

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Committee Substitute

for

Senate Bill 432

BY SENATORS GAUNCH, WELD, AND BOSO

[Originating in the Committee on Government
Organization; Reported on February 19, 2018]

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; making legislative findings; establishing the Municipal Home Rule
3 Pilot Program as a permanent program identified as the Municipal Home Rule Program;
4 providing for continuation of plans and amendments approved during Municipal Home
5 Rule Pilot Program; providing that any ordinance, act, resolution, rule, or regulation
6 enacted pursuant to the Municipal Home Rule Pilot Program shall continue until repealed;
7 expanding eligibility to participate in home rule to additional municipalities; establishing
8 annual assessment for participants in Municipal Home Rule Program; establishing penalty
9 for failing to timely pay annual assessment; creating special revenue account for Municipal
10 Home Rule Board; authorizing certain expenditures from special revenue fund; providing
11 suspension of annual assessment when certain conditions are met; clarifying the authority
12 of the Municipal Home Rule Board; requiring Municipal Home Rule Board to reject any
13 application or amendment that does not reasonably demonstrate municipality's ability to
14 manage related costs or liabilities; requiring publication of administrative rules of Municipal
15 Home Rule Board on its website and made available to the public in print upon request;
16 clarifying procedures related to submitting amendment to approved plan; requiring certain
17 notice prior to proposing or amending a plan; requiring public hearing and notice of hearing
18 prior to municipality proposing a plan or amendment; amending certain prohibitions on the
19 powers and duties of municipalities under home rule; prohibiting municipalities
20 participating in the Municipal Home Rule Program from passing an ordinance, act,
21 resolution, rule, or regulation contrary to laws governing professional licensing or
22 certification of employees; prohibiting municipalities participating in the Municipal Home
23 Rule Program from passing an ordinance, act, resolution, rule, or regulation contrary to
24 laws, rules, or regulations governing enforcement of building codes or fire codes;
25 prohibiting municipalities participating in the Municipal Home Rule Program from passing
26 an ordinance, act, resolution, rule, or regulation contrary to West Virginia Workplace

27 Freedom Act and Labor-Management Relations Act; prohibiting municipalities
28 participating in the Municipal Home Rule Program from passing an ordinance, act,
29 resolution, rule, or regulation contrary to federal laws, regulations, or standards related to
30 transportation that would affect state's required compliance or jeopardize federal funding;
31 prohibiting municipalities from enacting any ordinance, act, resolution, rule, or regulation
32 that imposes duties on another governmental entity; providing certain exceptions to that
33 prohibition; modifying reporting requirements; and eliminating automatic termination of the
34 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~~ Establishing
15 the Municipal Home Rule Pilot Program as a permanent program is in the public interest; and

16 (7) Increasing the powers and duties of the Municipal Home Rule Board, subject to the
17 limitations set forth herein, will enhance the Municipal Home Rule ~~Pilot~~ Program.

18 ~~(b) Continuance 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 plans previously enacted
24 and approved pursuant to the pilot program. -- The Municipal Home Rule Pilot Program is hereby
25 established as a permanent program and shall be identified as the Municipal Home Rule Program.
26 Any plan or amendment to a plan approved by the Board during the period of the Municipal Home
27 Rule Pilot Program is hereby continued. Any ordinance, act, resolution, rule or regulation enacted
28 by a participating municipality under the provisions of this section during the period of the
29 Municipal Home Rule Pilot Program shall continue in full force and effect unless and until
30 repealed.

31 (c) *Authorizing participation. --*

32 (1) Commencing ~~July 1, 2015~~ July 1, 2018, ~~30~~ any Class I, Class II, ~~and or~~ Class III
33 municipalities municipality that is ~~and four Class IV municipalities that are~~ current in payment of
34 all state fees may apply to participate in the Municipal Home Rule ~~Pilot~~ Program pursuant to the
35 provisions of this section. Also commencing July 1, 2018, up to four applications per year from
36 Class IV municipalities may be approved by the Board for participation in the Municipal Home
37 Rule Program pursuant to the provisions of this section, provided the Class IV municipality is
38 current in payment of all state fees.

