

# **WEST VIRGINIA LEGISLATURE**

## **2018 REGULAR SESSION**

**Introduced**

### **Senate Bill 432**

BY SENATORS GAUNCH, WELD, BOSO, AND JEFFRIES

[Introduced January 31, 2018; Referred  
to the Committee on Government Organization; and then  
to the Committee on the Judiciary]

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 identified as the Municipal Home Rule Program; providing that any  
 4 ordinance, act, resolution, rule, or regulation enacted pursuant to the Municipal Home Rule  
 5 Pilot Program shall continue until repealed; clarifying the authority of the Municipal Home  
 6 Rule Board; providing a funding mechanism for the board; creating a special revenue  
 7 account for the Municipal Home Rule Board; allowing all municipalities to participate in the  
 8 Municipal Home Rule Program; requiring certain notice prior to passing of an ordinance;  
 9 prohibiting municipalities participating in the Municipal Home Rule Program from passing  
 10 an ordinance, act, resolution, rule, or regulation that is contrary to certain laws governing  
 11 the professional licensing or certification of public employees; prohibiting certain  
 12 ordinances, acts, resolution, rules, or regulations in violation of federal law, regulation, or  
 13 standard that may impact federal funding or compliance requirements; providing for  
 14 petition procedures to protest enacted or amended ordinances; requiring ratification of  
 15 certain ordinances by the voters in a municipal election; and eliminating the automatic  
 16 termination of the Municipal Home Rule Pilot Program on July 1, 2019.

*Be it enacted by the Legislature of West Virginia:*

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20 ~~section, until the ordinances are repealed: *Provided*, That any ordinance enacting a municipal~~  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

22 (b) Establishment of a permanent program and continuation of pilot plans. - The Municipal  
23 Home Rule Pilot Program is hereby established as a permanent program and shall be identified  
24 as the Municipal Home Rule Program. Any ordinance, act, resolution, rule or regulation enacted  
25 by a participating municipality under the provisions of this section during the period of the  
26 Municipal Home Rule Pilot Program shall continue in full force and effect until repealed.

27 (c) *Authorizing participation. --*

28 (1) Commencing ~~July 1, 2015~~ July 1, 2018, 30 Class I, Class II and Class III municipalities  
29 and ~~four~~ 8 Class IV municipalities that are current in payment of all state fees may participate in  
30 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 (3) All municipalities currently participating in the Home Rule Pilot Program and all future  
36 participants in the Home Rule Program shall pay an annual assessment of \$2,000 for the  
37 operation and maintenance of the Home Rule Board. The assessment is due July 1, 2018 and  
38 every July 1 thereafter.

39 (4) There is hereby created the "Home Rule Board Operations Fund". Expenditures are  
40 authorized from collections and are to be made in accordance with appropriation by the  
41 Legislature in accordance with the provisions of §12-3-1 et seq. of this code and upon fulfillment  
42 of the provisions of §11B-2-1 et seq. of this code: Provided, That collections received during fiscal  
43 year 2018 may be expended upon receipt without prior Legislative appropriation. Any balance  
44 remaining in the fund at the end of any state fiscal year does not revert to the General Revenue  
45 Fund, but remains in the special revenue account and shall be used only in a manner consistent  
46 with this section. All costs and expenses incurred by the board pursuant to this section, including  
47 administrative and legal, shall be paid from those funds. At such time as the unencumbered  
48 balance in the fund at the end of a state fiscal year is \$200,000 or more, the annual assessment  
49 shall be suspended until such time as the unencumbered balance in the fund will be insufficient  
50 to meet future operating and legal expenses.

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

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

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

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

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

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

62 The Chair of the Senate Committee on Government Organization and the Chair of the  
63 House Committee on Government Organization shall continue to be ex-officio nonvoting  
64 members of the board.

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

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

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

72 (3) Review, evaluate, make recommendations and approve or reject, by a majority vote of  
73 the board, the amendments to the written plans submitted by municipalities: Provided, That any  
74 new application or amendment that does not sufficiently establish the municipalities ability to  
75 manage the costs or potential liabilities associated with its expanded duties shall be rejected;

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

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

80 (f) *Written plan.* -- Any Class I, Class II, Class III or Class IV municipality desiring to  
81 participate in the Municipal Home Rule Pilot Program or Municipal Home Rule Program shall  
82 submit a written plan to the board along with a \$2,000 application fee, stating in detail the  
83 following:

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

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

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

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

92 (g) *Public hearing on written plan.* -- Prior to submitting its written plan, or an amendment  
93 to an existing plan, to the board, the municipality shall:

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

95 (2) Provide notice at least 30 days prior to the public hearing by a Class II legal  
96 advertisement: *Provided*, That prior to the first day of publication, a copy of the notice shall be  
97 sent by first class mail to the Chairman of the Home Rule Board and the cabinet secretary of any  
98 state agency affected by the application or amendment;

99 (3) Make a copy of the written plan or amendment available for public inspection at least  
100 30 days prior to the public hearing; and

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

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

108 (i) *Powers and duties of municipalities.* -- The municipalities participating in the Municipal  
109 Home Rule Pilot Program have the authority to pass an ordinance, act, resolution, rule or

110 regulation, under the provisions of this section, that is not contrary to:

111 (1) Environmental law;

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

113 (3) The Freedom of Information Act;

114 (4) The Open Governmental Proceedings Act;

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

116 (6) The provisions of this section;

