

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

H. B. 2539

(By Delegates Trecost, Canterbury, Perry, E. Nelson, Howell,
Manchin, Eldridge, Boggs, Morgan Longstreth)

[Introduced February 2, 2015; referred to the
Committee on Government Organization then the Judiciary.]

A BILL to amend and reenact §8-1-5a of the Code of West Virginia, 1931, as amended, relating to
increasing by seven the number of participants in the Home Rule 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.

- (a) *Legislative findings.* -- The Legislature finds and declares that:
 - (1) The initial Municipal Home Rule Pilot Program brought innovative results, including novel municipal ideas that became municipal ordinances which later resulted in new statewide statutes;
 - (2) The initial Municipal Home Rule Pilot Program also brought novel municipal ideas that resulted in court challenges against some of the participating municipalities;
 - (3) The Municipal Home Rule Board was an essential part of the initial Municipal Home Rule Pilot Program, but it lacked some needed powers and duties;
 - (4) Municipalities still face challenges delivering services required by federal and state law or demanded by their constituents;

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

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

5 (7) Increasing the powers and duties of the Municipal Home Rule Board will enhance the
6 Municipal Home Rule Pilot Program.

7 (b) *Continuance of pilot program.* -- The Municipal Home Rule Pilot Program is continued
8 until July 1, 2019. The ordinances enacted by the four participating municipalities pursuant to the
9 initial Municipal Home Rule Pilot Program are hereby authorized and may remain in effect until the
10 ordinances are repealed, but are null and void if amended and such amendment is not approved by
11 the Municipal Home Rule Board: *Provided*, That any ordinance enacting a municipal occupation
12 tax is hereby null and void.

13 (c) *Authorizing participation.* --

14 (1) Commencing July 1, 2013, ~~twenty~~ twenty-seven Class I, Class II, Class III and/or Class
15 IV municipalities that are current in payment of all state fees may participate in the Municipal Home
16 Rule Pilot Program pursuant to the provisions of this section.

17 (2) The four municipalities participating in the pilot program on July 1, 2012, are hereby
18 authorized to continue in the pilot program and may amend current written plans and/or submit new
19 written plans in accordance with the provisions of this section.

20 (3) If any of the four municipalities participating in the pilot program on July 1, 2012, do not
21 want to participate in the pilot program, then on or before June 1, 2014, the municipality must submit
22 a written letter to the board indicating the municipality's intent not to participate and the board may
23 choose another municipality to fill the vacancy: *Provided*, That if a municipality chooses not to
24 participate further in the pilot program, its ordinances enacted pursuant to the Municipal Home Rule
25 Pilot Program are hereby authorized and may remain in effect until the ordinances are repealed, but
26 are null and void if amended: *Provided, however*, That any ordinance enacting a municipal

1 occupation tax is null and void.

2 (d) *Municipal Home Rule Board.* -- The Municipal Home Rule Board is hereby continued.

3 The board members serving on the board on July 1, 2012, may continue to serve, except that the

4 Chair of the Senate Committee on Government Organization and the Chair of the House Committee

5 on Government Organization shall be ex officio nonvoting members. Effective July 1, 2013, the

6 Municipal Home Rule Board shall consist of the following five voting members:

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

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

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

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

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

15 (e) *Board's powers and duties.* -- The Municipal Home Rule Board has the following powers
16 and duties:

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

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

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

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

26 (5) Consult with any agency affected by the written plans or the amendments to the written

1 plans; and

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

3 (f) *Written plan.* -- On or before June 1, 2014, a Class I, Class II, Class III or Class IV
4 municipality desiring to participate in the Municipal Home Rule Pilot Program shall submit a written
5 plan to the board stating in detail the following:

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

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

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

12 (4) A written opinion, by an attorney licensed to practice in West Virginia, stating that the
13 proposed written plan does not violate the provisions of this section.

14 (g) *Public hearing on written plan.* -- Prior to submitting its written plan to the board, the
15 municipality shall:

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

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

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

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

24 (h) *Selection of municipalities.* -- On or after June 1, 2014, by a majority vote, the Municipal
25 Home Rule Board may select from the municipalities that submitted written plans and were approved
26 by the board by majority vote, new Class I, Class II, Class III and/or Class IV municipalities to

1 participate in the Municipal Home Rule Pilot Program. A municipality which filed an application
 2 prior to June 1, 2014, or filed an incomplete application prior to June 1, 2014, may resubmit those
 3 applications for approval to participate in the Home Rule Pilot Program.

