

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Engrossed

Committee Substitute

for

Senate Bill 432

BY SENATORS GAUNCH, WELD, AND BOSO

[Originating in the Committee on Government

Organization; Reported on February 19, 2018]

1 A BILL to amend and reenact §8-1-5a of the Code of West Virginia, 1931, as amended, relating
2 to municipal home rule; making legislative findings; establishing the Municipal Home Rule
3 Pilot Program as a permanent program identified as the Municipal Home Rule Program;
4 providing for continuation of plans and amendments approved during Municipal Home
5 Rule Pilot Program; providing that any ordinance, act, resolution, rule, or regulation
6 enacted pursuant to the Municipal Home Rule Pilot Program shall continue until repealed;
7 expanding eligibility to participate in home rule to additional municipalities; establishing
8 annual assessment for participants in Municipal Home Rule Program; establishing penalty
9 for failing to timely pay annual assessment; creating special revenue account for Municipal
10 Home Rule Board; authorizing certain expenditures from special revenue fund; providing
11 suspension of annual assessment when certain conditions are met; clarifying the authority
12 of the Municipal Home Rule Board; requiring Municipal Home Rule Board to reject any
13 application or amendment that does not reasonably demonstrate municipality's ability to
14 manage related costs or liabilities; requiring publication of administrative rules of Municipal
15 Home Rule Board on its website and made available to the public in print upon request;
16 clarifying procedures related to submitting amendment to approved plan; requiring certain
17 notice prior to proposing or amending a plan; requiring public hearing and notice of hearing
18 prior to municipality proposing a plan or amendment; amending certain prohibitions on the
19 powers and duties of municipalities under home rule; prohibiting municipalities
20 participating in the Municipal Home Rule Program from passing an ordinance, act,
21 resolution, rule, or regulation contrary to laws governing professional licensing or
22 certification of employees; prohibiting municipalities participating in the Municipal Home
23 Rule Program from passing an ordinance, act, resolution, rule, or regulation contrary to
24 laws, rules, or regulations governing enforcement of building codes or fire codes;
25 prohibiting municipalities participating in the Municipal Home Rule Program from passing
26 an ordinance, act, resolution, rule, or regulation contrary to West Virginia Workplace

27 Freedom Act and Labor-Management Relations Act; prohibiting municipalities
28 participating in the Municipal Home Rule Program from passing an ordinance, act,
29 resolution, rule, or regulation contrary to federal laws, regulations, or standards related to
30 transportation that would affect state's required compliance or jeopardize federal funding;
31 prohibiting municipalities from enacting any ordinance, act, resolution, rule, or regulation
32 that imposes duties on another governmental entity; providing certain exceptions to that
33 prohibition; modifying reporting requirements; and eliminating automatic termination of the
34 Municipal Home Rule Pilot Program on July 1, 2019.

Be it enacted by the Legislature of West Virginia:

**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~~ Establishing
15 the Municipal Home Rule Pilot Program as a permanent program is in the public interest; and

16 (7) Increasing the powers and duties of the Municipal Home Rule Board, subject to the
17 limitations set forth herein, will enhance the Municipal Home Rule ~~Pilot~~ Program.

18 ~~(b) Continuance of pilot program.—~~ The Municipal Home Rule ~~Pilot Program is continued~~
19 ~~until July 1, 2019. The ordinances enacted by the participating municipalities pursuant to the~~
20 ~~Municipal Home Rule Pilot Program may remain in effect, subject to the requirements of this~~
21 ~~section, until the ordinances are repealed: *Provided*, That any ordinance enacting a municipal~~
22 ~~occupation tax is hereby null and void.~~

23 ~~(b) Establishment of a permanent program and continuation of plans previously enacted~~
24 ~~and approved pursuant to the pilot program.—~~ The Municipal Home Rule Pilot Program is
25 established as a permanent program and shall be identified as the Municipal Home Rule Program.
26 Any plan or amendment to a plan approved by the board during the period of the Municipal Home
27 Rule Pilot Program is continued. Any ordinance, act, resolution, rule, or regulation enacted by a
28 participating municipality under the provisions of this section during the period of the Municipal
29 Home Rule Pilot Program shall continue in full force and effect unless and until repealed.

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

31 (1) Commencing ~~July 1, 2015~~ July 1, 2018, ~~30~~ any Class I, Class II, and or Class III
32 municipalities municipality that is and ~~four Class IV municipalities that are~~ current in payment of
33 all state fees may apply to participate in the Municipal Home Rule ~~Pilot~~ Program pursuant to the
34 provisions of this section. Also, commencing July 1, 2018, up to four applications per year from
35 Class IV municipalities may be approved by the board for participation in the Municipal Home
36 Rule Program pursuant to the provisions of this section, provided the Class IV municipality is
37 current in payment of all state fees.

38 (2) The municipalities participating in the ~~pilot program~~ Municipal Home Rule Pilot
39 Program on the effective date of the amendment and reenactment of this section are hereby

40 authorized to continue in the ~~pilot program~~ Municipal Home Rule Program, subject to the
41 requirements of this section, and may amend current written plans and/or submit new written
42 plans in accordance with the provisions of this section.

