

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

ENROLLED

Committee Substitute

for

Senate Bill 441

SENATORS SYPOLT, BOSO AND SMITH, *original sponsors*

[Passed April 8, 2017; in effect 90 days from passage]

1 AN ACT to amend and reenact §8-1-5a of the Code of West Virginia, 1931, as amended, relating
2 to municipal home rule; establishing the Municipal Home Rule Pilot Program as a
3 permanent program identified as the Municipal Home Rule Program; providing that any
4 ordinance, act, resolution, rule or regulation enacted pursuant to the Municipal Home Rule
5 Pilot Program shall continue until repealed; clarifying the authority of the Municipal Home
6 Rule Board; allowing all municipalities to participate in the Municipal Home Rule Program;
7 requiring certain notice prior to passing of an ordinance; prohibiting municipalities
8 participating in the Municipal Home Rule Program from passing an ordinance, act,
9 resolution, rule or regulation that is contrary to certain laws governing the professional
10 licensing or certification of public employees; providing for petition procedures to protest
11 enacted or amended ordinances; requiring ratification of certain ordinances by the voters
12 in a municipal election; and eliminating the automatic termination of the Municipal Home
13 Rule Pilot Program on July 1, 2019.

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 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) Establishing the Municipal Home Rule Pilot Program as a permanent program
15 available to all municipalities statewide is in the public interest; and

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

18 (b) *Establishment of a permanent program and continuation of pilot plans.* – The
19 Municipal Home Rule Pilot Program is hereby established as a permanent program and shall be
20 identified as the Municipal Home Rule Program. Any ordinance, act, resolution, rule or regulation
21 enacted by a participating municipality under the provisions of this section during the period of
22 the Municipal Home Rule Pilot Program shall continue in full force and effect until repealed.

23 (c) *Authorizing participation.* —

24 (1) Commencing July 1, 2017, any Class I, Class II, Class III and Class IV municipality
25 that is current in payment of all state fees may participate in the Municipal Home Rule Program
26 pursuant to the provisions of this section.

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

31 (d) *Municipal Home Rule Board*. — The Municipal Home Rule Board is hereby continued.
32 Effective July 1, 2015, the Municipal Home Rule Board shall consist of the following five voting
33 members:

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

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

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

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

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

42 The Chair of the Senate Committee on Government Organization and the Chair of the
43 House Committee on Government Organization shall continue to be ex officio nonvoting members
44 of the board.

45 (e) *Board's powers and duties*. — The Municipal Home Rule Board has the following
46 powers and duties:

47 (1) Review, evaluate, make recommendations and approve or reject for any reason, by a
48 majority vote of the board, each aspect of the written plan, or the written plan in its entirety,
49 submitted by a municipality;

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

53 (3) Review, evaluate, make recommendations and approve or reject for any reason, by a
54 majority vote of the board, the amendments to the written plans submitted by municipalities;

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

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

59 (f) *Written plan.* — Any Class I, Class II, Class III or Class IV municipality desiring to
60 participate in the Municipal Home Rule Program shall submit a written plan to the board stating in
61 detail the following:

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

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

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

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

70 (g) *Public hearing on written plan.* — Prior to submitting its written plan to the board, the
71 municipality shall:

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

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

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

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

80 (h) *Selection of municipalities.* — On or after June 1, 2015, by a majority vote, the
81 Municipal Home Rule Board may select from the municipalities that submitted written plans and

82 were approved by the board by majority vote new Class I, Class II, Class III and/or Class IV
83 municipalities to participate in the Municipal Home Rule Program.

84 (i) *Powers and duties of municipalities.* — The municipalities participating in the Municipal
85 Home Rule Program have the authority to pass an ordinance, act, resolution, rule or regulation,
86 under the provisions of this section: *Provided*, That notice is given at least thirty days prior to
87 passage by a Class II legal advertisement, that is not contrary to:

88 (1) Environmental law;

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

90 (3) The Freedom of Information Act;

91 (4) The Open Governmental Proceedings Act;

92 (5) Laws governing wages for construction of public improvements;

93 (6) The provisions of this section;

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

95 (8) The municipality's written plan;

96 (9) The Constitution of the United States or the Constitution of the State of West Virginia;

97 (10) Federal law or crimes and punishment;

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

99 (12) Laws governing pensions or retirement plans;

100 (13) Laws governing annexation;

101 (14) Laws governing taxation: *Provided*, That a participating municipality may enact a
102 municipal sales tax up to one percent if it reduces or eliminates its municipal business and
103 occupation tax: *Provided, however*, That if a municipality subsequently reinstates or raises the
104 municipal business and occupation tax it previously reduced or eliminated under the Municipal
105 Home Rule Pilot Program or the Municipal Home Rule Program, it shall eliminate the municipal
106 sales tax enacted under the Municipal Home Rule Program: *Provided further*, That any
107 municipality that imposes a municipal sales tax pursuant to this section shall use the services of

108 the Tax Commissioner to administer, enforce and collect the tax in the same manner as the state
109 consumers sales and service tax and use tax under the provisions of articles fifteen, fifteen-a
110 and fifteen-b, chapter eleven of this code and all applicable provisions of the Streamlined Sales
111 and Use Tax Agreement: *And provided further*, That such tax shall not apply to the sale of motor
112 fuel or motor vehicles;

113 (15) Laws governing tax increment financing;

114 (16) Laws governing extraction of natural resources;

115 (17) Marriage and divorce laws; and

116 (18) Laws governing professional licensing or certification, including the administration
117 and oversight of those laws, by state agencies to the extent required by law.

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

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

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

126 (k) *Amendments to written plans*. — A municipality participating in the Municipal Home
127 Rule Program may amend its written plan at any time.

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

134 (m) *Reporting requirements.* — Commencing December 1, 2015, and each year
135 thereafter, each participating municipality shall give a progress report to the Municipal Home Rule
136 Board and commencing January 1, 2016, and each year thereafter, the Municipal Home Rule
137 Board shall give a summary report of all the participating municipalities to the Joint Committee on
138 Government and Finance.

139 (n) In the event thirty percent of the qualified voters of the municipality that voted in the
140 previous municipal election, by petition duly signed by them in their own handwriting and filed with
141 the recorder of the municipality within forty-five days after the enactment or amendment of an
142 ordinance, protest against the ordinance as enacted or amended, the ordinance shall not become
143 effective until it is ratified by a majority of the legal votes cast by the qualified voters of the
144 municipality at a regular municipal election or special municipal election, as the governing body
145 directs. Voting shall not take place until after notice of the submission is given by publication as a
146 Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of
147 this code.

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

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

.....
Chairman, Senate Committee

.....
Chairman, House Committee

Originated in the Senate.

In effect 90 days from passage.

.....
Clerk of the Senate

.....
Clerk of the House of Delegates

.....
President of the Senate

.....
Speaker of the House of Delegates

The within this the.....
Day of, 2017.

.....
Governor