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]
A BILL to amend and reenact §8-1-5a of the Code of West Virginia, 1931, as amended, relating to municipal home rule; making legislative findings; establishing the Municipal Home Rule Pilot Program as a permanent program identified as the Municipal Home Rule Program; providing for continuation of plans and amendments approved during 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act, resolution, rule, or regulation enacted pursuant to the Municipal Home Rule Pilot Program shall continue until repealed; expanding eligibility to participate in home rule to additional municipalities; establishing annual assessment for participants in Municipal Home Rule Program; establishing penalty for failing to timely pay annual assessment; creating special revenue account for Municipal Home Rule Board; authorizing certain expenditures from special revenue fund; providing suspension of annual assessment when certain conditions are met; clarifying the authority of the Municipal Home Rule Board; requiring Municipal Home Rule Board to reject any application or amendment that does not reasonably demonstrate municipality’s ability to manage related costs or liabilities; requiring publication of administrative rules of Municipal Home Rule Board on its website and made available to the public in print upon request; clarifying procedures related to submitting amendment to approved plan; requiring certain notice prior to proposing or amending a plan; requiring public hearing and notice of hearing prior to municipality proposing a plan or amendment; amending certain prohibitions on the powers and duties of municipalities under home rule; prohibiting municipalities participating in the Municipal Home Rule Program from passing an ordinance, act, resolution, rule, or regulation contrary to laws governing professional licensing or certification of employees; prohibiting municipalities participating in the Municipal Home Rule Program from passing an ordinance, act, resolution, rule, or regulation contrary to laws, rules, or regulations governing enforcement of building codes or fire codes; prohibiting municipalities participating in the Municipal Home Rule Program from passing an ordinance, act, resolution, rule, or regulation contrary to West Virginia Workplace
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Freedom Act and Labor-Management Relations Act; prohibiting municipalities participating in the Municipal Home Rule Program from passing an ordinance, act, resolution, rule, or regulation contrary to federal laws, regulations, or standards related to transportation that would affect state’s required compliance or jeopardize federal funding; prohibiting municipalities from enacting any ordinance, act, resolution, rule, or regulation that imposes duties on another governmental entity; providing certain exceptions to that prohibition; modifying reporting requirements; and eliminating 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. Establishing the Municipal Home Rule Pilot Program as a permanent program is in the public interest; and

(7) Increasing the powers and duties of the Municipal Home Rule Board, subject to the limitations set forth herein, 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 plans previously enacted and approved pursuant to the pilot program.** — The Municipal Home Rule Pilot Program is established as a permanent program and shall be identified as the Municipal Home Rule Program. Any plan or amendment to a plan approved by the board during the period of the Municipal Home Rule Pilot Program is continued. 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 unless and until repealed.

(c) **Authorizing participation.** —

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

(2) The municipalities participating in the Municipal Home Rule Pilot Program on the effective date of the amendment and reenactment of this section are hereby
authorized to continue in the pilot program Municipal Home Rule 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) On July 1, 2018, all municipalities currently participating in the Municipal Home Rule Pilot Program shall pay an annual assessment of $2,000 for the operation and administration of the Home Rule Board. On July 1 of each year thereafter, all municipalities participating in the Municipal Home Rule Program as of that date shall pay the annual assessment. Any participating municipality that fails to timely remit its assessment when due may be assessed a penalty of an additional $2,000 by the board.

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

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

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

(7) Notwithstanding any provision of this section to the contrary, if at the end of a fiscal year the unencumbered balance of the fund created in §8-1-5a(c)(4) of this code is $200,000 or more, then annual assessments shall be suspended until the board determines that the unencumbered balance in the fund is insufficient to meet operational 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 serve as 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, for any lawful reason, by a majority vote of the board, each aspect of the written plan, or the written plan in its entirety, 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, for any lawful reason, by a majority vote of the board, the amendments to the existing approved written plans submitted by municipalities: **Provided, That any new application or amendment that does not**
reasonably demonstrate the municipality’s ability to manage its associated costs or liabilities shall be rejected;

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

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

(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 any municipality desiring to amend its existing approved written plan, shall submit a written plan to the board 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 those 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 the State of 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 approved written plan, to the board, the municipality shall:

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

(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 or amendment to the Municipal Home Rule Board; after Provided, That the proposed ordinance has been read two times, as required by §8-11-4 of this code.

(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 may 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, including those governing crimes and punishment;
(11) Chapters 60A, 61, and 62 of this code or any other provisions of this code governing 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 reduce or eliminate the municipal sales tax enacted under the Municipal Home Rule Pilot Program or the Municipal Home Rule Program in an amount comparable to the revenue estimated to be generated by the reinstated tax: 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 required by 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 the tax will shall 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 regulating standards of care or conduct for any profession regulated, licensed, or certified by the State of West Virginia;

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

(20) The West Virginia Workplace Freedom Act and Labor-Management Relations Act; and
(21) 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 to the extent permitted 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; or

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

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

(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 as long as any the amendment is consistent with the municipality’s approved written plan, as modified by any amendments adopted pursuant to this section, 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 On or before December 1, 2015, and of each year thereafter, each participating municipality shall give a written progress report to the Municipal Home Rule Board, and commencing on or before January 1, 2016, and of 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 a distributee under the provisions of
this section may not 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 by the
Tax Division 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 has enacted a sales and use tax under
this section or as otherwise permitted by law 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.