

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 323

(By Senator Blair)

[Originating in the Committee on Government Organization;
reported January 30, 2015.]

A BILL to amend and reenact §8-1-5a of the Code of West Virginia, 1931, as amended, relating to extending home rule to all Class I, II and III municipalities; providing that the Municipal Home Rule Board will terminate five years after enactment of statute unless extended; making an increasing number of Class IV municipalities eligible to participate in the Home Rule Pilot Program; amending powers and duties of the Municipal Home Rule Board; amending requirements for enactment of ordinances, acts, resolutions, rules or regulations by municipalities participating in the Home Rule Pilot Program;

and eliminating requirement for the performance review of the Home Rule Pilot Project.

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.

1 (a) *Legislative findings.* –The Legislature finds and
2 declares that:

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

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

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

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

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

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

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

25 (8) Due to the success of the Municipal Home Rule Pilot
26 Program, the Legislature has determined municipal home rule
27 should be extended to all Class I, Class II and Class III
28 municipalities. Municipal home rule should also be available
29 to Class IV municipalities, the number of which will increase
30 over time.

31 (b) *Continuance of pilot program.* – The Municipal
32 Home Rule Pilot Program is continued until July 1, 2019.
33 The ordinances enacted by the four participating
34 municipalities pursuant to the initial Municipal Home Rule
35 Pilot Program are hereby authorized and may remain in effect
36 until the ordinances are repealed, but are null and void if
37 amended and such amendment is not approved by the
38 Municipal Home Rule Board: *Provided*, That any ordinance
39 enacting a municipal occupation tax is hereby null and void.

40 (c) *Authorizing participation.* –

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

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

50 ~~(3) If any of the four municipalities participating in the~~
51 ~~pilot program on July 1, 2012, do not want to participate in~~
52 ~~the pilot program, then on or before June 1, 2014, the~~
53 ~~municipality must submit a written letter to the board~~
54 ~~indicating the municipality's intent not to participate and the~~
55 ~~board may choose another municipality to fill the vacancy:~~
56 ~~*Provided,* That if a municipality chooses not to participate~~
57 ~~further in the pilot program, its ordinances enacted pursuant~~
58 ~~to the Municipal Home Rule Pilot Program are hereby~~
59 ~~authorized and may remain in effect until the ordinances are~~
60 ~~repealed, but are null and void if amended. *Provided,*~~
61 ~~*however,* That any ordinance enacting a municipal~~
62 ~~occupation tax is null and void:~~

63 (1) All Class I, Class II and Class III municipalities may
64 participate in the Municipal Home Rule Pilot Program
65 pursuant to the provisions of this section.

66 (2) Commencing July 1, 2015, four Class IV
67 municipalities may participate in the Municipal Home Rule
68 Pilot Program pursuant to the provisions of this section.

69 (3) Commencing July 1, 2016, twenty Class IV
70 municipalities may participate in the Municipal Home Rule
71 Pilot Program pursuant to the provisions of this section.

72 (4) Commencing July 1, 2017, all Class IV
73 municipalities may participate in the Municipal Home Rule
74 Pilot Program pursuant to the provisions of this section.

75 (d) Municipal Home Rule Board. – The Municipal
76 Home Rule Board is hereby continued for five years from
77 enactment of this statute, pursuant to the provisions of
78 section one, article ten, chapter four of this code, et seq.,
79 unless otherwise continued or reestablished pursuant to the
80 provisions of that article. The board members serving on
81 the board on July 1, 2012, may continue to serve, except
82 that the Chair of the Senate Committee on Government
83 Organization and the Chair of the House Committee on
84 Government Organization shall be ex officio nonvoting
85 members. Effective July 1, 2013, the Municipal Home
86 Rule Board shall consist of the following five voting
87 members:

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

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

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

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

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

100 (e) *Board's powers and duties.* – The Municipal Home
101 Rule Board has the following powers and duties:

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

105 (2) By a majority vote of the board, select, based on the
106 municipality's written plan, new ~~Class I, Class II, Class III,~~

107 ~~and/or~~ Class IV municipalities to participate in the Municipal
108 Home Rule Program;

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

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

115 ~~(5)~~ (4) Consult with any agency affected by the written
116 plans or the amendments to the written plans; and

117 ~~(6)~~ (5) Perform any other powers or duties necessary to
118 effectuate the provisions of this article.

119 (f) *Written plan.* – ~~On or before June 1, 2014,~~ a Any Class
120 I, Class II, Class III or Class IV municipality desiring to
121 participate in the Municipal Home Rule Pilot Program shall
122 submit a written plan to the board stating in detail the
123 following:

124 (1) The specific laws, acts, resolutions, policies, rules or
125 regulations which prevent the municipality from carrying out

126 its duties in the most cost-efficient, effective and timely
127 manner;

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

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

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

138 (g) *Public hearing on written plan.* – Prior to submitting
139 its written plan to the board, the municipality shall:

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

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

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

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

149 (h) *Selection of municipalities.* – On or after ~~June 1, 2014~~
150 June 1, 2015, by a majority vote, the Municipal Home Rule
151 Board may select from the municipalities that submitted
152 written plans and were approved by the board by majority
153 vote, new ~~Class I, Class II, Class III and/or Class IV~~
154 municipalities to participate in the Municipal Home Rule Pilot
155 Program.

