

1 **Senate Bill No. 323**

2 (By Senator Blair)

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4 [Introduced January 27, 2015; referred to the Committee on Government Organization; and then  
5 to the Committee on Finance.]

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9  
10 A BILL to amend and reenact §8-1-5a of the Code of West Virginia, 1931, as amended; and to  
11 amend said code by adding thereto a new section, designated §8-1-5b, all relating to  
12 extending home rule to all Class I, II and III municipalities; eliminating Municipal Home  
13 Rule Pilot Program; and providing that the Municipal Home Rule Board will terminate five  
14 years after enactment of statute unless extended.

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

16 That §8-1-5a of the Code of West Virginia, 1931, as amended, be amended and reenacted;  
17 and that said code be amended by adding thereto a new section, designated §8-1-5b, all to read as  
18 follows:

19 **ARTICLE 1. PURPOSE AND SHORT TITLE; DEFINITIONS; GENERAL PROVISIONS;**  
20 **CONSTRUCTION.**

21 **§8-1-5a. Municipal Home Rule Pilot Program.**

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

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

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

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

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

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

13 ~~(6) Continuing the Municipal Home Rule Pilot Program is in the public interest, and~~

14 ~~(7) Increasing the powers and duties of the Municipal Home Rule Board will enhance the~~  
15 ~~Municipal Home Rule Pilot Program.~~

16 (6) Due to the success of the Municipal Home Rule Pilot Program, the Legislature has  
17 determined municipal home rule should be extended to all Class I, Class II and Class III  
18 municipalities.

19 (b) *Continuance Termination of pilot program.* -- The Municipal Home Rule Pilot Program  
20 is ~~continued until July 1, 2019~~ terminated effective July 1, 2015. The ordinances enacted by the four  
21 participating municipalities pursuant to the initial Municipal Home Rule Pilot Program are hereby  
22 authorized and may remain in effect until the ordinances are repealed, but are null and void if

1 amended and such amendment is not approved by the Municipal Home Rule Board: *Provided*, That  
 2 any ordinance enacting a municipal occupation tax is hereby null and void.

3 ~~(e) Authorizing participation. --~~

4 ~~(1) Commencing July 1, 2013, twenty Class I, Class II, Class III and/or Class IV~~  
 5 ~~municipalities that are current in payment of all state fees may participate in the Municipal Home~~  
 6 ~~Rule Pilot Program pursuant to the provisions of this section.~~

7 ~~(2) The four municipalities participating in the pilot program on July 1, 2012, are hereby~~  
 8 ~~authorized to continue in the pilot program and may amend current written plans and/or submit new~~  
 9 ~~written plans in accordance with the provisions of this section.~~

10 ~~(3) If any of the four municipalities participating in the pilot program on July 1, 2012, do not~~  
 11 ~~want to participate in the pilot program, then on or before June 1, 2014, the municipality must submit~~  
 12 ~~a written letter to the board indicating the municipality's intent not to participate and the board may~~  
 13 ~~choose another municipality to fill the vacancy: *Provided*, That if a municipality chooses not to~~  
 14 ~~participate further in the pilot program, its ordinances enacted pursuant to the Municipal Home Rule~~  
 15 ~~Pilot Program are hereby authorized and may remain in effect until the ordinances are repealed, but~~  
 16 ~~are null and void if amended: *Provided, however*, That any ordinance enacting a municipal~~  
 17 ~~occupation tax is null and void.~~

18 ~~(d)~~ (c) Municipal Home Rule Board. -- The Municipal Home Rule Board is hereby continued  
 19 for five years from enactment of this statute, pursuant to the provisions of article ten, chapter four  
 20 of this code, unless continued or reestablished pursuant to the provisions of that article. The board  
 21 members serving on the board on July 1, 2012, may continue to serve, except that the Chair of the  
 22 Senate Committee on Government Organization and the Chair of the House Committee on

1 Government Organization shall be ex officio nonvoting members. Effective July 1, 2013, the

2 Municipal Home Rule Board shall consist of the following five voting members:

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

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

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

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

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

11 ~~(c)~~ (d) *Board's powers and duties.* -- The Municipal Home Rule Board has the following  
12 powers and duties:

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

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

18 ~~(3)~~ (2) Review, evaluate, make recommendations and approve or reject, by a majority vote  
19 of the board, the amendments to the written plans submitted by municipalities;

20 ~~(4)~~ (3) Approve or reject, by a majority vote of the board, each ordinance submitted by a  
21 participating municipality pursuant to its written plan or its amendments to the written plan;

22 ~~(5)~~ (4) Consult with any agency affected by the written plans or the amendments to the

1 written plans; and

2 ~~(6)~~ (5) Perform any other powers or duties necessary to effectuate the provisions of this  
3 article.

