

1                                 **COMMITTEE SUBSTITUTE**

2                                                 **FOR**

3                                 **Senate Bill No. 435**

4        (By Senators Snyder, Miller, Kessler (Mr. President), Jenkins,  
5 Yost, Stollings, Plymale, McCabe, Fitzsimmons, Palumbo and Beach)

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7                [Originating in the Committee on Government Organization;  
8                                                 reported March 6, 2013.]

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11 A BILL to amend and reenact §8-1-5a of the Code of West Virginia,  
12         1931, as amended, relating to continuing the Municipal Home  
13         Rule Pilot Program; legislative findings; authorizing Class I,  
14         II, III and IV municipalities to participate in the program;  
15         clarifying the voting privileges of members of the Municipal  
16         Home Rule Board; clarifying the powers and duties of the  
17         board; written plan requirements for municipalities; ordinance  
18         requirements for municipalities; powers and duties of the  
19         participating municipalities; prohibiting certain acts by  
20         participating municipalities; amending the written plan;  
21         reporting requirements; termination date of the pilot program;  
22         and the effect of ordinances passed by the municipalities  
23         participating in the pilot program.

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

25         That §8-1-5a of the Code of West Virginia, 1931, as amended,

1 be amended and reenacted to read as follows:

2 **ARTICLE 1. PURPOSE AND SHORT TITLE; DEFINITIONS; GENERAL**  
3 **PROVISIONS; CONSTRUCTION.**

4 **§8-1-5a. Municipal Home Rule Pilot Program.**

5 (a) *Legislative findings.* -- The Legislature finds and  
6 declares that:

7 (1) The initial Municipal Home Rule Pilot Program brought  
8 positive results, including novel municipal ideas that became  
9 municipal ordinances which later resulted in new statewide  
10 statutes;

11 (2) The initial Municipal Home Rule Pilot Program also brought  
12 some negative results, including novel municipal ideas that  
13 resulted in court challenges against some of the participating  
14 municipalities;

15 (3) The Municipal Home Rule Board was an essential part of the  
16 initial Municipal Home Rule Pilot Program but it lacked some needed  
17 powers and duties;

18 (4) Municipalities still face challenges delivering services  
19 required by federal and state law, or demanded by their  
20 constituents;

21 (5) Municipalities are sometimes restrained by state statutes,  
22 policies and rules that challenge their ability to carry out their  
23 duties and responsibilities in a cost-effective, efficient and  
24 timely manner;

25 (6) Continuing the Municipal Home Rule Pilot Program is in the

1 public interest; and

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

4 (b) *Continuance of pilot program.* -- The Municipal Home Rule  
5 Pilot Program is continued until July 1, 2019. The ordinances  
6 enacted by the four participating municipalities pursuant to the  
7 initial Municipal Home Rule Pilot Program are hereby authorized and  
8 may remain in effect until the ordinances are repealed, but are  
9 null and void if amended and such amendment is not approved by the  
10 Municipal Home Rule Board: *Provided*, That any ordinance enacting  
11 a municipal occupation tax is hereby null and void.

12 (c) *Authorizing participation.* -- Commencing July 1, 2013, ten  
13 Class I, Class II, Class III and/or Class IV municipalities, that  
14 are current in payment of all state fees, may participate in the  
15 Municipal Home Rule Pilot Program pursuant to the provisions of  
16 this section.

17 (d) *Municipal Home Rule Board.* -- The Municipal Home Rule  
18 Board is hereby continued. The board members serving on the board  
19 on July 1, 2012, may continue to serve, except that the Chair of  
20 the Senate Committee on Government Organization and the Chair of  
21 the House Committee on Government Organization shall be ex officio  
22 nonvoting members. Effective July 1, 2013, the Municipal Home Rule  
23 Board shall consist of the following five voting members:

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

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

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

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

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

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

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

15 (2) By a majority vote of the board, select, based on the  
16 municipality's written plan, up to ten Class I, Class II, Class III  
17 and/or Class IV municipalities to participate in the Municipal Home  
18 Rule Pilot Program;

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

22 (4) Approve or reject, by a majority vote of the board, each  
23 ordinance submitted by a participating municipality pursuant to its  
24 written plan or its amendments to the written plan;

25 (5) Consult with any agency affected by the written plans or  
26 the amendments to the written plans; and

1 (6) Perform any other powers or duties necessary to effectuate  
2 the provisions of this section.

3 (f) *Written plan.* -- On or before June 1, 2014, a Class I,  
4 Class II, Class III or Class IV municipality desiring to  
5 participate in the Municipal Home Rule Pilot Program shall submit  
6 a written plan to the board stating in detail the following:

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

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

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

17 (4) A written opinion, by an attorney licensed to practice in  
18 West Virginia, stating that the proposed written plan is  
19 constitutional and does not violate the provisions of this section.

