

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

House Bill 2572

BY DELEGATES ROHRBACH, HORNBUCKLE, WALKER AND

LOVEJOY

[Introduced January 21, 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 making the written plans of municipalities that have been approved by the Municipal
 3 Home Rule Board permanent; and providing that all ordinances, acts, resolutions, rules
 4 and regulations passed by those municipalities remain in effect until repealed.

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) *Continuance 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20 section, until the ordinances are repealed: *Provided*, That any ordinance enacting a municipal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 (c) *Authorizing participation.* --

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 70 (1) Hold a public hearing on the written plan;
- 71 (2) Provide notice at least 30 days prior to the public hearing by a Class II legal
72 advertisement;
- 73 (3) Make a copy of the written plan available for public inspection at least 30 days prior to
74 the public hearing; and
- 75 (4) After the public hearing, adopt an ordinance authorizing the municipality to submit a
76 written plan to the Municipal Home Rule Board after the proposed ordinance has been read two
77 times.
- 78 (h) *Selection of municipalities.* -- On or after June 1, 2015, by a majority vote, the Municipal
79 Home Rule Board may select from the municipalities that submitted written plans and were
80 approved by the board by majority vote, new Class I, Class II, Class III and/or Class IV
81 municipalities to participate in the Municipal Home Rule Pilot Program.
- 82 (i) *Powers and duties of municipalities.* -- The municipalities participating in the Municipal
83 Home Rule Pilot Program have the authority to pass an ordinance, act, resolution, rule or
84 regulation, under the provisions of this section, that is not contrary to:
- 85 (1) Environmental law;
- 86 (2) Laws governing bidding on government construction and other contracts;
- 87 (3) The Freedom of Information Act;
- 88 (4) The Open Governmental Proceedings Act;
- 89 (5) Laws governing wages for construction of public improvements;
- 90 (6) The provisions of this section;
- 91 (7) The provisions of §8-12-5a of this code;
- 92 (8) The municipality's written plan;
- 93 (9) The Constitution of the United States or the Constitution of the State of West Virginia;
- 94 (10) Federal law or crimes and punishment;
- 95 (11) Chapters 60A, 61 and 62 of this code or state crimes and punishment;

96 (12) Laws governing pensions or retirement plans;

97 (13) Laws governing annexation;

98 (14) Laws governing taxation: *Provided*, That a participating municipality may enact a
99 municipal sales tax up to one percent if it reduces or eliminates its municipal business and
100 occupation tax: *Provided, however*, That if a municipality subsequently reinstates or raises the
101 municipal business and occupation tax it previously reduced or eliminated under the Municipal
102 Home Rule Pilot Program, it shall eliminate the municipal sales tax enacted under the Municipal
103 Home Rule Pilot Program: *Provided further*, That any municipality that imposes a municipal sales
104 tax pursuant to this section shall use the services of the Tax Commissioner to administer, enforce
105 and collect the tax in the same manner as the state consumers sales and service tax and use tax
106 under the provisions of §11-15-1 *et seq.*, §11-15A-1 *et seq.*, and §11-15B-1 *et seq.* of this code,
107 and all applicable provisions of the Streamlined Sales and Use Tax Agreement: *And provided*
108 *further*, That such tax will not apply to the sale of motor fuel or motor vehicles;

109 (15) Laws governing tax increment financing;

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

111 (17) Marriage and divorce laws.

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

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

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

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

122 (l) *Amendments to ordinances, acts, resolutions, rules or regulations.* -- A municipality
123 participating in the Municipal Home Rule Pilot Program may amend any ordinance, act, resolution,
124 rule or regulation enacted pursuant to the municipality's approved written plan at any time so long
125 as any amendment is consistent with the municipality's approved written plan, complies with the
126 provisions of §8-12-5a(i) and §8-12-5a(j) of this code, and the municipality complies with all
127 applicable state law procedures for enacting municipal legislation.

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

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

137 (o) Notwithstanding any other provision of this code to the contrary, on and after the
138 effective date of the enactment of this provision in 2015, no distributee under the provisions of
139 this section may seek from the Tax Division of the Department of Revenue a refund of revenues
140 or moneys collected by, or remitted to, the Tax Division of the Department of Revenue, nor seek
141 a change in past amounts distributed, or any other retrospective adjustment relating to any
142 amount distributed, to the extent that the moneys in question have been distributed to another
143 distributee, regardless of whether those distributions were miscalculated, mistaken, erroneous,
144 misdirected or otherwise inaccurate or incorrect. For purposes of this section, the term "distribute"
145 means any municipality that receives or is authorized to receive a specific distribution of revenues
146 or moneys collected by, or remitted to, the Tax Division of the Department of Revenue pursuant
147 to this section.

148 (p) Notwithstanding any provision of this section to the contrary, on April 1, 2019, written
149 plans of municipalities that have been approved by the board become permanent. All ordinances,
150 acts, resolutions, rules and regulations passed by those municipalities remain in effect until
151 repealed.

NOTE: The purpose of this bill is to make the written plans of municipalities that have been approved by the Municipal Home Rule Board permanent. The bill provides that all ordinances, acts, resolutions, rules and regulations passed by those municipalities remain in effect until repealed.

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