

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

House Bill 2728

**FISCAL
NOTE**

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[Introduced January 29, 2019; Referred
to the Committee on Government Organization.]

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6 enacted pursuant to the Municipal Home Rule Pilot Program shall continue until repealed;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 Municipal Home Rule Program; established penalty
8 for failing to timely pay annual assessment; creating special revenue account for Municipal
9 Home Rule board; authorize certain expenditures from special revenue fund; providing
10 suspension of annual assessment when certain conditions are met; clarifying the authority
11 of the Municipal Home Rule Board; requiring Municipal Home Rule board to reject any
12 application or amendment that does not reasonably demonstrate municipality's ability to
13 manage related costs or liabilities; requiring publication of administrative rules of Municipal
14 Home Rule Board on its website and made available to the public in print upon request;
15 clarifying procedure related to submitting amendment to approved plan' requiring certain
16 notice prior to proposing or amending a plan; requiring public hearing and notice of hearing
17 prior to municipality proposing a plan or amendment; amending certain prohibitions on the
18 powers and duties of municipalities under home rules; prohibiting municipalities
19 participating in the Municipal Home Rule Program from passing an ordinance, act,
20 resolution, rule, or regulation contrary to laws governing professional licensing or
21 certification of employees; prohibiting municipalities participating in the Municipal Home
22 Rule Program from passing an ordinance, act, resolution, rule, or regulation governing
23 enforcement of building codes or fire codes; prohibiting municipalities participating in the
24 Municipal Home Rule Program from passing an ordinance, act, resolution, rule, or
25 regulation contrary to West Virginia Workplace Freedom Act or Labor-Management
26 Relations Act; prohibiting municipalities participating in the Municipal Home Rule Program

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

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

31 (c) ~~Authorizing participation.~~

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

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

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

50 (4) There is created in the office of the State Treasurer a special revenue account fund to

51 be known as the Home rule Board Operations Fund. The assessments required by the provisions
52 of §8-1-5a(c)(3) of this code shall be deposited into the fund, and expenditures from the fund shall
53 be made in accordance with appropriation to the Legislature under the provisions of §12-3-1 et
54 seq of this code, and in compliance with the provisions of §11B-2-1 et seq of this code: *Provided,*
55 That legislative appropriation is not required during fiscal year 2019.

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

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

61 (7) Notwithstanding any provision of this section to the contrary, if at the end of a fiscal
62 year the unencumbered balance of the fund created in §8-1-5a(c)(4) of this code is \$200,000 or
63 more, then annual assessments shall be suspended until the board determines that the
64 unencumbered balance in the fund is insufficient to meet operational expenses. The board shall
65 notify all participating municipalities of the suspension of the annual assessment prior to the end
66 of the fiscal year and provide an estimate of when payment of annual assessments will resume.

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

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

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

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

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

76 (5) One member representing the West Virginia Chapter of the American Institute of

77 ~~Certified Planners~~ Planning Association, appointed by the Governor with the advice and consent
78 of the Senate.

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

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

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

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

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

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

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

101 (f) ~~Written plan.~~ Any Class I, Class II, Class III or Class IV municipality desiring to
102 participate in the Municipal Home Rule ~~Pilot~~ Program, or any municipality desiring to amend its

103 existing approved written plan, shall submit a written plan to the board stating in detail the
104 following:

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

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

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

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

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

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

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

122 (3) Make a copy of the written plan or amendment available for public inspection at least
123 30 days prior to the public hearing; and

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

127 (h) ~~Selection of municipalities.~~ ~~On or after June 1, 2015, by~~ By a majority vote, the
128 Municipal Home Rule Board may select from the municipalities that submitted written plans and

129 were approved by the board by majority vote, new Class I, Class II, Class III and/or Class IV
130 municipalities to participate in the Municipal Home Rule ~~Pilot~~ Program.