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

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

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

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

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

4 (h) *Selection of municipalities.* -- On or after June 1, 2014,  
5 by a majority vote, the Municipal Home Rule Board may select from  
6 the municipalities that submitted written plans and were approved  
7 by the board by majority vote up to ten Class I, Class II, Class  
8 III and/or Class IV municipalities to participate in the Municipal  
9 Home Rule Pilot Program.

10 (i) *Ordinance, act, resolution, rule or regulation.* -- After  
11 being selected to participate in the Municipal Home Rule Pilot  
12 Program and prior to enacting an ordinance, act, resolution, rule  
13 or regulation based on the written plan, the municipality shall:

14 (1) Hold a public hearing on the proposed ordinance, act,  
15 resolution, rule or regulation;

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

18 (3) Make a copy of the proposed ordinance, act, resolution,  
19 rule or regulation available for public inspection at least thirty  
20 days prior to the public hearing;

21 (4) After the public hearing, submit the comments, either in  
22 audio or written form, to the Municipal Home Rule Board;

23 (5) Obtain approval, from the Municipal Home Rule Board by a  
24 majority vote, for the proposed ordinance, act, resolution, rule or  
25 regulation; and

26 (6) After obtaining approval from the Municipal Home Rule

1 Board, read the proposed ordinance, act, resolution, rule or  
2 regulation at least two times.

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

8 (1) The provisions of this section; and

9 (2) The municipality's written plan.

10 (k) *Prohibited acts.* -- The municipalities participating in  
11 the Municipal Home Rule Pilot Program do not have the authority to  
12 pass an ordinance, act, resolution, rule or regulation, under the  
13 provisions of this section, pertaining to:

14 (1) The Constitutions of the United States or West Virginia;

15 (2) Federal law or crimes and punishment;

16 (3) Chapters sixty-a, sixty-one and sixty-two of this code or  
17 state crimes and punishment;

18 (4) Pensions or retirement plans;

19 (5) Annexation;

20 (6) Taxation: *Provided*, That a participating municipality may  
21 enact a municipal sales tax up to one percent if it reduces or  
22 eliminates its municipal business and occupation tax;

23 (7) Tax increment financing;

24 (8) Environmental laws;

25 (9) Extraction of natural resources; and

26 (10) Persons or property outside the boundaries of the

1 municipality: *Provided*, That this prohibition under the Municipal  
2 Home Rule Pilot Program does not affect a municipality's powers  
3 outside its boundary lines under this chapter, this code or court  
4 decisions.

5 (l) *Amendments to written plans.* -- A municipality selected to  
6 participate in the Municipal Home Rule Pilot Program may amend its  
7 written plan at any time.

8 (m) *Reporting requirements.* -- Commencing December 1, 2015,  
9 and each year thereafter, each participating municipality shall  
10 give a progress report to the Municipal Home Rule Board, and  
11 commencing January 1, 2016, and each year thereafter, the Municipal  
12 Home Rule Board shall give a summary report of all the  
13 participating municipalities to the Joint Committee on Government  
14 and Finance.

15 (n) *Termination of the pilot program.* -- The Municipal Home  
16 Rule Pilot Program terminates on July 1, 2019. No ordinance, act,  
17 resolution, rule or regulation may be enacted by a participating  
18 municipality after July 1, 2019, pursuant to the provisions of this  
19 section. An ordinance, act, resolution, rule or regulation enacted  
20 by a participating municipality under the provisions of this  
21 section during the period of the Municipal Home Rule Pilot Program  
22 shall continue in full force and effect until repealed, but is null  
23 and void if it is amended and such amendment is not approved by the  
24 Municipal Home Rule Board.



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(NOTE: The purpose of this bill is to continue the Municipal Home Rule Pilot Program and provides legislative findings. The bill authorizes certain municipalities to participate in the program. The bill further changes the membership of the Municipal Home Rule Board. The bill establishes the powers and duties of the board. The bill further establishes the written plan requirements for a municipality desiring to participate in the Municipal Home Rule Pilot Program and that there shall be a public hearing on the written plan. The bill establishes ordinance requirements for municipalities. The bill further provides the powers and duties of the participating municipalities. The bill prohibits certain acts by participating municipalities. The bill provides that municipalities may amend the written plans. The bill also provides reporting requirements for each participating municipality and provides a termination date of the pilot program.

This section has been completely rewritten; therefore, strike-throughs and underscoring have been omitted.)