

1 ENGROSSED

2 **COMMITTEE SUBSTITUTE**

3 **FOR**

4 **Senate Bill No. 435**

5 (By Senators Snyder, Miller, Kessler (Mr. President), Jenkins,  
6 Yost, Stollings, Plymale, McCabe, Fitzsimmons, Palumbo and Beach)

7 \_\_\_\_\_  
8 [Originating in the Committee on Government Organization;  
9 reported March 6, 2013.]

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11  
12 A BILL to amend and reenact §8-1-5a of the Code of West Virginia,  
13 1931, as amended, relating to continuing the Municipal Home  
14 Rule Pilot Program; legislative findings; authorizing Class I,  
15 II, III and IV municipalities to participate in the program;  
16 clarifying the voting privileges of members of the Municipal  
17 Home Rule Board; clarifying the powers and duties of the  
18 board; written plan requirements for municipalities; ordinance  
19 requirements for municipalities; powers and duties of the  
20 participating municipalities; prohibiting certain acts by  
21 participating municipalities; amending the written plan;  
22 reporting requirements; termination date of the pilot program;  
23 and the effect of ordinances passed by the municipalities  
24 participating in the pilot program.

25 *Be it enacted by the Legislature of West Virginia:*

1           That §8-1-5a of the Code of West Virginia, 1931, as amended,  
2 be amended and reenacted to read as follows:

3 **ARTICLE 1.       PURPOSE AND SHORT TITLE; DEFINITIONS; GENERAL**  
4   **PROVISIONS; CONSTRUCTION.**

5 **§8-1-5a.   Municipal Home Rule Pilot Program.**

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

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

12           (2) The initial Municipal Home Rule Pilot Program also brought  
13 some negative results, including novel municipal ideas that  
14 resulted in court challenges against some of the participating  
15 municipalities;

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

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

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

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

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

5 (b) *Continuance of pilot program.* -- The Municipal Home Rule  
6 Pilot Program is continued until July 1, 2019. The ordinances  
7 enacted by the four participating municipalities pursuant to the  
8 initial Municipal Home Rule Pilot Program are hereby authorized and  
9 may remain in effect until the ordinances are repealed, but are  
10 null and void if amended and such amendment is not approved by the  
11 Municipal Home Rule Board: *Provided,* That any ordinance enacting  
12 a municipal occupation tax is hereby null and void.

13 (c) *Authorizing participation.* -- Commencing July 1, 2013,  
14 fourteen Class I, Class II, Class III and/or Class IV  
15 municipalities, that are current in payment of all state fees, may  
16 participate in the Municipal Home Rule Pilot Program pursuant to  
17 the provisions of this section: *Provided,* That the four  
18 municipalities participating in the pilot program on July 1, 2012,  
19 are hereby authorized to continue in the pilot program and may  
20 amend current written plans and/or submit new written plans in  
21 accordance with the provisions of this section: *Provided, however,*  
22 That if any of the four municipalities participating in the pilot  
23 program on July 1, 2012, do not want to participate in the pilot  
24 program, then the municipality must submit a written letter to the  
25 board indicating the municipality's desire not to participate.

26 (d) *Municipal Home Rule Board.* -- The Municipal Home Rule

1 Board is hereby continued. The board members serving on the board  
2 on July 1, 2012, may continue to serve, except that the Chair of  
3 the Senate Committee on Government Organization and the Chair of  
4 the House Committee on Government Organization shall be ex officio  
5 nonvoting members. Effective July 1, 2013, the Municipal Home Rule  
6 Board shall consist of the following five voting members:

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

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

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

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

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

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

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

24 (2) By a majority vote of the board, select, based on the  
25 municipality's written plan, up to ten new Class I, Class II, Class  
26 III and/or Class IV municipalities to participate in the Municipal

1 Home Rule Pilot Program;

2 (3) Review, evaluate, make recommendations and approve or  
3 reject, by a majority vote of the board, the amendments to the  
4 written plans submitted by municipalities;

5 (4) Approve or reject, by a majority vote of the board, each  
6 ordinance submitted by a participating municipality pursuant to its  
7 written plan or its amendments to the written plan;

