

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

House Bill 2006

BY DELEGATES HOWELL, WESTFALL, ROHRBACH,
WORRELL, SUMMERS, HAMRICK, ELLINGTON, QUEEN,
HILL, WILSON AND CRISS

[Introduced January 15, 2019; Referred
to the Committee on Political Subdivisions then
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 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 5 Pilot Program shall continue until repealed; clarifying the authority of the Municipal Home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; allowing all municipalities to participate in the Municipal Home Rule Program;
 7 requiring notice prior to passing of an ordinance; clarifying the prohibition concerning
 8 municipalities participating in the Municipal Home Rule Program from passing an
 9 ordinance, act, resolution, rule, or regulation that is contrary to certain laws governing the
 10 professional licensing or certification of public employees; creating a Home Rule Board
 11 Operations Fund; providing for annual assessment of participants and waiver of the
 12 assessment; providing for fund expenditures; proscribing fiscal year end funds not transfer
 13 to the General revenue Fund; providing for petition procedures to protest enacted or
 14 amended ordinances; allowing protest of certain ordinances, act, resolution, rule,
 15 regulations, or bonds 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~~ Establishing
15 the Municipal Home Rule Program as a permanent program available to all municipalities
16 statewide is in the public interest; and

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

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22 ~~section, until the ordinances are repealed: *Provided*, That any ordinance enacting a municipal~~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

24 (b) Establishment of a permanent program and continuation of pilot plans. -- The Municipal
25 Home Rule Pilot Program is hereby established as a permanent program and shall be identified
26 as the Municipal Home Rule Program. Any ordinance, act, resolution, rule, regulation, or bond
27 enacted by a participating municipality under the provisions of this section before or during the
28 period of the Municipal Home Rule Pilot Program shall continue in full force and effect until
29 repealed: *Provided*, That municipalities that are participants in the Municipal Home Rule Program
30 shall update their ordinances, acts, resolutions, rules, and regulations to comply with any
31 additions or modifications to §8-1-5a(i) or §8-1-5a(j) of this code.

32 (c) *Authorizing participation.* --

33 (1) Commencing July 1, ~~2015~~ 2019, ~~thirty~~ any Class I, Class II, ~~and or~~ or Class III
34 ~~municipalities and four Class IV municipalities that are~~ municipality that is current in payment of
35 all state fees may apply to participate in the Municipal Home Rule ~~Pilot~~ Program pursuant to the
36 provisions of this section. Beginning July 1, 2019, up to four applications from Class IV
37 municipalities may be approved annually by the board for participation in the Municipal Home
38 Rule Program: *Provided*, That the Class IV municipality is current in the payment of all state fees.

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

44 (3) All municipalities currently participating in the Home Rule Pilot Program and all
45 participants in the Municipal Home Rule Program shall pay an annual assessment of \$2,000 for
46 the operation and administration of the board. The annual assessment is due July 1, 2019, and
47 every July 1 thereafter. Any participating municipality that fails to timely remit its assessment when
48 due may be assessed a penalty of an additional \$2,000 by the board.

49 (4) There is hereby created the "Home Rule Board Operations Fund". Expenditures are
50 authorized from collections and are to be made in accordance with appropriation by the
51 Legislature in accordance with the provisions of §12-3-1 *et seq.* of this code and upon fulfillment
52 of the provisions of §11B-2-1 *et seq.* of this code: *Provided*, That collections received during fiscal
53 year 2019 may be expended upon receipt without prior Legislative appropriation. Any balance
54 remaining in the fund at the end of any state fiscal year shall not revert to the General Revenue
55 Fund, but remain in the special revenue account to be used by the board only in a manner
56 consistent with this section.

57 (5) All costs and expenses lawfully incurred by the board, including administrative and
58 legal, shall be paid from the Home Rule Board Operations Fund as authorized by the Chair.

59 (6) At such time as the unencumbered balance in the fund at the end of a state fiscal year
60 is \$200,000 or more, the annual assessment shall be suspended until such time as the
61 unencumbered balance in the fund will be insufficient to meet future operating and legal
62 expenses. The board shall notify all participating municipalities of the suspension of the annual
63 assessment prior to the end of the fiscal year and provide an estimate of when the payments will
64 resume.

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

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

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

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

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

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

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

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

81 (1) Review, evaluate, make recommendations and approve or reject for any reason, by a
82 majority vote of the board, each aspect of the written plan, or the written plan in its entirety,

83 submitted by a municipality;

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

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

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

94 (5) Perform any other powers or duties necessary to effectuate the provisions of this
95 section: Provided, That any administrative rules established by the board for the operation of the
96 Municipal Home Rule Program shall be published on the Municipal Home Rule website, and made
97 available to the public in print upon request.

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

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

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

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

108 (4) A written opinion, by an attorney licensed to practice in West Virginia, stating that the

109 proposed written plan does not violate the provisions of this section.