43 (3) On July 1, 2018, all municipalities currently participating in the Municipal Home Rule
44 Pilot Program shall pay an annual assessment of \$2,000 for the operation and administration of
45 the Home Rule Board. On July 1 of each year thereafter, all municipalities participating in the
46 Municipal Home Rule Program as of that date shall pay the annual assessment. Any participating
47 municipality that fails to timely remit its assessment when due may be assessed a penalty of an
48 additional \$2,000 by the board.

49 (4) There is created in the office of the State Treasurer a special revenue account fund to
50 be known as the Home Rule Board Operations Fund. The assessments required by the provisions
51 of §8-1-5a(c)(3) of this code shall be deposited into the fund, and expenditures from the fund shall
52 be made in accordance with appropriation of the Legislature under the provisions of §12-3-1 et
53 seq. of this code, and in compliance with the provisions of §11B-2-1 et seq. of this code: *Provided,*
54 That legislative appropriation is not required during fiscal year 2018.

55 (5) Any balance in the fund created under §8-1-5a(c)(4) of this code at the end of a fiscal
56 year shall not revert to the General Revenue Fund but shall remain in the special revenue account
57 for uses consistent with the provisions of this section.

58 (6) All costs and lawful expenses of the board may be paid from the fund created under
59 §8-1-5a(c)(4) of this code.

60 (7) Notwithstanding any provision of this section to the contrary, if at the end of a fiscal
61 year the unencumbered balance of the fund created in §8-1-5a(c)(4) of this code is \$200,000 or
62 more, then annual assessments shall be suspended until the board determines that the
63 unencumbered balance in the fund is insufficient to meet operational expenses.

64 (d) ~~Municipal Home Rule Board.~~— The Municipal Home Rule Board is hereby continued.
65 ~~Effective July 1, 2015, the~~ The Municipal Home Rule Board shall consist of the following five
66 voting members:

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

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

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

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

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

75 The Chair of the Senate Committee on Government Organization and the Chair of the
76 House Committee on Government Organization shall ~~continue to be~~ serve as ex officio nonvoting
77 members of the board.

78 (e) ~~Board's powers and duties.~~— The Municipal Home Rule Board ~~has the following~~
79 ~~powers and duties~~ shall:

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

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

86 (3) Review, evaluate, make recommendations, and approve or reject, for any lawful
87 reason, by a majority vote of the board, the amendments to the existing approved written plans
88 submitted by municipalities: Provided, That any new application or amendment that does not

89 reasonably demonstrate the municipality's ability to manage its associated costs or liabilities shall
90 be rejected;

91 (4) Consult with any agency affected by the written plans or the amendments to the
92 existing approved written plans; and

93 (5) Perform any other powers or duties necessary to effectuate the provisions of this
94 section: Provided, That any administrative rules established by the board for the operation of the
95 Municipal Home Rule Program shall be published on the Municipal Home Rule's website, and
96 made available to the public in print upon request.

97 (f) ~~Written plan.~~— Any Class I, Class II, Class III, or Class IV municipality desiring to
98 participate in the Municipal Home Rule ~~Pilot Program,~~ or any municipality desiring to amend its
99 existing approved written plan, shall submit a written plan to the board stating in detail the
100 following:

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

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

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

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

110 (g) ~~Public hearing on written plan.~~— Prior to submitting its written plan, or an amendment
111 to an existing approved written plan, to the board, the municipality shall:

112 (1) Hold a public hearing on the written plan or the amendment to the existing approved
113 written plan;

114 (2) Provide notice of the public hearing at least 30 days prior to the public hearing by a
115 Class II legal advertisement: Provided, That on or before the first day of publication, the
116 municipality shall send a copy of the notice by certified mail to the Municipal Home Rule Board
117 and the cabinet secretary of every state department;

118 (3) Make a copy of the written plan or amendment available for public inspection at least
119 30 days prior to the public hearing; and

120 (4) After the public hearing, adopt an ordinance authorizing the municipality to submit a
121 written plan or amendment to the Municipal Home Rule Board; ~~after~~ Provided, That the proposed
122 ordinance has been read two times, as required by §8-11-4 of this code.

123 (h) ~~Selection of municipalities.~~— ~~On or after June 1, 2015, by~~ By a majority vote, the
124 Municipal Home Rule Board may select from the municipalities that submitted written plans and
125 were approved by the board by majority vote, new Class I, Class II, Class III, and/or Class IV
126 municipalities to participate in the Municipal Home Rule ~~Pilot~~ Program.

