

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

Senate Bill 441

BY SENATORS SYPOLT, BOSO AND SMITH

[Introduced February 24, 2017; Referred
to the Committee on Government Organization]

1 A BILL to amend and reenact §8-1-5a of the Code of West Virginia, 1931, as amended, relating
 2 to municipal home rule; establishing the Municipal Home Rule Pilot Program as a
 3 permanent program; allowing all municipalities to participate in the Municipal Home Rule
 4 Program; and allowing municipalities to use their own city collector's offices to administer,
 5 enforce and collect a sales and use tax levied pursuant to the Municipal Home Rule
 6 Program.

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~~ Establishing the Municipal Home Rule Pilot Program as a permanent
15 program available to all municipalities statewide is in the public interest; and

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

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21 ~~section, until the ordinances are repealed: *Provided*, That any ordinance enacting a municipal~~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

23 (b) Establishment of a permanent program and continuation of pilot plans. -- The Municipal
24 Home Rule Pilot Program is hereby established as a permanent program. The ordinances
25 enacted by the participating municipalities pursuant to the Municipal Home Rule Pilot Program
26 may remain in effect, subject to the requirements of this section, until the ordinances are repealed.

27 (c) *Authorizing participation. --*

28 (1) Commencing ~~July 1, 2015~~ July 1, 2017, ~~thirty~~ all Class I, Class II, and Class III
29 municipalities and ~~four~~ Class IV municipalities that are current in payment of all state fees may
30 participate in the Municipal Home Rule ~~Pilot~~ Program pursuant to the provisions of this section.

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

35 (d) *Municipal Home Rule Board. --* The Municipal Home Rule Board is hereby continued.
36 Effective July 1, 2015, the Municipal Home Rule Board shall consist of the following five voting
37 members:

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

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

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

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

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

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

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

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

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

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

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

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

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

65 (1) The specific laws, acts, resolutions, policies, rules or regulations which prevent the

66 municipality from carrying out its duties in the most cost-efficient, effective and timely manner;

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

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

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

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

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

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

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

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

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

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

90 (1) Environmental law;

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

- 92 (3) The Freedom of Information Act;
- 93 (4) The Open Governmental Proceedings Act;
- 94 (5) Laws governing wages for construction of public improvements;
- 95 (6) The provisions of this section;
- 96 (7) The provisions of section five-a, article twelve of this chapter;
- 97 (8) The municipality's written plan;
- 98 (9) The Constitution of the United States or the Constitution of the State of West Virginia;
- 99 (10) Federal law or crimes and punishment;
- 100 (11) Chapters sixty-a, sixty-one and sixty-two of this code or state crimes and punishment;
- 101 (12) Laws governing pensions or retirement plans;
- 102 (13) Laws governing annexation;
- 103 (14) Laws governing taxation: *Provided*, That a participating municipality may enact a
- 104 municipal sales tax up to one percent if it reduces or eliminates its municipal business and
- 105 occupation tax: *Provided, however*, That if a municipality subsequently reinstates or raises the
- 106 municipal business and occupation tax it previously reduced or eliminated under the Municipal
- 107 Home Rule Pilot Program, it shall eliminate the municipal sales tax enacted under the Municipal
- 108 Home Rule Pilot Program: *Provided further*, That any municipality that imposes a municipal sales
- 109 tax pursuant to this section ~~shall~~ may use its own city collector's office to administer, enforce and
- 110 collect the tax or may use the services of the Tax Commissioner to administer, enforce and collect
- 111 the tax in the same manner as the state consumers sales and service tax and use tax under the
- 112 provisions of articles fifteen, fifteen-a and fifteen-b, chapter eleven of this code and all applicable
- 113 provisions of the Streamlined Sales and Use Tax Agreement: *And provided further*, That such tax
- 114 ~~will~~ shall not apply to the sale of motor fuel or motor vehicles;
- 115 (15) Laws governing tax increment financing;
- 116 (16) Laws governing extraction of natural resources; and
- 117 (17) Marriage and divorce laws.

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

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

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

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

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

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

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

143 (o) Notwithstanding any other provision of this code to the contrary, on and after the

144 effective date of the enactment of this provision in 2015, no distributee under the provisions of
145 this section may seek from the Tax Division of the Department of Revenue a refund of revenues
146 or moneys collected by, or remitted to, the Tax Division of the Department of Revenue, nor seek
147 a change in past amounts distributed, or any other retrospective adjustment relating to any
148 amount distributed, to the extent that the moneys in question have been distributed to another
149 distributee, regardless of whether those distributions were miscalculated, mistaken, erroneous,
150 misdirected or otherwise inaccurate or incorrect. For purposes of this section, the term
151 "distributee" means any municipality that receives or is authorized to receive a specific distribution
152 of revenues or moneys collected by, or remitted to, the Tax Division of the Department of Revenue
153 pursuant to this section.

NOTE: The purpose of this bill is to establish the municipal home rule pilot program as a permanent program, allow all municipalities to participate in the program, and allow municipalities who institute a sales and use tax pursuant to the program to administer and collect the tax through their own municipal collector's offices.

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