WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

Senate Bill 432

BY SENATORS GAUNCH, WELD, BOSO, AND JEFFRIES

[Introduced January 31, 2018; Referred
to the Committee on Government Organization; and then
to the Committee on the Judiciary]
A BILL to amend and reenact §8-1-5a of the Code of West Virginia, 1931, as amended, relating to municipal home rule; establishing the Municipal Home Rule Pilot Program as a permanent program identified as the Municipal Home Rule Pilot Program; providing that any ordinance, act, resolution, rule, or regulation enacted pursuant to the Municipal Home Rule Pilot Program shall continue until repealed; clarifying the authority of the Municipal Home Rule Board; providing a funding mechanism for the board; creating a special revenue account for the Municipal Home Rule Board; allowing all municipalities to participate in the Municipal Home Rule Program; requiring certain notice prior to passing of an ordinance; prohibiting municipalities participating in the Municipal Home Rule Program from passing an ordinance, act, resolution, rule, or regulation that is contrary to certain laws governing the professional licensing or certification of public employees; prohibiting certain ordinances, acts, resolution, rules, or regulations in violation of federal law, regulation, or standard that may impact federal funding or compliance requirements; providing for petition procedures to protest enacted or amended ordinances; requiring ratification of certain ordinances by the voters in a municipal election; and eliminating the automatic termination of the 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.

(a) Legislative findings. -- The Legislature finds and declares that:

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

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

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

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

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

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

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

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

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

(c) **Authorizing participation.** --

(1) Commencing July 1, 2015, 30 Class I, Class II and Class III municipalities and four Class IV municipalities that are current in payment of all state fees may participate in the Municipal Home Rule Pilot Program pursuant to the provisions of this section.

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

(3) All municipalities currently participating in the Home Rule Pilot Program and all future participants in the Home Rule Program shall pay an annual assessment of $2,000 for the operation and maintenance of the Home Rule Board. The assessment is due July 1, 2018 and every July 1 thereafter.

(4) There is hereby created the “Home Rule Board Operations Fund”. Expenditures are authorized from collections and are to be made in accordance with appropriation by the Legislature in accordance with the provisions of §12-3-1 et seq. of this code and upon fulfillment of the provisions of §11B-2-1 et seq. of this code: Provided, That collections received during fiscal year 2018 may be expended upon receipt without prior Legislative appropriation. Any balance remaining in the fund at the end of any state fiscal year does not revert to the General Revenue Fund, but remains in the special revenue account and shall be used only in a manner consistent with this section. All costs and expenses incurred by the board pursuant to this section, including administrative and legal, shall be paid from those funds. At such time as the unencumbered balance in the fund at the end of a state fiscal year is $200,000 or more, the annual assessment shall be suspended until such time as the unencumbered balance in the fund will be insufficient to meet future operating and legal expenses.

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

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

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

(3) One member representing the Business and Industry Council, appointed by the Governor with the advice and consent of the Senate;
(4) One member representing the largest labor organization in the state, appointed by the Governor with the advice and consent of the Senate; and

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

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

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

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

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

(3) Review, evaluate, make recommendations and approve or reject, by a majority vote of the board, the amendments to the written plans submitted by municipalities: Provided, That any new application or amendment that does not sufficiently establish the municipalities ability to manage the costs or potential liabilities associated with its expanded duties shall be rejected;

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

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

(f) Written plan. -- Any Class I, Class II, Class III or Class IV municipality desiring to participate in the Municipal Home Rule Pilot Program or Municipal Home Rule Program shall submit a written plan to the board along with a $2,000 application fee, stating in detail the following:
(1) The specific laws, acts, resolutions, policies, rules or regulations which prevent the municipality from carrying out its duties in the most cost-efficient, effective and timely manner;

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

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

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

(g) Public hearing on written plan. -- Prior to submitting its written plan, or an amendment to an existing plan, to the board, the municipality shall:

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

(2) Provide notice at least 30 days prior to the public hearing by a Class II legal advertisement: Provided, That prior to the first day of publication, a copy of the notice shall be sent by first class mail to the Chairman of the Home Rule Board and the cabinet secretary of any state agency affected by the application or amendment;

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

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

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

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

1. Environmental law;
2. Laws governing bidding on government construction and other contracts;
3. The Freedom of Information Act;
4. The Open Governmental Proceedings Act;
5. Laws governing wages for construction of public improvements;
6. The provisions of this section;
7. The provisions of §8-12-5a of this code;
8. The municipality's written plan;
9. The Constitution of the United States or the Constitution of the State of West Virginia;
10. Federal law or crimes and punishment;
11. Chapters 60A, 61 and 62 of this code or state crimes and punishment;
12. Laws governing pensions or retirement plans;
13. Laws governing annexation;
14. Laws governing taxation: Provided, That a participating municipality may enact a municipal sales tax up to one percent if it reduces or eliminates its municipal business and occupation tax, Provided, however, That if a municipality subsequently reinstates or raises the municipal business and occupation tax it previously reduced or eliminated under the Municipal Home Rule Pilot Program or the Municipal Home Rule Program, it shall eliminate the municipal sales tax enacted under the Municipal Home Rule Pilot Program or the Municipal Home Rule Program, Provided further, That any municipality that imposes a municipal sales tax pursuant to this section shall use the services of the Tax Commissioner to administer, enforce and collect the tax in the same manner as the state consumers sales and service tax and use tax under the provisions of §11-15-1 et seq., §11-15A-1 et seq. and §11-15B-1 et seq. of this code and all applicable provisions of the Streamlined Sales and Use Tax Agreement: And provided further, That such tax will not apply to the sale of motor fuel or motor vehicles;
(15) Laws governing tax increment financing;

(16) Laws governing extraction of natural resources; and

(17) Marriage and divorce laws;

(18) Laws governing the professional licensing or certification of public employees which provide for or ensure the health, safety and welfare of the public, including the administration and oversight of those laws by state agencies to the extent required by law; and

(19) Federal laws, regulations or standards related to transportation that would affect the state’s required compliance or jeopardize federal funding.

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

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

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

(k) Amendments to written plans. -- A municipality participating in the Municipal Home Rule Pilot Program or the Municipal Home Rule Program may amend its written plan at any time: Provided, That any request for an amendment to a plan shall only be accepted for review and action by the home rule board if the municipality has complied to the requirements made of new plans provided in the amendment and reenactment of this section by the Legislature in 2018.

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

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

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

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

NOTE: The purpose of this bill is to establish the Municipal Home Rule Pilot Program as a permanent program identified as the Municipal Home Rule Program. The bill seeks to address the concerns raised by the Governor when SB 441 was vetoed in 2017. The bill provides that any ordinance, act, resolution, rule or regulation enacted pursuant to the Municipal Home Rule Pilot Program shall continue until repealed. The bill clarifies the authority of the Municipal Home Rule Board. The bill provides a funding mechanism for the board. The bill creates a special revenue account for the Municipal Home Rule Board. The bill allows all municipalities to participate in the Municipal Home Rule Program. The bill
requires certain notice prior to passing of an ordinance. The bill prohibits municipalities participating in the Municipal Home Rule Program from passing an ordinance, act, resolution, rule or regulation that is contrary to certain laws governing the professional licensing or certification of public employees. The bill prohibits certain ordinances, acts, resolution, rules or regulations in violation of federal law, regulation or standard that may impact federal funding or compliance requirements. The bill provides for petition procedures to protest enacted or amended ordinances. The bill requires ratification of certain ordinances by the voters in a municipal election. The bill eliminates the automatic termination of the Municipal Home Rule Pilot Program on July 1, 2019.

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