

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

Senate Bill 325

FISCAL
NOTE

BY SENATORS BEACH AND OJEDA

[Introduced January 19, 2018; Referred
to the Committee on Government Organization; and then
to the Committee on Finance]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
 2 designated §7-1-17, relating to the creation of the County Home Rule Pilot Program;
 3 setting forth legislative findings; creating the pilot program; setting criteria for participating
 4 counties including a minimum population; extending the Municipal Home Rule Board to
 5 administer the County Home Rule Pilot Program; detailing powers and duties of the board;
 6 requiring a written plan, public hearing, and notice for counties that wish to participate;
 7 authorizing the board to approve up to four counties; setting forth powers and duties of
 8 counties; detailing restrictions on the types of ordinances that counties are prohibited from
 9 enacting; authorizing amendments to the county plan or ordinances; requiring certain
 10 reports be completed annually; and setting a termination date for the pilot program.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-17. County Home Rule Pilot Program.

1 (a) Legislative findings. -- The Legislature finds and declares that:
 2 (1) The Municipal Home Rule Pilot Program brought innovative results, including novel
 3 municipal ideas that became municipal ordinances which later resulted in new statewide statutes;
 4 (2) Counties, like municipalities, still face challenges delivering services required by
 5 federal and state law or demanded by their constituents;
 6 (3) Counties 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 (4) Creating the County Home Rule Pilot Program is in the public interest; and
 10 (5) Expanding the Municipal Home Rule Board to include oversight of the County Home
 11 Rule Pilot Program is a necessary step in ensuring proper operation of the County Home Rule
 12 Pilot Program.
 13 (b) Creation of pilot program. -- The County Home Rule Pilot Program is hereby created,

14 effective July 1, 2018. Any ordinances created by the County Home Rule Pilot Program may
15 remain in effect, subject to the requirements of this section, until the ordinances are repealed.

16 (c) Authorizing participation. -- Commencing July 1, 2018, up to four counties that have
17 90,000 people or more as of the most recent United States census that are current in payment of
18 all state fees may participate in the County Home Rule Pilot Program pursuant to the provisions
19 of this section.

20 (d) Home Rule Board. -- The Municipal Home Rule Board is extended to include the duties
21 set forth in this section, effective July 1, 2018.

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

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

26 (2) By a majority vote of the board, select, based on the county's written plan, eligible
27 counties to participate in the County Home Rule Pilot Program;

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

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

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

34 (f) Written plan. -- Any county with a population of at least 90,000 at the time of the most
35 recent census that would like to participate in the County Home Rule Pilot Program shall submit
36 a written plan to the board stating in detail the following:

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

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

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

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

45 (g) *Public hearing on written plan.* -- Prior to submitting its written plan to the board, the
46 county shall:

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

48 (2) Provide notice at least 30 days prior to the public hearing by a Class II legal
49 advertisement;

50 (3) Make a copy of the written plan available for public inspection at least 30 days prior to
51 the public hearing; and

52 (4) After the public hearing, adopt an ordinance authorizing the county to submit a written
53 plan to the County Home Rule Board after the proposed ordinance has been read two times.

54 (h) *Selection of counties.* -- On or after July 1, 2018, the County Home Rule Board may
55 select from the counties that submitted written plans and were approved by the board by majority
56 vote, up to four counties to participate in the County Home Rule Pilot Program.

57 (i) *Powers and duties of counties.* -- The counties participating in the County Home Rule
58 Pilot Program have the authority to pass an ordinance, act, resolution, rule, or regulation, under
59 the provisions of this section, that is not contrary to:

60 (1) Environmental law;

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

62 (3) The Freedom of Information Act;

63 (4) The Open Governmental Proceedings Act;

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

65 (6) The provisions of this section;

- 66 (7) The provisions of §7-1-3 of this code;
- 67 (8) The county's written plan;
- 68 (9) The Constitution of the United States or the Constitution of the State of West Virginia;
- 69 (10) Federal law or crimes and punishment;
- 70 (11) Chapters sixty-a, sixty-one and sixty-two of this code or state crimes and punishment;
- 71 (12) Laws governing pensions or retirement plans;
- 72 (13) Laws governing annexation;
- 73 (14) Laws governing taxation;
- 74 (15) Laws governing tax increment financing;
- 75 (16) Laws governing extraction of natural resources; and
- 76 (17) Marriage and divorce laws.
- 77 (j) Counties may not pass an ordinance, act, resolution, rule, or regulation under the
78 provisions of this section that:
- 79 (1) Affects persons or property outside the boundaries of the county: *Provided*, That this
80 prohibition under the County Home Rule Pilot Program does not limit a county's powers outside
81 its boundary lines under other provisions of this section, other sections of this chapter, other
82 chapters of this code, or court decisions; or
- 83 (2) Enacts an occupation tax, fee or assessment payable by a nonresident of a county.
- 84 (k) *Amendments to written plans.* -- A county participating in the County Home Rule Pilot
85 Program may amend its written plan at any time.
- 86 (l) *Amendments to ordinances, acts, resolutions, rules or regulations.* -- A county
87 participating in the County Home Rule Pilot Program may amend any ordinance, act, resolution,
88 rule, or regulation enacted pursuant to the county's approved written plan at any time so long as
89 any amendment is consistent with the county's approved written plan, complies with the provisions
90 of subsections (i) and (j) of this section, and the county complies with all applicable state law
91 procedures for enacting county legislation.

92 (m) Reporting requirements. -- Commencing December 1, 2018, and each year thereafter,
93 each participating county shall give a progress report to the Municipal Home Rule Board and
94 commencing January 1, 2019, and each year thereafter, the Municipal Home Rule Board shall
95 give a summary report of all the participating counties to the Joint Committee on Government and
96 Finance.

97 (n) Termination of the pilot program. -- The County Home Rule Pilot Program terminates
98 on July 1, 2024. An ordinance, act, resolution, rule, or regulation enacted by a participating county
99 under the provisions of this section during the period of the County Home Rule Pilot Program shall
100 continue in full force and effect until repealed.

NOTE: The purpose of this bill is to create the County Home Rule Pilot Program.

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