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

134 (1) Environmental law;

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

136 (3) The Freedom of Information Act;

137 (4) The Open Governmental Proceedings Act;

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

139 (6) The provisions of this section;

140 (7) The provisions of section five-a, article twelve of this chapter;

141 (8) The municipality's written plan;

142 (9) The Constitution of the United States or the Constitution of the state of West Virginia;

143 (10) Federal law, including those governing ~~or~~ crimes and punishment;

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

146 (12) Laws governing pensions or retirement plans;

147 (13) Laws governing annexation;

148 (14) Laws governing taxation: *Provided*, That a participating municipality may enact a
149 municipal sales tax up to one percent if it reduces or eliminates its municipal business and
150 occupation tax: *Provided, however*, That if a municipality subsequently reinstates or raises the
151 municipal business and occupation tax it previously reduced or eliminated under the Municipal
152 Home Rule Pilot Program or the Municipal Home Rule Program, it shall reduce or eliminate the
153 municipal sales tax enacted under the Municipal Home Rule Pilot Program or the Municipal Home
154 Rule Program in an amount comparable to the revenue estimated to be generated by the

155 reinstated tax: *Provided further,* That any municipality that imposes a municipal sales tax
 156 pursuant to this section shall use the services of the Tax Commissioner to administer, enforce
 157 and collect the tax ~~in the same manner as the state consumers sales and service tax and use tax~~
 158 ~~under~~ required by the provisions of §11-15-1 *et seq*, §11-15A-1 *et seq*, and §11-15B-1 *et seq*, of
 159 this code and all applicable provisions of the Streamlined Sales and Use Tax Agreement: *And*
 160 *provided further,* That ~~such~~ the tax will ~~does~~ not apply to the sale of motor fuel or motor vehicles;

161 (15) Laws governing tax increment financing;

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

163 (17) Marriage and divorce laws;

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

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

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

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

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

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

172 (24) Laws, rules, or regulations governing communication technologies or
 173 telecommunications carriers, as the term "telecommunications carrier" is defined by the Federal
 174 Communications Commission in 47 U.S.C. § 153 or as determined by the Public Service
 175 Commission of West Virginia.

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

178 (1) Affects persons or property outside the boundaries of the municipality: *Provided,* That
 179 this prohibition under the Municipal Home Rule ~~Pilot~~ Program does not limit a municipality's
 180 powers outside its boundary lines to the extent permitted under other provisions of this section,

181 other sections of this chapter, other chapters of this code or court decisions; or

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

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

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

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

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

203 (m) ~~*Reporting requirements.*~~— Commencing On or before December 1, 2015, and of each
204 year ~~thereafter~~, each participating municipality shall give a written progress report to the Municipal
205 Home Rule Board and ~~commencing~~ on or before January 1, 2016, and of each year, ~~thereafter~~
206 the Municipal Home Rule Board shall give a summary report of all the participating municipalities

207 to the Joint Committee on Government and Finance.

208 (n) ~~Termination of the pilot program.~~ The Municipal Home Rule Pilot Program terminates
209 on July 1, 2019. An ordinance, act, resolution, rule or regulation enacted by a participating
210 municipality under the provisions of this section during the period of the Municipal Home Rule
211 Pilot Program shall continue in full force and effect until repealed In the event 30 percent of the
212 qualified voters of the municipality who voted in the previous municipal election, by petition duly
213 signed by them in their own handwriting and filed with the recorder of the municipality within 45
214 days after the enactment or amendment of an ordinance, act, resolution, rule, or regulation,
215 protest against the ordinance, act, resolution, rule, or regulation, as amended, the ordinance, act,
216 resolution, rule, or regulation shall not be issued or become effective until it is ratified by a majority
217 of the legal votes cast by the qualified voters of the municipality at a regular municipal election or
218 special municipal election, as the governing body directs. Voting shall not take place until after
219 notice of the submission is given by publication as a Class II legal advertisement in compliance
220 with the provisions of §59-3-1 et seq of this code.

221 (o) Each bond for which the proceeds from a sales and use tax enacted under this section
222 are specifically pledges to pay the debt services must be ratified by a majority of the legal votes
223 cast by the qualified voters of the municipality at a regular municipal election or special municipal
224 election, as the governing body directs, before it may become effective. Voting shall not take place
225 until after notice of the submission is give by publication as a Class II legal advertisement in
226 compliance with the provisions of §59-3-1 et seq of this code: *Provided*, That this subsection shall
227 not apply retroactively to existing bonds and: *Provided, however* That bonds may be refunded
228 without being ratified by election.

