

# **WEST VIRGINIA LEGISLATURE**

## **2019 REGULAR SESSION**

**Engrossed**

**Committee Substitute**

**for**

**Senate Bill 4**

SENATORS WELD, PLYMALE, CLEMENTS, TAKUBO, SYPOLT, SWOPE,

CLINE, AND IHLENFELD, *original sponsors*

[Originating in the Committee on Government

Organization; Reported on January 25, 2019]



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6 enacted pursuant to the Municipal Home Rule Pilot Program shall continue until repealed;  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 that would  
30 affect state's required compliance or jeopardize federal funding; prohibiting municipalities  
31 from passing an ordinance, act, resolution, rule, or regulation contrary to laws or rules  
32 governing procurement of architectural and engineering services; prohibiting  
33 municipalities from passing an ordinance, act, resolution, rule, or regulation contrary to  
34 chapter 17C of the Code of West Virginia, 1931, as amended; prohibiting municipalities  
35 from passing an ordinance, act, resolution, rule, or regulation contrary to laws, rules, or  
36 regulations governing communication technologies or telecommunication carriers;  
37 prohibiting municipalities from enacting any ordinance, act, resolution, rule, or regulation  
38 that imposes duties on another governmental entity; providing certain exceptions to that  
39 prohibition; prohibiting municipalities from passing an ordinance, act, resolution, rule, or  
40 regulation that prohibits or limits rental of a property or regulates duration, frequency, or  
41 location of such rental; providing certain exceptions to that prohibition and limitation;  
42 providing procedures for protesting enactment or amendment of ordinance, act, resolution,  
43 rule, or regulation through petition; providing that duly protested enactments shall not  
44 become effective unless ratified through majority vote at a regular or special election;  
45 specifying voting procedure; providing that certain bonds must be ratified by majority vote  
46 before becoming effective; specifying voting procedure for bond ratification; modifying  
47 reporting requirements; and eliminating automatic termination of the Municipal Home Rule  
48 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) The Municipal Home Rule Pilot Program is established as a permanent program and  
24 shall be identified as the Municipal Home Rule Program. Any plan or amendment to a plan  
25 approved by the board during the period of the Municipal Home Rule Pilot Program is continued.

26 Any ordinance, act, resolution, rule, or regulation enacted by a participating municipality under  
27 the provisions of this section during the period of the Municipal Home Rule Pilot Program shall  
28 continue in full force and effect unless and until repealed: *Provided*, That municipalities that are  
29 participants in the Municipal Home Rule Program shall update their ordinances, acts, resolutions,  
30 rules, and regulations to comply with any additions or modifications to subsection (i) or subsection  
31 (j) of this section.

32 (c) ~~Authorizing participation.~~

33 (1) Commencing ~~July 1, 2015~~ July 1, 2019, ~~39~~ any Class I, Class II, ~~and~~ or Class III  
34 municipalities municipality that is and ~~four Class IV municipalities that are~~ current in payment of  
35 all state fees may apply to participate in the Municipal Home Rule ~~Pilot~~ Program pursuant to the  
36 provisions of this section. Also, commencing July 1, 2019, up to four applications per year from  
37 Class IV municipalities may be approved by the board for participation in the Municipal Home  
38 Rule Program pursuant to the provisions of this section, provided the Class IV municipality is  
39 current in payment of all state fees.

40 (2) The municipalities participating in the ~~pilot program~~ Municipal Home Rule Pilot  
41 Program on the effective date of the amendment and reenactment of this section are ~~hereby~~  
42 authorized to continue in the ~~pilot program~~ Municipal Home Rule Program, subject to the  
43 requirements of this section, and may amend current written plans and/or submit new written  
44 plans in accordance with the provisions of this section.

45 (3) On July 1, 2019, all municipalities currently participating in the Municipal Home Rule  
46 Pilot Program shall pay an annual assessment of \$2,000 for the operation and administration of  
47 the Home Rule Board. On July 1 of each year thereafter, all municipalities participating in the  
48 Municipal Home Rule Program as of that date shall pay the annual assessment. Any participating  
49 municipality that fails to timely remit its assessment when due may be assessed a penalty of an  
50 additional \$2,000 by the board.

51 (4) There is created in the office of the State Treasurer a special revenue account fund to  
52 be known as the Home Rule Board Operations Fund. The assessments required by the provisions  
53 of subdivision (3) of this subsection shall be deposited into the fund, and expenditures from the  
54 fund shall be made in accordance with appropriation of the Legislature under the provisions of  
55 §12-3-1 et seq. of this code, and in compliance with the provisions of §11B-2-1 et seq. of this  
56 code: *Provided*, That legislative appropriation is not required during fiscal year 2019.

57 (5) Any balance in the fund created under subdivision (4) of this subsection at the end of  
58 a fiscal year shall not revert to the General Revenue Fund but shall remain in the special revenue  
59 account for uses consistent with the provisions of this section.

60 (6) All costs and expenses lawfully incurred by the board may be paid from the fund  
61 created under subdivision (4) of this subsection.

62 (7) Notwithstanding any provision of this section to the contrary, if at the end of a fiscal  
63 year the unencumbered balance of the fund created in subdivision (4) of this subsection is  
64 \$200,000 or more, then annual assessments shall be suspended until the board determines that  
65 the unencumbered balance in the fund is insufficient to meet operational expenses. The board  
66 shall notify all participating municipalities of the suspension of the annual assessment prior to the  
67 end of the fiscal year and provide an estimate of when payment of annual assessments will  
68 resume.

