has been completely rewritten; therefore, strike-throughs and underscoring have been omitted.)