229 (e)(p) Notwithstanding any other provision of this code to the contrary, ~~on and after the~~
230 ~~effective date of the enactment of this provision in 2015,~~ a distributee under the provisions of
231 this section may not seek from the Tax Division of the Department of Revenue a refund of
232 revenues or moneys collected by, or remitted to, the Tax Division of the Department of Revenue,

233 nor seek a change in past amounts distributed, or any other retrospective adjustment relating to
234 any amount distributed, to the extent that the moneys in question have been distributed by the
235 Tax Division to another distributee, regardless of whether those distributions were miscalculated,
236 mistaken, erroneous, misdirected or otherwise inaccurate or incorrect. For purposes of this
237 section, the term "distributee" means any municipality that has enacted a sales and use tax under
238 this section or as otherwise permitted by law that receives or is authorized to receive a specific
239 distribution of revenues or moneys collected by, or remitted to, the Tax Division of the Department
240 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 provides for continuation of plans and amendments approved during Municipal Home Rule Pilot Program. The bill provide that any ordinance, act, resolution, rule, or regulation enacted pursuant to the Municipal Home Rule Pilot Program shall continue until repealed. The bill expands eligibility to participate in home rule to additional municipalities. The bill establishes annual assessment for participants in Municipal Home Rule Program. The bill established penalties for failing to timely pay annual assessment. The bill creates special revenue account for Municipal Home Rule Board. The bill authorizes certain expenditures from the special revenue fund. The bill provides suspension of annual assessment when certain conditions are met. The bill clarifies the authority of the Municipal Home Rule Board. The bill requires Municipal Home Rule Board to reject any application or amendment that does not reasonably demonstrate municipalities' ability to manage related costs or liabilities. The bill requires publication of administrative rules of Municipal Home Rule Board on its website and made available to the public in print upon request. The bill clarifies procedures relating to submitting an amendment to approved plan. The bill requires certain notice prior proposing or amending a plan. The bill requires public hearing and notice of hearing prior to municipality proposing a plan or amendment. The bill amends certain prohibitions on the powers and duties of municipalities under home rule. The bill prohibits 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. The bill prohibits municipalities participating in the Municipal Home Rule Program from passing an ordinance, act, resolution, rule, or regulation contract to laws, rules, or regulations governing enforcement of building codes or fire codes. The bill prohibits municipalities participating in the Municipal Home Rule Program from passing an ordinance, act, resolution rule, or regulation contrary to the West Virginia Workplace Freedom Act and Labor-Management Relations Act. The bill prohibits municipalities participating in Municipal Home Rule Program from passing an ordinance, act, resolution, rule, or regulation contrary to federal laws regulations, or standards relating to transportation that would affect state's required compliance or jeopardize federal funding. The bill prohibits municipalities from passing an ordinance, act, resolution, rule, or regulation contrary to law or rules governing procurement of architectural and engineering services. The bill prohibits municipalities from passing an ordinance, act, resolution, rule, or regulation contrary to Chapter 17C of the Code of West Virginia, 1931, as amended. The bill prohibits municipalities from enacting any ordinance, act, resolution, rule, or regulations that imposes duties on another governmental entity. The bill provide certain

exceptions to that prohibition. The bill prohibits municipalities from passing an ordinance, act, resolution, rule, or regulation that prohibits or limits rental of a property or regulations the duration, frequency, or location of such rental. The bill provides certain exceptions to that prohibition and limitation. The bill provides procedures for protesting enactment of amendment of ordinances, acts, resolution, rules, or regulations through a petition process. The bill provides procedures for the petition process. The bill provides that duly protested enactments shall not take effect until ratified by a majority of voters and prescribes the voting procedures. The bill provides that each bond must be ratified by a majority of voters and prescribes the voting procedure for bond ratification. The bill modifies reporting requirements. The bill eliminates 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.