156 (i) *Ordinance, act, resolution, rule or regulation.* – After
157 being selected to participate in the Municipal Home Rule Pilot
158 Program and prior to enacting an ordinance, act, resolution, rule
159 or regulation based on the written plan, the municipality shall:

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

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

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

167 (4) After the public hearing, submit the comments, either
168 in audio or written form, to the Municipal Home Rule Board.

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

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

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

180 (1) Environmental law;

181 (2) Bidding on government construction and other
182 contracts;

- 183 (3) The Freedom of Information Act;
- 184 (4) The Open Governmental Proceedings Act;
- 185 (5) Wages for construction of public improvements;
- 186 (6) The provisions of this section;
- 187 (7) The provisions of section five-a, article twelve of
- 188 this chapter; and
- 189 (8) The municipality's written plan.
- 190 (k) *Prohibited acts.* – The municipalities participating
- 191 in the Municipal Home Rule Pilot Program do not have the
- 192 authority to pass an ordinance, act, resolution, rule or
- 193 regulation, under the provisions of this section, pertaining
- 194 to:
- 195 (1) The Constitution of the United States or West
- 196 Virginia;
- 197 (2) Federal law or crimes and punishment;
- 198 (3) Chapters sixty-a, sixty-one and sixty-two of this
- 199 code or state crimes and punishment;
- 200 (4) Pensions or retirement plans;
- 201 (5) Annexation;

202 (6) Taxation: *Provided*, That a participating municipality
203 may enact a municipal sales tax up to one percent if it
204 reduces or eliminates its municipal business and occupation
205 tax: *Provided, however*, That if a municipality subsequently
206 reinstates or raises the municipal business and occupation tax
207 it previously reduced or eliminated under the Municipal
208 Home Rule Pilot Program, it shall eliminate the municipal
209 sales tax enacted under the Municipal Home Rule Pilot
210 Program: *Provided further*, That any municipality that
211 imposes a municipal sales tax pursuant to this section shall
212 use the services of the Tax Commissioner to administer,
213 enforce and collect the tax in the same manner as the state
214 consumers sales and service tax and use tax under the
215 provisions of articles fifteen, fifteen-a and fifteen-b, chapter
216 eleven of this code and all applicable provisions of the
217 streamlined sales and use tax agreement: *And provided*
218 *further*, That such tax will not apply to the sale of motor fuel
219 or motor vehicles;

220 (7) Tax increment financing;

221 (8) Extraction of natural resources;

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

228 (10) Marriage and divorce laws; and

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

231 (l) *Amendments to written plans.* – A municipality
232 ~~selected to participate~~ participating in the Municipal Home
233 Rule Pilot Program may amend its written plan at any time.

234 (m) *Reporting requirements.* – Commencing December
235 1, 2015, and each year thereafter, each participating
236 municipality shall give a progress report to the Municipal
237 Home Rule Board and commencing January 1, 2016, and
238 each year thereafter, the Municipal Home Rule Board shall
239 give a summary report of all the participating

240 municipalities to the Joint Committee on Government and
241 Finance.

242 ~~(n) Performance Evaluation and Review Division review.~~

243 ~~Before January 1, 2019, the Performance Evaluation and~~

244 ~~Review Division of the Legislative Auditor's Office shall~~

245 ~~conduct a performance review on the pilot program and the~~

246 ~~participating municipalities. The review shall include the~~

247 ~~following:~~

248 ~~(1) An evaluation of the effectiveness of expanded home~~

249 ~~rule on the participating municipalities;~~

250 ~~(2) A recommendation as to whether the expanded home~~

251 ~~rule should be continued, reduced, expanded or terminated;~~

252 ~~(3) A recommendation as to whether any legislation is~~

253 ~~necessary; and~~

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

255 ~~(o) (n) Termination of the pilot program. – The~~

256 ~~Municipal Home Rule Pilot Program terminates on July 1,~~

257 ~~2019. No ordinance, act, resolution, rule or regulation may~~

258 ~~be enacted by a participating municipality after July 1, 2019;~~

259 ~~pursuant to the provisions of this section.~~ An ordinance, act,
260 resolution, rule or regulation enacted by a participating
261 municipality under the provisions of this section during the
262 period of the Municipal Home Rule Pilot Program shall
263 continue in full force and effect until repealed, but is null and
264 void if it is amended and such amendment is not approved by
265 the Municipal Home Rule Board.

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

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