39 (2) The municipalities participating in the ~~pilot program~~ Municipal Home Rule Pilot

40 Program on the effective date of the amendment and reenactment of this section are hereby
41 authorized to continue in the ~~pilot program~~ Municipal Home Rule Program, subject to the
42 requirements of this section, and may amend current written plans and/or submit new written
43 plans in accordance with the provisions of this section.

44 (3) On July 1, 2018, all municipalities currently participating in the Municipal Home Rule
45 Program shall pay an annual assessment of \$2,000 for the operation and administration of the
46 Home Rule Board. On July 1 of each year thereafter, all municipalities participating in the
47 Municipal Home Rule Program as of that date shall pay the annual assessment. Any participating
48 municipality that fails to timely remit its assessment when due may be assessed a penalty of an
49 additional \$2,000 by the Board.

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

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

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

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

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

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

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

73 The Chair of the Senate Committee on Government Organization and the Chair of the
74 House Committee on Government Organization shall ~~continue to be~~ serve as ex-officio nonvoting
75 members of the board.

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

78 (1) Review, evaluate, make recommendations, and approve or reject, for any lawful
79 reason, by a majority vote of the board, each aspect of the written plan, or the written plan in its
80 entirety, submitted by a municipality;

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

84 (3) Review, evaluate, make recommendations and approve or reject, for any lawful
85 reason, by a majority vote of the board, the amendments to the approved written plans submitted
86 by municipalities: Provided, That any new application or amendment that does not reasonably
87 demonstrate the municipality's ability to manage the costs or liabilities associated with its
88 proposed amendment shall be rejected;

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

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

92 section: Provided, That any administrative rules established by the Board for the operation of the
93 Municipal Home Rule Program shall be published on the Municipal Home Rule's website, and
94 made available to the public in print upon request.

95 (f) *Written plan.* -- Any Class I, Class II, Class III, or Class IV municipality desiring to
96 participate in the Municipal Home Rule ~~Pilot~~ Program, or any municipality desiring to amend its
97 existing approved Home Rule plan, shall submit a written plan to the board stating in detail the
98 following:

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

101 (2) The problems created by ~~the~~ those laws, acts, resolutions, policies, rules, or
102 regulations;

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

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

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

110 (1) Hold a public hearing on the written plan or the amendment to the existing approved
111 plan;

112 (2) Provide notice of the public hearing at least 30 days prior to the public hearing by a
113 Class II legal advertisement: *Provided, That on or before the first day of publication, a copy of the*
114 notice shall be sent by first-class mail to the Chairman of the Municipal Home Rule Board and the
115 cabinet secretary of any state agency affected by the application or amendment, whether directly
116 identified in the application or amendment or by inclusion of state law or rule directly overseen by
117 that state agency;

118 (3) Make a copy of the written plan or amendment available for public inspection at least
119 30 days prior to the public hearing; and

120 (4) After the public hearing, adopt an ordinance authorizing the municipality to submit a
121 written plan or amendment to the Municipal Home Rule Board, ~~after~~ provided the proposed
122 ordinance has been read two times, as required by §8-11-4 of this code.

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

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

130 (1) Environmental law;

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

132 (3) The Freedom of Information Act;

133 (4) The Open Governmental Proceedings Act;

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

135 (6) The provisions of this section;

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

137 (8) The municipality's written plan;

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

139 (10) Federal law, including those governing ~~of~~ crimes and punishment;

140 (11) Chapters 60A, 6,1 and 62 of this code or other code governing state crimes and
141 punishment;

142 (12) Laws governing pensions or retirement plans;

143 (13) Laws governing annexation;