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

- 72 (1) The Governor, or a designee, who shall serve as chair;  
73 (2) The Executive Director of the West Virginia Development Office, or a designee;  
74 (3) One member representing the Business and Industry Council, appointed by the  
75 Governor with the advice and consent of the Senate;

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

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

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

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

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

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

92 (3) Review, evaluate, make recommendations, and approve or reject, for any lawful  
93 reason, by a majority vote of the board, the amendments to the existing approved written plans  
94 submitted by municipalities: Provided, That any new application or amendment that does not  
95 reasonably demonstrate the municipality's ability to manage its associated costs or liabilities shall  
96 be rejected;

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

99 (5) Perform any other powers or duties necessary to effectuate the provisions of this  
100 section: Provided, That any administrative rules established by the board for the operation of the



101 Municipal Home Rule Program shall be published on the Municipal Home Rule Board's website,  
102 and made available to the public in print upon request.

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

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

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

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

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

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

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

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

124 (3) Make a copy of the written plan or amendment available for public inspection at least  
125 30 days prior to the public hearing; and

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

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

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

- 137 (1) Environmental law;
- 138 (2) Laws governing bidding on government construction and other contracts;
- 139 (3) The Freedom of Information Act;
- 140 (4) The Open Governmental Proceedings Act;
- 141 (5) Laws governing wages for construction of public improvements;
- 142 (6) The provisions of this section;
- 143 (7) The provisions of §8-12-5a of this code;
- 144 (8) The municipality's written plan;
- 145 (9) The Constitution of the United States or the Constitution of the State of West Virginia;
- 146 (10) Federal law, including those governing ~~or~~ crimes and punishment;
- 147 (11) Chapters 60A, 61, and 62 of this code or any other provisions of this code governing  
148 state crimes and punishment;
- 149 (12) Laws governing pensions or retirement plans;
- 150 (13) Laws governing annexation;

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

164 (15) Laws governing tax increment financing;

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

166 (17) Marriage and divorce laws;

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

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

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

171 (21) Federal laws, regulations, or standards that would affect the state's required  
172 compliance or jeopardize federal funding;

173 (22) Laws or rules governing procurement of architectural and engineering services;

174 (23) The provisions of chapter 17C of this code; or

175 (24) Laws, rules, or regulations governing communication technologies or  
176 telecommunications carriers, as the term "telecommunications carrier" is defined by the Federal

177 Communications Commission in 47 U.S.C. §153 or as determined by the Public Service  
178 Commission of West Virginia.

179 (j) ~~Municipalities~~ The municipalities participating in the Municipal Home Rule Program may  
180 not pass an ordinance, act, resolution, rule, or regulation, under the provisions of this section,  
181 ~~under the provisions of this section~~ that:

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

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

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

191 (4) Prohibits or effectively limits the rental of a property, in whole or in part, or regulates  
192 the duration, frequency, or location of such rental, in whole or in part. A municipality may regulate  
193 activities that arise when a property is used as a rental: *Provided*, That such regulation applies  
194 uniformly to all properties, without regard to whether such properties are used as a rental:  
195 *Provided, however*, That nothing in this subdivision may be construed to prohibit a municipality  
196 from imposing a hotel occupancy tax as prescribed in §7-18-1 *et seq.* of this code.

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

200 (l) ~~*Amendments to ordinances, acts, resolutions, rules, or regulations.*~~— A municipality  
201 participating in the Municipal Home Rule ~~Pilot~~ Program may amend any ordinance, act, resolution,  
202 rule, or regulation enacted pursuant to the municipality's approved written plan at any time ~~so~~ as

203 long as ~~any~~ the amendment is consistent with the municipality's approved written plan, as  
204 modified by any amendments adopted pursuant to this section, complies with the provisions of  
205 ~~subsections (i) and (j)~~ of this section, and the municipality complies with all applicable state law  
206 procedures for enacting municipal legislation.

207 ~~(m) Reporting requirements.~~—Commencing On or before December 1, 2015, ~~and of~~ each  
208 year ~~thereafter~~, each participating municipality shall give a written progress report to the Municipal  
209 Home Rule Board, and ~~commencing on or before~~ on or before January 1, 2016, ~~and of~~ each year thereafter,  
210 the Municipal Home Rule Board shall give a summary report of all the participating municipalities  
211 to the Joint Committee on Government and Finance.

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

216 ~~(e) (n)~~ Notwithstanding any other provision of this code to the contrary, ~~on and after the~~  
217 ~~effective date of the enactment of this provision in 2015,~~ a distributee under the provisions of  
218 this section may not seek from the Tax Division of the Department of Revenue a refund of  
219 revenues or moneys collected by, or remitted to, the Tax Division of the Department of Revenue,  
220 nor seek a change in past amounts distributed, or any other retrospective adjustment relating to  
221 any amount distributed, to the extent that the moneys in question have been distributed by the  
222 Tax Division to another distributee, regardless of whether those distributions were miscalculated,  
223 mistaken, erroneous, misdirected, or otherwise inaccurate or incorrect. For purposes of this  
224 section, the term “distributee” means any municipality that has enacted a sales and use tax under  
225 this section or as otherwise permitted by law that receives or is authorized to receive a specific  
226 distribution of revenues or moneys collected by, or remitted to, the Tax Division of the Department  
227 of Revenue pursuant to this section.