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

130 (1) Environmental law;

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

132 (3) The Freedom of Information Act;

133 (4) The Open Governmental Proceedings Act;

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

135 (6) The provisions of this section;

136 (7) The provisions of §8-12-5a of this code;

137 (8) The municipality's written plan;

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

139 (10) Federal law, including those governing ~~of~~ crimes and punishment;

140 (11) Chapters 60A, 61, and 62 of this code or any other provisions of this code governing
141 state crimes and punishment;

142 (12) Laws governing pensions or retirement plans;

143 (13) Laws governing annexation;

144 (14) Laws governing taxation: *Provided*, That a participating municipality may enact a
145 municipal sales tax up to one percent if it reduces or eliminates its municipal business and
146 occupation tax: *Provided, however*, That if a municipality subsequently reinstates or raises the
147 municipal business and occupation tax it previously reduced or eliminated under the Municipal
148 Home Rule Pilot Program or the Municipal Home Rule Program, it shall reduce or eliminate the
149 municipal sales tax enacted under the Municipal Home Rule Pilot Program or the Municipal Home
150 Rule Program in an amount comparable to the revenue estimated to be generated by the
151 reinstated tax: *Provided further*, That any municipality that imposes a municipal sales tax pursuant
152 to this section shall use the services of the Tax Commissioner to administer, enforce, and collect
153 the tax ~~in the same manner as the state consumers sales and service tax and use tax under~~
154 required by the provisions of §11-15-1 *et seq.*, §11-15A-1 *et seq.*, and §11-15B-1 *et seq.* of this
155 code and all applicable provisions of the Streamlined Sales and Use Tax Agreement: *And*
156 *provided further*, That ~~such~~ the tax will ~~will~~ shall not apply to the sale of motor fuel or motor vehicles;

157 (15) Laws governing tax increment financing;

158 (16) Laws governing extraction of natural resources; ~~and~~

159 (17) Marriage and divorce laws;

160 (18) Laws regulating standards of care or conduct for any profession regulated, licensed,
161 or certified by the State of West Virginia;

162 (19) Laws, rules, or regulations governing the enforcement of state building or fire codes;

163 (20) The West Virginia Workplace Freedom Act and Labor-Management Relations Act;

164 and

165 (21) Federal laws, regulations, or standards related to transportation that would affect the
166 state's required compliance or jeopardize federal funding.

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

169 (1) Affects persons or property outside the boundaries of the municipality: *Provided*, That
170 this prohibition under the Municipal Home Rule ~~Pilot~~ Program does not limit a municipality's
171 powers outside its boundary lines to the extent permitted under other provisions of this section,
172 other sections of this chapter, other chapters of this code, or court decisions; or

173 (2) Enacts an occupation tax, fee, or assessment payable by a nonresident of a
174 municipality; or

175 (3) Imposes duties on another governmental entity, unless the performance of the duties
176 is part of a legally executed agreement between the municipality and the other governmental
177 entity, or is otherwise permitted by state law.

178 (k) ~~Amendments to written plans.~~— A municipality participating in the Municipal Home
179 Rule ~~Pilot~~ Program may amend its written plan at any time subject to the requirements of this
180 section.

181 (l) ~~Amendments to ordinances, acts, resolutions, rules, or regulations.~~— A municipality
182 participating in the Municipal Home Rule ~~Pilot~~ Program may amend any ordinance, act, resolution,
183 rule, or regulation enacted pursuant to the municipality's approved written plan at any time ~~se~~ as
184 long as ~~any~~ the amendment is consistent with the municipality's approved written plan, as
185 modified by any amendments adopted pursuant to this section, complies with the provisions of
186 ~~subsections (i) and (j) of this section~~, and the municipality complies with all applicable state law
187 procedures for enacting municipal legislation.

188 (m) ~~Reporting requirements.~~— ~~Commencing On or before December 1, 2015, and of each~~
189 ~~year thereafter~~, each participating municipality shall give a written progress report to the Municipal
190 Home Rule Board, and ~~commencing on or before January 1, 2016, and of each year thereafter~~,

191 the Municipal Home Rule Board shall give a summary report of all the participating municipalities
192 to the Joint Committee on Government and Finance.

193 ~~(n) *Termination of the pilot program.* — The Municipal Home Rule Pilot Program~~
194 ~~terminates on July 1, 2019. An ordinance, act, resolution, rule or regulation enacted by a~~
195 ~~participating municipality under the provisions of this section during the period of the Municipal~~
196 ~~Home Rule Pilot Program shall continue in full force and effect until repealed~~

197 ~~(e) (n)~~ Notwithstanding any other provision of this code to the contrary, ~~on and after the~~
198 ~~effective date of the enactment of this provision in 2015, no~~ a distributee under the provisions of
199 this section may not seek from the Tax Division of the Department of Revenue a refund of
200 revenues or moneys collected by, or remitted to, the Tax Division of the Department of Revenue,
201 nor seek a change in past amounts distributed, or any other retrospective adjustment relating to
202 any amount distributed, to the extent that the moneys in question have been distributed by the
203 Tax Division to another distributee, regardless of whether those distributions were miscalculated,
204 mistaken, erroneous, misdirected, or otherwise inaccurate or incorrect. For purposes of this
205 section, the term “distributee” means any municipality that has enacted a sales and use tax under
206 this section or as otherwise permitted by law that receives or is authorized to receive a specific
207 distribution of revenues or moneys collected by, or remitted to, the Tax Division of the Department
208 of Revenue pursuant to this section.