

1 ENROLLED

2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 323**

5 (Senator Blair, *original sponsor*)

6 _____
7 [Passed March 14, 2015; in effect ninety days from passage.]
8 _____

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11 AN ACT to amend and reenact §8-1-5a of the Code of West Virginia, 1931, as amended, relating
12 to the Municipal Home Rule Pilot Program generally; allowing participation of thirty Class
13 I, Class II and Class III municipalities; allowing participation of four Class IV municipalities;
14 continuing ordinances in effect; removing requirements that Municipal Home Rule Board
15 must approve a municipality's amendment to its home rule plan and that a municipal
16 ordinance is nullified if the municipality's amendment to its home rule plan is not approved
17 by the Municipal Home Rule Board; removing requirement that the board approve each
18 municipal ordinance prior to enactment; removing process for enacting ordinance;
19 authorizing amendments to municipal ordinances, acts, resolutions, rules or regulations
20 enacted pursuant to the municipality's approved written plan; removing provisions
21 prohibiting municipality from enacting ordinance, act, resolution, rule or regulation after the
22 pilot program terminates in 2019; prohibiting municipalities from seeking refunds of moneys
23 collected from taxpayers or moneys distributed to municipalities by the Tax Division under

1 the pilot program: removing obsolete provisions; and reorganizing existing provisions.

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

3 That §8-1-5a of the Code of West Virginia, 1931, as amended, be amended and reenacted
4 to read as follows:

5 **ARTICLE 1. PURPOSE AND SHORT TITLE; DEFINITIONS; GENERAL PROVISIONS;**
6 **CONSTRUCTION.**

7 **§8-1-5a. Municipal Home Rule Pilot Program.**

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

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

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

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

16 (4) Municipalities still face challenges delivering services required by federal and state law
17 or demanded by their constituents;

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

21 (6) Continuing the Municipal Home Rule Pilot Program is in the public interest; and

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

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

6 (c) *Authorizing participation.* --

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

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

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

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

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

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

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

23 (5) One member representing the West Virginia Chapter of the American Institute of

1 Certified Planners, appointed by the Governor with the advice and consent of the Senate.

2 The Chair of the Senate Committee on Government Organization and the Chair of the House
3 Committee on Government Organization shall continue to be ex officio nonvoting members of the
4 board.

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

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

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

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

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

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

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

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

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

23 (3) The proposed solutions to the problems, including all proposed changes to ordinances,

1 acts, resolutions, rules and regulations: *Provided*, That the specific municipal ordinance instituting
2 the solution does not have to be included in the written plan; and

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

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

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

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

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

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

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

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

22 (1) Environmental law;

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

- 1 (3) The Freedom of Information Act;
- 2 (4) The Open Governmental Proceedings Act;
- 3 (5) Laws governing wages for construction of public improvements;
- 4 (6) The provisions of this section;
- 5 (7) The provisions of section five-a, article twelve of this chapter;
- 6 (8) The municipality's written plan;
- 7 (9) The Constitution of the United States or the Constitution of the state of West Virginia;
- 8 (10) Federal law or crimes and punishment;
- 9 (11) Chapters sixty-a, sixty-one and sixty-two of this code or state crimes and punishment;
- 10 (12) Laws governing pensions or retirement plans;
- 11 (13) Laws governing annexation;
- 12 (14) Laws governing taxation: *Provided*, That a participating municipality may enact a
13 municipal sales tax up to one percent if it reduces or eliminates its municipal business and
14 occupation tax: *Provided, however*, That if a municipality subsequently reinstates or raises the
15 municipal business and occupation tax it previously reduced or eliminated under the Municipal
16 Home Rule Pilot Program, it shall eliminate the municipal sales tax enacted under the Municipal
17 Home Rule Pilot Program: *Provided further*, That any municipality that imposes a municipal sales
18 tax pursuant to this section shall use the services of the Tax Commissioner to administer, enforce
19 and collect the tax in the same manner as the state consumers sales and service tax and use tax under
20 the provisions of articles fifteen, fifteen-a and fifteen-b, chapter eleven of this code and all applicable
21 provisions of the Streamlined Sales and Use Tax Agreement: *And provided further*, That such tax
22 will not apply to the sale of motor fuel or motor vehicles;
- 23 (15) Laws governing tax increment financing;

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

2 (17) Marriage and divorce laws.

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

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

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

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

12 (l) *Amendments to ordinances, acts, resolutions, rules or regulations.* -- A municipality
13 participating in the Municipal Home Rule Pilot Program may amend any ordinance, act, resolution,
14 rule or regulation enacted pursuant to the municipality's approved written plan at any time so long
15 as any amendment is consistent with the municipality's approved written plan, complies with the
16 provisions of subsections (i) and (j) of this section, and the municipality complies with all applicable
17 state law procedures for enacting municipal legislation.

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

23 (n) *Termination of the pilot program.* -- The Municipal Home Rule Pilot Program terminates

1 on July 1, 2019. An ordinance, act, resolution, rule or regulation enacted by a participating
2 municipality under the provisions of this section during the period of the Municipal Home Rule Pilot
3 Program shall continue in full force and effect until repealed.

4 (o) Notwithstanding any other provision of this code to the contrary, on and after the effective
5 date of the enactment of this provision in 2015, no distributee under the provisions of this section
6 may seek from the Tax Division of the Department of Revenue a refund of revenues or moneys
7 collected by, or remitted to, the Tax Division of the Department of Revenue, nor seek a change in
8 past amounts distributed, or any other retrospective adjustment relating to any amount distributed,
9 to the extent that the moneys in question have been distributed to another distributee, regardless of
10 whether those distributions were miscalculated, mistaken, erroneous, misdirected or otherwise
11 inaccurate or incorrect. For purposes of this section, the term “distributee” means any municipality
12 that receives or is authorized to receive a specific distribution of revenues or moneys collected by,
13 or remitted to, the Tax Division of the Department of Revenue pursuant to this section.