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

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

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

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

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

15 ~~(g) Public hearing on written plan.~~ Prior to submitting its written plan to the board, the  
16 municipality shall:

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

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

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

22 ~~(4) After the public hearing, adopt an ordinance authorizing the municipality to submit a~~

1 written plan to the Municipal Home Rule Board after the proposed ordinance has been read two  
2 times:

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

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

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

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

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

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

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

19       ~~(6) After obtaining approval from the Municipal Home Rule Board, read the proposed~~  
20 ~~ordinance, act, resolution, rule or regulation at least two times.~~

21       ~~(j) Powers and duties of municipalities.~~ -- The municipalities participating in the Municipal  
22 Home Rule Pilot Program have the authority to pass an ordinance, act, resolution, rule or regulation,

1 ~~under the provisions of this section, that is not contrary to:~~

2 ~~(1) Environmental law;~~

3 ~~(2) Bidding on government construction and other contracts;~~

4 ~~(3) The Freedom of Information Act;~~

5 ~~(4) The Open Governmental Proceedings Act;~~

6 ~~(5) Wages for construction of public improvements;~~

7 ~~(6) The provisions of this section;~~

8 ~~(7) The provisions of section five-a, article twelve of this chapter; and~~

9 ~~(8) The municipality's written plan.~~

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

13 ~~(1) The Constitution of the United States or West Virginia;~~

14 ~~(2) Federal law or crimes and punishment;~~

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

16 ~~(4) Pensions or retirement plans;~~

17 ~~(5) Annexation;~~

18 ~~(6) Taxation: *Provided*, That a participating municipality may enact a municipal sales tax up~~  
 19 ~~to one percent if it reduces or eliminates its municipal business and occupation tax: *Provided*,~~  
 20 ~~*however*, That if a municipality subsequently reinstates or raises the municipal business and~~  
 21 ~~occupation tax it previously reduced or eliminated under the Municipal Home Rule Pilot Program,~~  
 22 ~~it shall eliminate the municipal sales tax enacted under the Municipal Home Rule Pilot Program:~~

1 ~~Provided further, That any municipality that imposes a municipal sales tax pursuant to this section~~  
2 ~~shall use the services of the Tax Commissioner to administer, enforce and collect the tax in the same~~  
3 ~~manner as the state consumers sales and service tax and use tax under the provisions of articles~~  
4 ~~fifteen, fifteen-a and fifteen-b, chapter eleven of this code and all applicable provisions of the~~  
5 ~~streamlined sales and use tax agreement: And provided further, That such tax will not apply to the~~  
6 ~~sale of motor fuel or motor vehicles;~~

7 ~~(7) Tax increment financing;~~

8 ~~(8) Extraction of natural resources;~~

9 ~~(9) Persons or property outside the boundaries of the municipality: Provided, That this~~  
10 ~~prohibition under the Municipal Home Rule Pilot Program does not affect a municipality's powers~~  
11 ~~outside its boundary lines under other sections of this chapter, other chapters of this code or court~~  
12 ~~decisions;~~

13 ~~(10) Marriage and divorce laws; and~~

14 ~~(11) An occupation tax, fee or assessment payable by a nonresident of a municipality.~~

15 ~~(l) Amendments to written plans. -- A municipality selected to participate in the Municipal~~  
16 ~~Home Rule Pilot Program may amend its written plan at any time.~~

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

22 ~~(n) Performance Evaluation and Review Division review. -- Before January 1, 2019, the~~



1 ~~Performance Evaluation and Review Division of the Legislative Auditor's Office shall conduct a~~  
 2 ~~performance review on the pilot program and the participating municipalities. The review shall~~  
 3 ~~include the following:~~

4 ~~(1) An evaluation of the effectiveness of expanded home rule on the participating~~  
 5 ~~municipalities;~~

6 ~~(2) A recommendation as to whether the expanded home rule should be continued, reduced,~~  
 7 ~~expanded or terminated;~~

