

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

House Bill 2913

2015 Carryover

(BY DELEGATE SOBONYA)

[Introduced January 13, 2016; referred to the
Committee on Government Organization then the
Judiciary.]

1 A BILL to amend and reenact §8-1-5a of the Code of West Virginia, 1931, as amended, relating
 2 to terminating the Municipal Home Rule Pilot Program and Municipal Home Rule Board;
 3 allowing municipalities throughout the state an opportunity to enact any ordinance, act,
 4 resolution, rule or regulation resulting from the Municipal Home Rule Pilot Program.

Be it enacted by the Legislature of West Virginia:

1 That §8-1-5a of the Code of West Virginia, 1931, as amended, be amended and reenacted
 2 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 declares that:

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

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

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

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

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

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

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

17 (3) The Municipal Home Rule Pilot Program, although having produced some novel
18 municipal ideas, has also created disparity between municipalities by allowing powers for some
19 that are not available to others;

20 (4) In order to correct these disparate results, municipalities should be afforded the
21 opportunity to adopt ordinances enacted pursuant to the Municipal Home Rule Pilot Program;

22 (5) The Municipal Home Rule Pilot Program should be terminated;

23 (6) The Municipal Home Rule Board, having served its function, should be terminated.

24 (b) ~~Continuance~~ Termination of pilot program. -- The Municipal Home Rule Pilot Program
25 is continued until July 1, 2019 terminated effective July 1, 2015. The ordinances enacted by the
26 four participating municipalities pursuant to the initial Municipal Home Rule Pilot Program are
27 hereby authorized and may remain in effect until the ordinances are repealed. ~~but are null and~~
28 ~~void if amended and such amendment is not approved by the Municipal Home Rule Board:~~
29 ~~Provided, That any ordinance enacting a municipal occupation tax is hereby null and void.~~

30 ~~(c) Authorizing participation.--~~

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

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

37 ~~(3) If any of the four municipalities participating in the pilot program on July 1, 2012, do~~
38 ~~not want to participate in the pilot program, then on or before June 1, 2014, the municipality must~~

39 ~~submit a written letter to the board indicating the municipality's intent not to participate and the~~
40 ~~board may choose another municipality to fill the vacancy: *Provided*, That if a municipality~~
41 ~~chooses not to participate further in the pilot program, its ordinances enacted pursuant to the~~
42 ~~Municipal Home Rule Pilot Program are hereby authorized and may remain in effect until the~~
43 ~~ordinances are repealed, but are null and void if amended: *Provided, however*, That any~~
44 ~~ordinance enacting a municipal occupation tax is null and void.~~

45 (c) Extension of ordinances to municipalities - As of the date of passage of this amendment
46 during the 2015 Legislative Session, any ordinance, act, resolution, rule or regulation enacted
47 pursuant to the Municipal Home Rule Pilot Program shall be made available for adoption by any
48 other municipality. Each municipality wishing to adopt the ordinance, act, resolution, rule or
49 regulation must:

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

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

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

55 (4) After obtaining approval from the city council, read the proposed ordinance, act,
56 resolution, rule or regulation at least two times.

57 (d) Municipal Home Rule Board. -- The Municipal Home Rule Board is hereby ~~continued~~
58 ~~terminated~~. The board members serving on the board on July 1, 2012, may continue to serve,
59 except that the Chair of the Senate Committee on Government Organization and the Chair of the
60 House Committee on Government Organization shall be ex officio nonvoting members.
61 Effective July 1, 2013, the Municipal Home Rule Board shall consist of the following five voting
62 members:

- 63 ~~(1) The Governor, or a designee, who shall serve as chair;~~
- 64 ~~(2) The Executive Director of the West Virginia Development Office or a designee;~~
- 65 ~~(3) One member representing the Business and Industry Council, appointed by the~~
66 ~~Governor with the advice and consent of the Senate;~~
- 67 ~~(4) One member representing the largest labor organization in the state, appointed by the~~
68 ~~Governor with the advice and consent of the Senate; and~~
- 69 ~~(5) One member representing the West Virginia Chapter of the American Institute of~~
70 ~~Certified Planners, appointed by the Governor with the advice and consent of the Senate.~~
- 71 ~~(e) Board's powers and duties. -- The Municipal Home Rule Board has the following~~
72 ~~powers and duties:~~
- 73 ~~(1) Review, evaluate, make recommendations and approve or reject, by a majority vote of~~
74 ~~the board, each aspect of the written plan submitted by a municipality;~~
- 75 ~~(2) By a majority vote of the board, select, based on the municipality's written plan, new~~
76 ~~Class I, Class II, Class III and/or Class IV municipalities to participate in the Municipal Home Rule~~
77 ~~Pilot Program;~~
- 78 ~~(3) Review, evaluate, make recommendations and approve or reject, by a majority vote of~~
79 ~~the board, the amendments to the written plans submitted by municipalities;~~
- 80 ~~(4) Approve or reject, by a majority vote of the board, each ordinance submitted by a~~
81 ~~participating municipality pursuant to its written plan or its amendments to the written plan;~~
- 82 ~~(5) Consult with any agency affected by the written plans or the amendments to the written~~
83 ~~plans; and~~
- 84 ~~(6) Perform any other powers or duties necessary to effectuate the provisions of this~~
85 ~~article.~~
- 86 ~~(f) Written plan. -- On or before June 1, 2014, a Class I, Class II, Class III or Class IV~~

87 ~~municipality desiring to participate in the Municipal Home Rule Pilot Program shall submit a written~~
88 ~~plan to the board stating in detail the following:~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

128 (1) Environmental law;

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

130 (3) The Freedom of Information Act;

131 (4) The Open Governmental Proceedings Act;

132 (5) Wages for construction of public improvements;

133 (6) The provisions of this section;

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

135 (8) The municipality's written plan.

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

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

140 (2) Federal law or crimes and punishment;

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

142 (4) Pensions or retirement plans;

143 (5) Annexation;

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

155 (7) Tax increment financing;

156 (8) Extraction of natural resources;

157 (9) Persons or property outside the boundaries of the municipality: *Provided*, That this
158 prohibition under the Municipal Home Rule Pilot Program does not affect a municipality's powers

159 outside its boundary lines under other sections of this chapter, other chapters of this code or court
160 decisions;

161 (10) Marriage and divorce laws; and

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

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

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

170 ~~(n) Performance Evaluation and Review Division review. -- Before January 1, 2019, the
171 Performance Evaluation and Review Division of the Legislative Auditor's Office shall conduct a
172 performance review on the pilot program and the participating municipalities. -- The review shall
173 include the following:~~

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

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

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

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

180 ~~(e) Termination of the pilot program. -- The Municipal Home Rule Pilot Program terminates
181 on July 1, 2019. -- No ordinance, act, resolution, rule or regulation may be enacted by a
182 participating municipality after July 1, 2019, pursuant to the provisions of this section. -- An~~

183 ~~ordinance, act, resolution, rule or regulation enacted by a participating municipality under the~~
184 ~~provisions of this section during the period of the Municipal Home Rule Pilot Program shall~~
185 ~~continue in full force and effect until repealed, but is null and void if it is amended and such~~
186 ~~amendment is not approved by the Municipal Home Rule Board.~~

NOTE: The purpose of this bill is to terminate the Municipal Home Rule Pilot Program and the Municipal Home Rule Board, but allow municipalities the option to adopt any ordinance already enacted in another municipality through the Municipal Home Rule Pilot Program.

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