

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

### **Committee Substitute**

**for**

### **Senate Bill 263**

BY SENATORS BLAIR AND SNYDER

[Originating in the Committee on Government  
Organization; Reported January 15, 2016.]



1 A BILL to amend and reenact §8-1-5a of the Code of West Virginia, 1931, as amended, relating  
2 to the Municipal Home Rule Pilot Program; and allowing for members of the Municipal  
3 Home Rule Board, with the exception of ex-officio nonvoting members, to be reimbursed  
4 for travel and other reasonable expenses.

*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 novel  
3 municipal ideas that became municipal ordinances which later resulted in new statewide statutes;

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

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

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

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

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

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

16           (b) *Continuance of pilot program.* — The Municipal Home Rule Pilot Program is continued  
17 until July 1, 2019. The ordinances enacted by the participating municipalities pursuant to the  
18 Municipal Home Rule Pilot Program may remain in effect, subject to the requirements of this  
19 section, until the ordinances are repealed: *Provided*, That any ordinance enacting a municipal  
20 occupation tax is hereby null and void.

21           (c) *Authorizing participation.* —

22           (1) Commencing July 1, 2015, thirty Class I, Class II and Class III municipalities and four  
23 Class IV municipalities that are current in payment of all state fees may participate in the Municipal  
24 Home Rule Pilot Program pursuant to the provisions of this section.

25           (2) The municipalities participating in the pilot program on the effective date of the  
26 amendment and reenactment of this section are hereby authorized to continue in the pilot  
27 program, subject to the requirements of this section, and may amend current written plans and/or  
28 submit new written plans in accordance with the provisions of this section.

29           (d) *Municipal Home Rule Board.* — The Municipal Home Rule Board is hereby continued.  
30 Effective July 1, 2015, the Municipal Home Rule Board shall consist of the following five voting  
31 members:

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

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

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

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

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

40           The Chair of the Senate Committee on Government Organization and the Chair of the House  
41 Committee on Government Organization shall continue to be ex officio nonvoting members of the board.

42 Members of the board shall be reimbursed for their actual travel and other reasonable  
43 expenses incurred as a result of performing their official duties: *Provided*, That the two ex officio  
44 nonvoting members of the board, the Chair of the Senate Committee on Government  
45 Organization and the Chair of the House Committee on Government Organization, shall not be  
46 reimbursed for travel or other expenses.

47 (e) *Board's powers and duties.* — The Municipal Home Rule Board has the following  
48 powers and duties:

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

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

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

56 (4) Consult with any agency affected by the written plans or the amendments to the written  
57 plans; and

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

59 (f) *Written plan.* — Any Class I, Class II, Class III or Class IV municipality desiring to  
60 participate in the Municipal Home Rule Pilot Program shall submit a written plan to the board  
61 stating in detail the following:

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

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

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

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

70 (g) *Public hearing on written plan.* — Prior to submitting its written plan to the board, the  
71 municipality shall:

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

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

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

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

80 (h) *Selection of municipalities.* — On or after June 1, 2015, by a majority vote, the  
81 Municipal Home Rule Board may select from the municipalities that submitted written plans and  
82 were approved by the board by majority vote, new Class I, Class II, Class III and/or Class IV  
83 municipalities to participate in the Municipal Home Rule Pilot Program.

84 (i) *Powers and duties of municipalities.* — The municipalities participating in the Municipal  
85 Home Rule Pilot Program have the authority to pass an ordinance, act, resolution, rule or  
86 regulation, under the provisions of this section, that is not contrary to:

87 (1) Environmental law;

88 (2) Laws governing bidding on government construction and other contracts;

89 (3) The Freedom of Information Act;

90 (4) The Open Governmental Proceedings Act;

91 (5) Laws governing wages for construction of public improvements;

92 (6) The provisions of this section;

93 (7) The provisions of section five-a, article twelve of this chapter;

94 (8) The municipality's written plan;

95 (9) The Constitution of the United States or the Constitution of the State of West Virginia;

96 (10) Federal law or crimes and punishment;