117 (7) The provisions of §8-12-5a of this code;

118 (8) The municipality's written plan;

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

120 (10) Federal law or crimes and punishment;

121 (11) Chapters 60A, 61 and 62 of this code or state crimes and punishment;

122 (12) Laws governing pensions or retirement plans;

123 (13) Laws governing annexation;

124 (14) Laws governing taxation: *Provided*, That a participating municipality may enact a

125 municipal sales tax up to one percent if it reduces or eliminates its municipal business and

126 occupation tax, *Provided, however*, That if a municipality subsequently reinstates or raises the

127 municipal business and occupation tax it previously reduced or eliminated ~~under the Municipal~~

128 ~~Home Rule Pilot Program or the Municipal Home Rule Program~~, it shall eliminate the municipal

129 sales tax enacted under the Municipal Home Rule Pilot Program or the Municipal Home Rule

130 Program, *Provided further*, That any municipality that imposes a municipal sales tax pursuant to

131 this section shall use the services of the Tax Commissioner to administer, enforce and collect the

132 tax in the same manner as the state consumers sales and service tax and use tax under the

133 provisions of §11-15-1 *et seq.*, §11-15A-1 *et seq.* and §11-15B-1 *et seq.* of this code and all

134 applicable provisions of the Streamlined Sales and Use Tax Agreement: *And provided further*,

135 That such tax will not apply to the sale of motor fuel or motor vehicles;

- 136 (15) Laws governing tax increment financing;
- 137 (16) Laws governing extraction of natural resources; ~~and~~
- 138 (17) Marriage and divorce laws;
- 139 (18) Laws governing the professional licensing or certification of public employees which  
140 provide for or ensure the health, safety and welfare of the public, including the administration and  
141 oversight of those laws by state agencies to the extent required by law; and
- 142 (19) Federal laws, regulations or standards related to transportation that would affect the  
143 state's required compliance or jeopardize federal funding.
- 144 (j) Municipalities may not pass an ordinance, act, resolution, rule or regulation under the  
145 provisions of this section that:
- 146 (1) Affects persons or property outside the boundaries of the municipality: *Provided*, That  
147 this prohibition under the Municipal Home Rule Pilot Program does not limit a municipality's  
148 powers outside its boundary lines under other provisions of this section, other sections of this  
149 chapter, other chapters of this code or court decisions; or
- 150 (2) Enacts an occupation tax, fee or assessment payable by a nonresident of a  
151 municipality.
- 152 (k) *Amendments to written plans.* -- A municipality participating in the Municipal Home  
153 Rule Pilot Program or the Municipal Home Rule Program may amend its written plan at any time:  
154 *Provided*, That any request for an amendment to a plan shall only be accepted for review and  
155 action by the home rule board if the municipality has complied to the requirements made of new  
156 plans provided in the amendment and reenactment of this section by the Legislature in 2018.
- 157 (l) *Amendments to ordinances, acts, resolutions, rules or regulations.* -- A municipality  
158 participating in the Municipal Home Rule Pilot Program may amend any ordinance, act, resolution,  
159 rule or regulation enacted pursuant to the municipality's approved written plan at any time so long  
160 as any amendment is consistent with the municipality's approved written plan, complies with the  
161 provisions of subsections (i) and (j) of this section, and the municipality complies with all applicable



162 state law procedures for enacting municipal legislation.

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

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

172 (e) (n) Notwithstanding any other provision of this code to the contrary, on and after the  
173 effective date of the enactment of this provision in 2015, no distributee under the provisions of  
174 this section may seek from the Tax Division of the Department of Revenue a refund of revenues  
175 or moneys collected by, or remitted to, the Tax Division of the Department of Revenue, nor seek  
176 a change in past amounts distributed, or any other retrospective adjustment relating to any  
177 amount distributed, to the extent that the moneys in question have been distributed to another  
178 distributee, regardless of whether those distributions were miscalculated, mistaken, erroneous,  
179 misdirected or otherwise inaccurate or incorrect. For purposes of this section, the term  
180 "distributee" means any municipality that receives or is authorized to receive a specific distribution  
181 of revenues or moneys collected by, or remitted to, the Tax Division of the Department of Revenue  
182 pursuant to this section.

NOTE: The purpose of this bill is to establish the Municipal Home Rule Pilot Program as a permanent program identified as the Municipal Home Rule Program. The bill seeks to address the concerns raised by the Governor when SB 441 was vetoed in 2017. The bill provides that any ordinance, act, resolution, rule or regulation enacted pursuant to the Municipal Home Rule Pilot Program shall continue until repealed. The bill clarifies the authority of the Municipal Home Rule Board. The bill provides a funding mechanism for the board. The bill creates a special revenue account for the Municipal Home Rule Board. The bill allows all municipalities to participate in the Municipal Home Rule Program. The bill

requires certain notice prior to passing of an ordinance. The bill prohibits municipalities participating in the Municipal Home Rule Program from passing an ordinance, act, resolution, rule or regulation that is contrary to certain laws governing the professional licensing or certification of public employees. The bill prohibits certain ordinances, acts, resolution, rules or regulations in violation of federal law, regulation or standard that may impact federal funding or compliance requirements. The bill provides for petition procedures to protest enacted or amended ordinances. The bill requires ratification of certain ordinances by the voters in a municipal election. The bill eliminates the automatic termination of the Municipal Home Rule Pilot Program on July 1, 2019.

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