

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 5486

By Delegates Hite, Dean, Vance, Rohrbach,
Longanacre, Smith, E. Pritt, Maynor, Ferrell, and
Campbell

[Introduced February 06, 2024; Referred to the
Committee on Government Organization then
Finance]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §7-1-4a, relating to the creation of the "County Home Rule Program."

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.
§7-1-4a. County Home Rule Program.

1 (a) The Legislature finds and declares that:

2 (1) Counties face challenges delivering services required by federal and state law or
3 demanded by their constituents;

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

7 (3) Establishing a County Home Rule Program as a permanent program is in the public
8 interest.

9 (b) The County Home Rule Program is established as a permanent program and shall be
10 identified as the County Home Rule Program.

11 (c)(1) Commencing July 1, 2024, any County that is current in payment of all state fees
12 may apply to participate in the County Home Rule Program pursuant to the provisions of this
13 section.

14 (2) A County wishing to participate in the County Home Rule Program must secure the
15 support of a simple majority of ballots cast by its constituents through a ballot referendum during a
16 normal primary or general election. *Provided*, That if the County Home Rule Program is passed in
17 a county, the Program shall sunset after a period of six years.

18 (d) The Counties participating in the County Home Rule Program may not pass an
19 ordinance, act, resolution, rule, or regulation, under the provisions of this section, that is contrary
20 to the following:

21 (1) Environmental law;

- 22 (2) Laws governing bidding on government construction and other contracts;
- 23 (3) The Freedom of Information Act;
- 24 (4) The Open Governmental Proceedings Act;
- 25 (5) Laws governing wages for construction of public improvements;
- 26 (6) The provisions of this section;
- 27 (7) The County's written plan;
- 28 (8) The Constitution of the United States or the Constitution of the State of West Virginia;
- 29 (9) Federal law, including those governing crimes and punishment;
- 30 (10) Chapters 60A, 61, and 62 of this code or any other provisions of this code governing
- 31 state crimes and punishment;
- 32 (11) Laws governing pensions or retirement plans;
- 33 (12) Laws governing annexation;
- 34 (13) Laws governing taxation:
- 35 (A) *Provided*, That a participating County may enact a County sales tax up to one percent if
- 36 it eliminates its County Stormwater Management Fee if applicable:
- 37 (B) *Provided, however*, That if a County subsequently reinstates the Stormwater
- 38 Management Fee it previously eliminated, or enacts a Stormwater Management Fee it did not
- 39 have previously; it shall eliminate the County sales tax enacted under the County Home Rule
- 40 Program:
- 41 (C) *Provided further*, That any County imposing a sales tax, may not impose the tax inside
- 42 any municipality within that county that already has a municipal sales tax under 8-1-5a.
- 43 (D) *And provided further*, That any County that imposes a County sales tax pursuant to this
- 44 section shall use the services of the Tax Commissioner to administer, enforce, and collect the tax
- 45 required by the provisions of §11-15-1 *et seq.*, §11-15A-1 *et seq.*, and §11-15B-1 *et seq.* of this
- 46 code and all applicable provisions of the Streamlined Sales and Use Tax Agreement. The tax
- 47 described in subsection (h) does not apply to the sale of motor fuel or motor vehicles;

- 48 (14) Laws governing tax increment financing;
- 49 (15) Laws governing extraction of natural resources;
- 50 (16) Marriage and divorce laws;
- 51 (17) Laws governing professional licensing or certification, including the administration and
52 oversight of those laws, by state agencies to the extent required by law;
- 53 (18) Laws, rules, or regulations governing the enforcement of state building or fire codes;
- 54 (19) Federal laws, regulations, or standards that would affect the state's required
55 compliance or jeopardize federal funding;
- 56 (20) Laws or rules governing procurement of architectural and engineering services:
57 Provided, That notwithstanding any other provision of this section to the contrary, the change
58 made in this subdivision applies prospectively and any ordinance enacted by the participating
59 Counties prior to the effective date of the amendments to this section during the 2024 regular
60 legislative session remains in effect.
- 61 (21) The provisions of chapter 17C of this code; or
- 62 (22) Laws, rules, or regulations governing communication technologies or
63 telecommunications carriers, as the term "telecommunications carrier" is defined by the Federal
64 Communications Commission in 47 U.S.C. §153 or as determined by the Public Service
65 Commission of West Virginia.
- 66 (23) Laws governing the sale, transfer, possession, use, storage, taxation, registration,
67 licensing, or carrying firearms, ammunition, or accessories thereof.
- 68 (e) The Counties participating in the County Home Rule Program may not pass an
69 ordinance, act, resolution, rule, or regulation under the provisions of this section that:
70 (1) Affects persons or property outside the boundaries of the County: Provided, That this
71 prohibition under the County Home Rule Program does not limit a County's powers outside its
72 boundary lines to the extent permitted under other provisions of this section, other sections of this
73 chapter, other chapters of this code, or court decisions;

74 (2) Enacts an occupation tax, fee, or assessment payable by a nonresident of a County; or
75 (3) Imposes duties on another governmental entity, unless the performance of the duties is
76 part of a legally executed agreement between the County and the other governmental entity, or is
77 otherwise permitted by state law;
78 (f) Counties may not prohibit or effectively limit the rental of a property, in whole or in part,
79 or regulate the duration, frequency, or location of such rental, in whole or in part. A County may
80 regulate activities that arise when a property is used as a rental: *Provided*, That such regulation
81 applies uniformly to all properties, without regard to whether such properties are used as a rental:
82 *Provided, however*, That nothing in this subdivision may be construed to prohibit a County from
83 imposing a hotel occupancy tax.
84 (g) Notwithstanding any other provision of this code to the contrary, a distributee under the
85 provisions of this section may not seek from the Tax Division of the Department of Revenue a
86 refund of revenues or moneys collected by, or remitted to, the Tax Division of the Department of
87 Revenue, nor seek a change in past amounts distributed, or any other retrospective adjustment
88 relating to any amount distributed, to the extent that the moneys in question have been distributed
89 by the Tax Division to another distributee, regardless of whether those distributions were
90 miscalculated, mistaken, erroneous, misdirected, or otherwise inaccurate or incorrect. For
91 purposes of this section, the term "distributee" means any County that has enacted a sales and
92 use tax under this section or as otherwise permitted by law that receives or is authorized to receive
93 a specific distribution of revenues or moneys collected by, or remitted to, the Tax Division of the
94 Department of Revenue pursuant to this section.

NOTE: The purpose of this bill is to create the "County Home Rule Program."

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