97 (11) Chapters sixty-a, sixty-one and sixty-two of this code or state crimes and punishment;

98 (12) Laws governing pensions or retirement plans;

99 (13) Laws governing annexation;

100 (14) Laws governing taxation: *Provided*, That a participating municipality may enact a  
101 municipal sales tax up to one percent if it reduces or eliminates its municipal business and  
102 occupation tax: *Provided, however*, That if a municipality subsequently reinstates or raises the  
103 municipal business and occupation tax it previously reduced or eliminated under the Municipal  
104 Home Rule Pilot Program, it shall eliminate the municipal sales tax enacted under the Municipal  
105 Home Rule Pilot Program: *Provided further*, That any municipality that imposes a municipal sales  
106 tax pursuant to this section shall use the services of the Tax Commissioner to administer, enforce  
107 and collect the tax in the same manner as the state consumers sales and service tax and use tax  
108 under the provisions of articles fifteen, fifteen-a and fifteen-b, chapter eleven of this code and all  
109 applicable provisions of the Streamlined Sales and Use Tax Agreement: *And provided further*,  
110 That such tax will not apply to the sale of motor fuel or motor vehicles;

111 (15) Laws governing tax increment financing;

112 (16) Laws governing extraction of natural resources; and

113 (17) Marriage and divorce laws.

114 (j) Municipalities may not pass an ordinance, act, resolution, rule or regulation under the  
115 provisions of this section that:

116 (1) Affects persons or property outside the boundaries of the municipality: *Provided*, That  
117 this prohibition under the Municipal Home Rule Pilot Program does not limit a municipality's  
118 powers outside its boundary lines under other provisions of this section, other sections of this  
119 chapter, other chapters of this code or court decisions; or

120           (2) Enacts an occupation tax, fee or assessment payable by a nonresident of a  
121 municipality.

122           (k) *Amendments to written plans.* — A municipality participating in the Municipal Home  
123 Rule Pilot Program may amend its written plan at any time.

124           (l) *Amendments to ordinances, acts, resolutions, rules or regulations.* — A municipality  
125 participating in the Municipal Home Rule Pilot Program may amend any ordinance, act, resolution,  
126 rule or regulation enacted pursuant to the municipality's approved written plan at any time so long  
127 as any amendment is consistent with the municipality's approved written plan, complies with the  
128 provisions of subsections (i) and (j) of this section, and the municipality complies with all applicable  
129 state law procedures for enacting municipal legislation.

130           (m) *Reporting requirements.* — Commencing December 1, 2015, and each year  
131 thereafter, each participating municipality shall give a progress report to the Municipal Home Rule  
132 Board and commencing January 1, 2016, and each year thereafter, the Municipal Home Rule  
133 Board shall give a summary report of all the participating municipalities to the Joint Committee on  
134 Government and Finance.

135           (n) *Termination of the pilot program.* — The Municipal Home Rule Pilot Program  
136 terminates on July 1, 2019. An ordinance, act, resolution, rule or regulation enacted by a  
137 participating municipality under the provisions of this section during the period of the Municipal  
138 Home Rule Pilot Program shall continue in full force and effect until repealed.

139           (o) Notwithstanding any other provision of this code to the contrary, on and after the  
140 effective date of the enactment of this provision in 2015, no distributee under the provisions of  
141 this section may seek from the Tax Division of the Department of Revenue a refund of revenues  
142 or moneys collected by, or remitted to, the Tax Division of the Department of Revenue, nor seek  
143 a change in past amounts distributed, or any other retrospective adjustment relating to any  
144 amount distributed, to the extent that the moneys in question have been distributed to another  
145 distributee, regardless of whether those distributions were miscalculated, mistaken, erroneous,



146 misdirected or otherwise inaccurate or incorrect. For purposes of this section, the term  
147 “distributee” means any municipality that receives or is authorized to receive a specific distribution  
148 of revenues or moneys collected by, or remitted to, the Tax Division of the Department of Revenue  
149 pursuant to this section.

NOTE: The purpose of this bill is to provide that members of the board shall be reimbursed for their reasonable expenses incurred in performing their duties for the board.

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