

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

House Bill 2384

2015 Carryover

(BY DELEGATES WALTERS, CANTERBURY, R. PHILLIPS,
OVERINGTON, BYRD, ROWE, STANSBURY, GUTHRIE, B.
WHITE, ARMSTEAD AND E. NELSON)

[Introduced January 13, 2016; referred to the
Committee on Pensions and Retirement then Political
Subdivisions.]

1 A BILL to amend and reenact §8-1-5a of the Code of West Virginia, 1931, as amended, relating
 2 to removing prohibition of municipalities that are participating in the Municipal Home Rule
 3 Pilot Program to pass ordinances, acts, rules or regulations pertaining to municipal
 4 pension plans.

Be it enacted by the Legislature of West Virginia:

1 That §8-1-5a of the Code of West Virginia, 1931, as amended, be amended and reenacted
 2 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 declares that:

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

5 (2) The initial Municipal Home Rule Pilot Program also brought novel municipal ideas that
 6 resulted in court challenges against some of the participating municipalities;

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

9 (4) Municipalities still face challenges delivering services required by federal and state law
 10 or demanded by their constituents;

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

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

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

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20 until the ordinances are repealed, but are null and void if amended and such amendment is not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

23 (c) *Authorizing participation.* --

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

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

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

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

39 The board members serving on the board on July 1, 2012, may continue to serve, except that the
40 Chair of the Senate Committee on Government Organization and the Chair of the House
41 Committee on Government Organization shall be ex officio nonvoting members. Effective July
42 1, 2013, the Municipal Home Rule Board shall consist of the following five voting members:

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

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

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

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

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

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

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

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

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

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

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

63 plans; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

108 (1) Environmental law;

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

110 (3) The Freedom of Information Act;

- 111 (4) The Open Governmental Proceedings Act;
- 112 (5) Wages for construction of public improvements;
- 113 (6) The provisions of this section;
- 114 (7) The provisions of section five-a, article twelve of this chapter; and
- 115 (8) The municipality's written plan.
- 116 (k) *Prohibited acts.* -- The municipalities participating in the Municipal Home Rule Pilot
- 117 Program do not have the authority to pass an ordinance, act, resolution, rule or regulation, under
- 118 the provisions of this section, pertaining to:
- 119 (1) The Constitution of the United States or West Virginia;
- 120 (2) Federal law or crimes and punishment;
- 121 (3) Chapters sixty-a, sixty-one and sixty-two of this code or state crimes and punishment;
- 122 ~~(4) Pensions or retirement plans;~~
- 123 ~~(5)~~(4) Annexation;
- 124 ~~(6)~~(5) Taxation: *Provided*, That a participating municipality may enact a municipal sales
- 125 tax up to one percent if it reduces or eliminates its municipal business and occupation tax:
- 126 *Provided, however*, That if a municipality subsequently reinstates or raises the municipal business
- 127 and occupation tax it previously reduced or eliminated under the Municipal Home Rule Pilot
- 128 Program, it shall eliminate the municipal sales tax enacted under the Municipal Home Rule Pilot
- 129 Program: *Provided further*, That any municipality that imposes a municipal sales tax pursuant to
- 130 this section shall use the services of the Tax Commissioner to administer, enforce and collect the
- 131 tax in the same manner as the state consumers sales and service tax and use tax under the
- 132 provisions of articles fifteen, fifteen-a and fifteen-b, chapter eleven of this code and all applicable
- 133 provisions of the streamlined sales and use tax agreement: *And provided further*, That such tax
- 134 will not apply to the sale of motor fuel or motor vehicles;

- 135 ~~(7)~~(6) Tax increment financing;
- 136 ~~(8)~~(7) Extraction of natural resources;
- 137 ~~(9)~~(8) Persons or property outside the boundaries of the municipality: *Provided*, That this
- 138 prohibition under the Municipal Home Rule Pilot Program does not affect a municipality's powers
- 139 outside its boundary lines under other sections of this chapter, other chapters of this code or court
- 140 decisions;
- 141 ~~(10)~~(9) Marriage and divorce laws; and
- 142 ~~(11)~~(10) An occupation tax, fee or assessment payable by a nonresident of a municipality.
- 143 (l) *Amendments to written plans.* -- A municipality selected to participate in the Municipal
- 144 Home Rule Pilot Program may amend its written plan at any time.
- 145 (m) *Reporting requirements.* -- Commencing December 1, 2015, and each year thereafter,
- 146 each participating municipality shall give a progress report to the Municipal Home Rule Board and
- 147 commencing January 1, 2016, and each year thereafter, the Municipal Home Rule Board shall
- 148 give a summary report of all the participating municipalities to the Joint Committee on Government
- 149 and Finance.
- 150 (n) *Performance Evaluation and Review Division review.* --Before January 1, 2019, the
- 151 Performance Evaluation and Review Division of the Legislative Auditor's office shall conduct a
- 152 performance review on the pilot program and the participating municipalities. The review shall
- 153 include the following:
- 154 (1) An evaluation of the effectiveness of expanded home rule on the participating
- 155 municipalities;
- 156 (2) A recommendation as to whether the expanded home rule should be continued,
- 157 reduced, expanded or terminated;
- 158 (3) A recommendation as to whether any legislation is necessary; and

159 (4) Any other issues considered relevant.
160 (o) *Termination of the pilot program.* -- The Municipal Home Rule Pilot Program terminates
161 on July 1, 2019. No ordinance, act, resolution, rule or regulation may be enacted by a
162 participating municipality after July 1, 2019, pursuant to the provisions of this section. An
163 ordinance, act, resolution, rule or regulation enacted by a participating municipality under the
164 provisions of this section during the period of the Municipal Home Rule Pilot Program shall
165 continue in full force and effect until repealed, but is null and void if it is amended and such
166 amendment is not approved by the Municipal Home Rule Board.

NOTE: The purpose of this bill is to remove prohibition of municipalities that are participating in the Municipal Home Rule Pilot Program to pass ordinances, acts, rules or regulations pertaining to municipal pension plans.

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