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

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

12 (f) *Written plan.* -- On or before June 1, 2014, a Class I,  
13 Class II, Class III or Class IV municipality desiring to  
14 participate or continue to participate in the Municipal Home Rule  
15 Pilot Program shall submit a written plan to the board stating in  
16 detail the following:

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

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

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

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

4 (g) *Public hearing on written plan.* -- Prior to submitting its  
5 written plan to the board, the municipality shall:

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

7 (2) Provide notice at least thirty days prior to the public  
8 hearing by a Class II legal advertisement;

9 (3) Make a copy of the written plan available for public  
10 inspection at least thirty days prior to the public hearing; and

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

14 (h) *Selection of municipalities.* -- On or after June 1, 2014,  
15 by a majority vote, the Municipal Home Rule Board may select from  
16 the municipalities that submitted written plans and were approved  
17 by the board by majority vote up to ten new Class I, Class II,  
18 Class III and/or Class IV municipalities to participate in the  
19 Municipal Home Rule Pilot Program.

20 (i) *Ordinance, act, resolution, rule or regulation.* -- After  
21 being selected to participate in the Municipal Home Rule Pilot  
22 Program and prior to enacting an ordinance, act, resolution, rule  
23 or regulation based on the written plan, the municipality shall:

24 (1) Hold a public hearing on the proposed ordinance, act,  
25 resolution, rule or regulation;

26 (2) Provide notice at least thirty days prior to the public

1 hearing by a Class II legal advertisement;

2 (3) Make a copy of the proposed ordinance, act, resolution,  
3 rule or regulation available for public inspection at least thirty  
4 days prior to the public hearing;

5 (4) After the public hearing, submit the comments, either in  
6 audio or written form, to the Municipal Home Rule Board;

7 (5) Obtain approval, from the Municipal Home Rule Board by a  
8 majority vote, for the proposed ordinance, act, resolution, rule or  
9 regulation; and

10 (6) After obtaining approval from the Municipal Home Rule  
11 Board, read the proposed ordinance, act, resolution, rule or  
12 regulation at least two times.

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

18 (1) The provisions of this section; and

19 (2) The municipality's written plan.

20 (k) *Prohibited acts.* -- The municipalities participating in  
21 the Municipal Home Rule Pilot Program do not have the authority to  
22 pass an ordinance, act, resolution, rule or regulation, under the  
23 provisions of this section, pertaining to:

24 (1) The Constitutions of the United States or West Virginia;

25 (2) Federal law or crimes and punishment;

26 (3) Chapters sixty-a, sixty-one and sixty-two of this code or

1 state crimes and punishment;

2 (4) Pensions or retirement plans;

3 (5) Annexation;

4 (6) Taxation: *Provided*, That a participating municipality may  
5 enact a municipal sales tax up to one percent if it reduces or  
6 eliminates its municipal business and occupation tax;

7 (7) Tax increment financing;

8 (8) Environmental laws;

9 (9) Extraction of natural resources; and

10 (10) Persons or property outside the boundaries of the  
11 municipality: *Provided*, That this prohibition under the Municipal  
12 Home Rule Pilot Program does not affect a municipality's powers  
13 outside its boundary lines under this chapter, this code or court  
14 decisions.

15 (1) *Amendments to written plans*. -- A municipality selected to  
16 participate in the Municipal Home Rule Pilot Program may amend its  
17 written plan at any time.

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

25 (n) *Termination of the pilot program*. -- The Municipal Home  
26 Rule Pilot Program terminates on July 1, 2019. No ordinance, act,



1 resolution, rule or regulation may be enacted by a participating  
2 municipality after July 1, 2019, pursuant to the provisions of this  
3 section. An ordinance, act, resolution, rule or regulation enacted  
4 by a participating municipality under the provisions of this  
5 section during the period of the Municipal Home Rule Pilot Program  
6 shall continue in full force and effect until repealed, but is null  
7 and void if it is amended and such amendment is not approved by the  
8 Municipal Home Rule Board.