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

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

113 (2) Provide notice of the public hearing at least 30 days prior to the public hearing by a
114 Class II legal advertisement: Provided, That on or before the first day of publication, a copy of the
115 notice shall be sent by 1st class mail to the Chairman of the Municipal Home Rule Board and the
116 Cabinet Secretary of any state agency identified in the application or amendment, whether by
117 name of the state agency or by inclusion of state law or rule directly overseen by 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 an approved plan, to the Municipal Home Rule Board after the
122 proposed ordinance has been read two times.

123 (h) *Selection of municipalities.* -- ~~On or after June 1, 2015~~ By a majority vote, the Municipal
124 Home Rule Board may select ~~from the municipalities that submitted written plans and were~~
125 ~~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~~ related 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 §18-12-5a 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 ~~or~~ including those governing crimes and punishment;
- 140 (11) §60A-1-1 *et seq.* and §61-1-1 *et seq.* and 62-1-1 *et seq.* of this code ~~or~~ governing
- 141 state crimes and 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: *Provided further*, That
- 150 any municipality that imposes a municipal sales tax pursuant to this section shall use the services
- 151 of the Tax Commissioner to administer, enforce and collect the tax in the same manner as the
- 152 state consumers sales and service tax and use tax under the provisions of §11-15-1 *et seq.*, §11-
- 153 15a-1 *et seq.*, and §11-15b-1 *et seq.* of this code and all applicable provisions of the Streamlined
- 154 Sales and Use Tax Agreement: *And provided further*, That such tax ~~will~~ may not apply to the sale
- 155 of motor fuel or motor vehicles;
- 156 (15) Laws governing tax increment financing;
- 157 (16) Laws governing extraction of natural resources; ~~and~~
- 158 (17) Marriage and divorce laws;
- 159 (18) Laws governing professional licensing or certification, including the administration
- 160 and oversight of those laws, by state agencies to the extent required by law; and

161 (19) Federal laws, regulations or standards related to transportation that would materially
162 affect the states required compliance or result in the loss of federal funding.

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

165 (1) Affects persons or property outside the boundaries of the municipality: *Provided*, That
166 this prohibition under the Municipal Home Rule ~~Pilot~~ Program does not limit a municipality's
167 powers outside its boundary lines to the extent permitted under other provisions of this section,
168 other sections of this chapter, other chapters of this code, or court decisions; ~~or~~

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

171 (3) Imposes duties on another governmental entity unless the performance of the duty is
172 part of a legally executed agreement between the municipality and the other governmental entity,
173 or otherwise permitted by state law; or

174 (4) Prohibits or effectively limits the rental of a property, in whole or in part, or regulates
175 the duration, frequency, or location of such rental, in whole or in part. A municipality may regulate
176 activities that arise when a property is used as a rental: *Provided*, That such regulation applies
177 uniformly to all properties, without regard to whether such properties are used as a rental:
178 *Provided, however*, That nothing in this subdivision may be construed to prohibit a municipality
179 from imposing a hotel occupancy tax as prescribed in §7-18-1 *et seq.* of this code.

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

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

187 municipality complies with all applicable state law procedures for enacting municipal legislation.

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

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

198 (n) In the event 30 percent of the qualified voters of the municipality that voted in the
199 previous municipal election, by petition duly signed by them in their own handwriting and filed with
200 the recorder of the municipality within 45 days after the enactment or amendment of an ordinance,
201 act, resolution, rule, regulation, or bond, protest against the ordinance as enacted or amended,
202 the ordinance, act, resolution, rule, regulation, or bond shall not be issued or become effective
203 until it is ratified by a majority of the legal votes cast by the qualified voters of the municipality at
204 a regular municipal election or special municipal election, as the governing body directs. Voting
205 shall not take place until after notice of the submission is given by publication as a Class II legal
206 advertisement in compliance with the provisions of §59-3-1 et seq. of this code.

207 (o) Notwithstanding any other provision of this code to the contrary, ~~on and after the~~
208 ~~effective date of the enactment of this provision in 2015~~ no distributee under the provisions of this
209 section may seek from the Tax Division of the Department of Revenue a refund of revenues or
210 moneys collected by, or remitted to, the Tax Division of the Department of Revenue, nor seek a
211 change in past amounts distributed, or any other retrospective adjustment relating to any amount
212 distributed, to the extent that the moneys in question have been to another distributee, regardless

213 of whether those distributions were miscalculated, mistaken, erroneous, misdirected or otherwise
214 inaccurate or incorrect. For purposes of this section, the term “distributee” means any municipality
215 that receives or is authorized to receive a specific distribution of revenues or moneys collected
216 by, or remitted to, the Tax Division of the Department of Revenue 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 providing 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 allows all municipalities to participate in the Municipal Home Rule Program. The bill requires certain notice prior to passing of an ordinance. The bill clarifies the prohibiting 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 creates a Home Rule Board Operations Fund. The bill provides for annual assessment of participants and waiver of the assessment. The bill provides for fund expenditures. The bill proscribes fiscal year end funds not transfer to the General revenue Fund. The bill provides for petition procedures to protest enacted or amended ordinances. The bill allows protest of certain ordinances, act, resolution, rule, regulations, or bonds 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.