144 (14) Laws governing taxation: *Provided*, That a participating municipality may enact a
145 municipal sales tax up to one percent if it reduces or eliminates its municipal business and
146 occupation tax, *Provided, however*, That if a municipality subsequently reinstates or raises the
147 municipal business and occupation tax it previously reduced or eliminated under the Municipal
148 Home Rule Pilot Program or the Municipal Home Rule Program, it shall reduce or eliminate the
149 municipal sales tax enacted under the Municipal Home Rule Pilot Program or the Municipal Home
150 Rule Program in an amount comparable to the revenue estimated to be generated by the
151 reinstated tax: *Provided further*, That any municipality that imposes a municipal sales tax pursuant
152 to this section shall use the services of the Tax Commissioner to administer, enforce and collect
153 the tax ~~in the same manner as the state consumers sales and service tax and use tax under~~
154 required by the provisions of §11-15-1 *et seq.*, §11-15A-1 *et seq.* and §11-15B-1 *et seq.* of this
155 code and all applicable provisions of the Streamlined Sales and Use Tax Agreement: *And*
156 *provided further*, That such tax ~~will~~ shall not apply to the sale of motor fuel or motor vehicles;

157 (15) Laws governing tax increment financing;

158 (16) Laws governing extraction of natural resources; ~~and~~

159 (17) Marriage and divorce laws;

160 (18) Laws governing the professional licensing or certification of employees

161 (19) Laws, rules or regulations governing the enforcement of building codes or fire codes;

162 (20) The West Virginia Workplace Freedom Act and Labor-Management Relations Act;

163 and

164 (21) Federal laws, regulations, or standards related to transportation that would affect the
165 state's required compliance or jeopardize federal funding.

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

168 (1) Affects persons or property outside the boundaries of the municipality: *Provided*, That
169 this prohibition under the Municipal Home Rule Pilot Program does not limit a municipality's

170 powers outside its boundary lines to the extent permitted under other provisions of this section,
171 other sections of this chapter, other chapters of this code or court decisions; or

172 (2) Enacts an occupation tax, fee or assessment payable by a nonresident of a
173 municipality; or

174 (3) Imposes duties on another governmental entity, unless the performance of the duties
175 is part of a legally executed agreement between the municipality and the other governmental
176 entity, or is otherwise permitted by state law.

177 (k) *Amendments to written plans.* -- A municipality participating in the Municipal Home
178 Rule ~~Pilot~~ Program may amend its written plan at any time subject to the requirements of this
179 section.

180 (l) *Amendments to ordinances, acts, resolutions, rules, or regulations.* -- A municipality
181 participating in the Municipal Home Rule ~~Pilot~~ Program may amend any ordinance, act, resolution,
182 rule, or regulation enacted pursuant to the municipality's approved written plan at any time so long
183 as any amendment is consistent with the municipality's approved written plan, as modified by any
184 amendments adopted pursuant to this section, complies with the provisions of ~~subsections (i) and~~
185 ~~(j) of this section,~~ and the municipality complies with all applicable state law procedures for
186 enacting municipal legislation.

187 (m) *Reporting requirements.* -- ~~Commencing~~ On or before December 1, 2015, ~~and of~~ each
188 year ~~thereafter,~~ each participating municipality shall give a written progress report to the Municipal
189 Home Rule Board, ~~and commencing on or before~~ January 1, 2016, ~~and of~~ each year ~~thereafter,~~
190 the Municipal Home Rule Board shall give a summary report of all the participating municipalities
191 to the Joint Committee on Government and Finance.

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

196 ~~(e)~~ (n) Notwithstanding any other provision of this code to the contrary, ~~on and after the~~
197 ~~effective date of the enactment of this provision in 2015,~~ no distributee under the provisions of
198 this section may seek from the Tax Division of the Department of Revenue a refund of revenues
199 or moneys collected by, or remitted to, the Tax Division of the Department of Revenue, nor seek
200 a change in past amounts distributed, or any other retrospective adjustment relating to any
201 amount distributed, to the extent that the moneys in question have been distributed by the Tax
202 Division to another distributee, regardless of whether those distributions were miscalculated,
203 mistaken, erroneous, misdirected or otherwise inaccurate or incorrect. For purposes of this
204 section, the term "distributee" means any municipality that has enacted a sales and use tax under
205 this section or as otherwise permitted by law that receives or is authorized to receive a specific
206 distribution of revenues or moneys collected by, or remitted to, the Tax Division of the Department
207 of Revenue pursuant to this section.

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