

Senate Bill No. 324

(By Senators Blair, Trump, Laird, Kessler, D. Hall, Palumbo and Plymale)

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

A BILL to amend and reenact §8-1-5a of the Code of West Virginia, 1931, as amended, relating to
increasing by seven the number of participants in the Home Rule Pilot Program.

Be it enacted by the Legislature of West Virginia:

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

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

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

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

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

(2) The initial Municipal Home Rule Pilot Program also brought novel municipal ideas that

1 resulted in court challenges against some of the participating municipalities;

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

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

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

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

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

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15 ordinances are repealed, but are null and void if amended and such amendment is not approved by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

18 (c) *Authorizing participation.* --

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

22 (2) The four municipalities participating in the pilot program on July 1, 2012, are hereby

1 authorized to continue in the pilot program and may amend current written plans and/or submit new
2 written plans in accordance with the provisions of this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (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, 2014, 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. A municipality which filed an application
19 prior to June 1, 2014, or filed an incomplete application prior to June 1, 2014, may resubmit those
20 applications for approval to participate in the Home Rule Pilot Program.

21 (i) *Ordinance, act, resolution, rule or regulation.* -- After being selected to participate in the
22 Municipal Home Rule Pilot Program and prior to enacting an ordinance, act, resolution, rule or

1 regulation based on the written plan, the municipality shall:

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

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

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

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

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

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

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

16 (1) Environmental law;

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

18 (3) The Freedom of Information Act;

19 (4) The Open Governmental Proceedings Act;

20 (5) Wages for construction of public improvements;

21 (6) The provisions of this section;

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

1 (8) The municipality's written plan.

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

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

6 (2) Federal law or crimes and punishment;

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

8 (4) Pensions or retirement plans;

9 (5) Annexation;

10 (6) Taxation: *Provided*, That a participating municipality may enact a municipal sales tax
11 up to one percent if it reduces or eliminates its municipal business and occupation tax: *Provided*,
12 *however*, That if a municipality subsequently reinstates or raises the municipal business and
13 occupation tax it previously reduced or eliminated under the Municipal Home Rule Pilot Program,
14 it shall eliminate the municipal sales tax enacted under the Municipal Home Rule Pilot Program:
15 *Provided further*, That any municipality that imposes a municipal sales tax pursuant to this section
16 shall use the services of the Tax Commissioner to administer, enforce and collect the tax in the same
17 manner as the state consumers sales and service tax and use tax under the provisions of articles
18 fifteen, fifteen-a and fifteen-b, chapter eleven of this code and all applicable provisions of the
19 streamlined sales and use tax agreement: *And provided further*, That such tax will not apply to the
20 sale of motor fuel or motor vehicles;

21 (7) Tax increment financing;

22 (8) Extraction of natural resources;

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

5 (10) Marriage and divorce laws; and

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

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

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

14 (n) *Performance Evaluation and Review Division review.* --Before January 1, 2019, the
15 Performance Evaluation and Review Division of the Legislative Auditor's office shall conduct a
16 performance review on the pilot program and the participating municipalities. The review shall
17 include the following:

18 (1) An evaluation of the effectiveness of expanded home rule on the participating
19 municipalities;

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

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

1 (4) Any other issues considered relevant.

2 (o) *Termination of the pilot program.* -- The Municipal Home Rule Pilot Program terminates
3 on July 1, 2019. No ordinance, act, resolution, rule or regulation may be enacted by a participating
4 municipality after July 1, 2019, pursuant to the provisions of this section. An ordinance, act,
5 resolution, rule or regulation enacted by a participating municipality under the provisions of this
6 section during the period of the Municipal Home Rule Pilot Program shall continue in full force and
7 effect until repealed, but is null and void if it is amended and such amendment is not approved by
8 the Municipal Home Rule Board.

NOTE: The purpose of this bill is to increase the number of participants allowed in the Home Rule Pilot Program to allow the seven municipalities who were not accepted in the Home Rule Pilot Program to reapply.

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