4 (i) *Ordinance, act, resolution, rule or regulation.* -- After being selected to participate in the
 5 Municipal Home Rule Pilot Program and prior to enacting an ordinance, act, resolution, rule or
 6 regulation based on the written plan, the municipality shall:

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

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

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

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

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

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

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

21 (1) Environmental law;

22 (2) Bidding on government construction and other contracts;

23 (3) The Freedom of Information Act;

24 (4) The Open Governmental Proceedings Act;

25 (5) Wages for construction of public improvements;

26 (6) The provisions of this section;

- 1 (7) The provisions of section five-a, article twelve of this chapter; and
2 (8) The municipality's written plan.
- 3 (k) *Prohibited acts.* -- The municipalities participating in the Municipal Home Rule Pilot
4 Program do not have the authority to pass an ordinance, act, resolution, rule or regulation, under the
5 provisions of this section, pertaining to:
- 6 (1) The Constitution of the United States or West Virginia;
7 (2) Federal law or crimes and punishment;
8 (3) Chapters sixty-a, sixty-one and sixty-two of this code or state crimes and punishment;
9 (4) Pensions or retirement plans;
10 (5) Annexation;
11 (6) Taxation: *Provided*, That a participating municipality may enact a municipal sales tax
12 up to one percent if it reduces or eliminates its municipal business and occupation tax: *Provided*,
13 *however*, That if a municipality subsequently reinstates or raises the municipal business and
14 occupation tax it previously reduced or eliminated under the Municipal Home Rule Pilot Program,
15 it shall eliminate the municipal sales tax enacted under the Municipal Home Rule Pilot Program:
16 *Provided further*, That any municipality that imposes a municipal sales tax pursuant to this section
17 shall use the services of the Tax Commissioner to administer, enforce and collect the tax in the same
18 manner as the state consumers sales and service tax and use tax under the provisions of articles
19 fifteen, fifteen-a and fifteen-b, chapter eleven of this code and all applicable provisions of the
20 streamlined sales and use tax agreement: *And provided further*, That such tax will not apply to the
21 sale of motor fuel or motor vehicles;
- 22 (7) Tax increment financing;
23 (8) Extraction of natural resources;
24 (9) Persons or property outside the boundaries of the municipality: *Provided*, That this
25 prohibition under the Municipal Home Rule Pilot Program does not affect a municipality's powers
26 outside its boundary lines under other sections of this chapter, other chapters of this code or court

1 decisions;

2 (10) Marriage and divorce laws; and

3 (11) An occupation tax, fee or assessment payable by a nonresident of a municipality.

4 (l) *Amendments to written plans.* -- A municipality selected to participate in the Municipal
5 Home Rule Pilot Program may amend its written plan at any time.

6 (m) *Reporting requirements.* -- Commencing December 1, 2015, and each year thereafter,
7 each participating municipality shall give a progress report to the Municipal Home Rule Board and
8 commencing January 1, 2016, and each year thereafter, the Municipal Home Rule Board shall give
9 a summary report of all the participating municipalities to the Joint Committee on Government and
10 Finance.

11 (n) *Performance Evaluation and Review Division review.* --Before January 1, 2019, the
12 Performance Evaluation and Review Division of the Legislative Auditor's office shall conduct a
13 performance review on the pilot program and the participating municipalities. The review shall
14 include the following:

15 (1) An evaluation of the effectiveness of expanded home rule on the participating
16 municipalities;

17 (2) A recommendation as to whether the expanded home rule should be continued, reduced,
18 expanded or terminated;

19 (3) A recommendation as to whether any legislation is necessary; and

20 (4) Any other issues considered relevant.

21 (o) *Termination of the pilot program.* -- The Municipal Home Rule Pilot Program terminates
22 on July 1, 2019. No ordinance, act, resolution, rule or regulation may be enacted by a participating
23 municipality after July 1, 2019, pursuant to the provisions of this section. An ordinance, act,
24 resolution, rule or regulation enacted by a participating municipality under the provisions of this
25 section during the period of the Municipal Home Rule Pilot Program shall continue in full force and
26 effect until repealed, but is null and void if it is amended and such amendment is not approved by

1 the Municipal Home Rule Board.

NOTE: The purpose of this bill is to increase the number of participants allowed in the Home Rule Pilot Program to allow the seven municipalities who were not accepted in the Home Rule Pilot Program to reapply.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.