8 ~~(3) A recommendation as to whether any legislation is necessary; and~~

9 ~~(4) Any other issues considered relevant.~~

10 ~~(e) *Termination of the pilot program.*—The Municipal Home Rule Pilot Program terminates~~  
 11 ~~on July 1, 2019. No ordinance, act, resolution, rule or regulation may be enacted by a participating~~  
 12 ~~municipality after July 1, 2019, pursuant to the provisions of this section. An ordinance, act,~~  
 13 ~~resolution, rule or regulation enacted by a participating municipality under the provisions of this~~  
 14 ~~section during the period of the Municipal Home Rule Pilot Program shall continue in full force and~~  
 15 ~~effect until repealed, but is null and void if it is amended and such amendment is not approved by~~  
 16 ~~the Municipal Home Rule Board.~~

17 **§8-1-5b. Municipal Home Rule.**

18 (a) All Class I, Class II and Class III municipalities may participate in municipal home rule.  
 19 If a Class I, Class II or Class III municipality desires to participate in municipal home rule, it shall  
 20 submit a written plan to the Municipal Home Rule Board stating in detail the following:

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

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

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

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

7 (b) *Public hearing on written plan.* -- Prior to submitting its written plan to the board, the  
8 municipality shall:

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

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

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

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

17 (c) *Ordinance, act, resolution, rule or regulation.* -- Prior to enacting an ordinance, act,  
18 resolution, rule or regulation based on the municipality's written plan, the municipality shall:

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

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

22 (3) Make a copy of the proposed ordinance, act, resolution, rule or regulation available for

1 public inspection at least thirty days prior to the public hearing;

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

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

6 (6) After obtaining approval from the Municipal Home Rule Board, read the proposed  
7 ordinance, act, resolution, rule or regulation at least two times.

8 (b) *Powers and duties of municipalities.* -- After the Municipal Home Rule Board approves  
9 a municipality's written plan, the municipality has the authority to pass an ordinance, act, resolution,  
10 rule or regulation, under the provisions of this section, that is not contrary to:

11 (1) Environmental law;

12 (2) Bidding on government construction and other contracts;

13 (3) The Freedom of Information Act;

14 (4) The Open Governmental Proceedings Act;

15 (5) Wages for construction of public improvements;

16 (6) The provisions of this section;

17 (7) The provisions of section five-a, article twelve of this chapter; and

18 (8) The municipality's written plan.

19 (d) *Prohibited acts.* -- The municipalities do not have the authority to pass an ordinance, act,  
20 resolution, rule or regulation, under the provisions of this section, pertaining to:

21 (1) The Constitution of the United States or West Virginia;

22 (2) Federal law or crimes and punishment;

- 1 (3) Chapters sixty-a, sixty-one and sixty-two of this code or state crimes and punishment;
- 2 (4) Pensions or retirement plans;
- 3 (5) Annexation;
- 4 (6) Taxation: *Provided*, That a participating municipality may enact a municipal sales tax
- 5 up to one percent if it reduces or eliminates its municipal business and occupation tax: *Provided*,
- 6 *however*, That if a municipality subsequently reinstates or raises the municipal business and
- 7 occupation tax it previously reduced or eliminated under the Municipal Home Rule Pilot Program
- 8 or under the authority of this section, it shall eliminate the municipal sales tax previously enacted:
- 9 *Provided further*, That any municipality that imposes a municipal sales tax pursuant to this section
- 10 shall use the services of the Tax Commissioner to administer, enforce and collect the tax in the same
- 11 manner as the state consumers sales and service tax and use tax under the provisions of articles
- 12 fifteen, fifteen-a and fifteen-b, chapter eleven of this code and all applicable provisions of the
- 13 streamlined sales and use tax agreement: *And provided further*, That such tax will not apply to the
- 14 sale of motor fuel or motor vehicles;
- 15 (7) Tax increment financing;
- 16 (8) Extraction of natural resources;
- 17 (9) Persons or property outside the boundaries of the municipality: *Provided*, That this
- 18 prohibition does not affect a municipality's powers outside its boundary lines under other sections
- 19 of this chapter, other chapters of this code or court decisions;
- 20 (10) Marriage and divorce laws; and
- 21 (11) An occupation tax, fee or assessment payable by a nonresident of a municipality.
- 22 (e) *Amendments to written plans*. -- A municipality may amend its written plan at any time.

1           (f) *Reporting requirements.* -- Commencing December 1, 2015, and each year thereafter, each  
2 participating municipality shall give a progress report to the Municipal Home Rule Board and  
3 commencing January 1, 2016, and each year thereafter, the Municipal Home Rule Board shall give  
4 a summary report of all the participating municipalities to the Joint Committee on Government and  
5 Finance.

NOTE: The purpose of this bill is to extend municipal home rule to all Class I, Class II, and Class III municipalities.

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

§8-1-5b is new; therefore, underscoring and strike-throughs have been omitted.