

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Committee Substitute

for

Senate Bill 441

BY SENATORS SYPOLT, BOSO AND SMITH

[Originating in the Committee on Government

Organization; reported on March 8, 2017]

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; establishing the Municipal Home Rule Pilot Program as a
3 permanent program identified as the Municipal Home Rule Program; providing that any
4 ordinance, act, resolution, rule or regulation enacted pursuant to the Municipal Home Rule
5 Pilot Program shall continue until repealed; allowing all municipalities to participate in the
6 Municipal Home Rule Program; prohibiting municipalities participating in the Municipal
7 Home Rule Program from passing an ordinance, act, resolution, rule or regulation that is
8 contrary to certain laws governing the professional licensing or certification of public
9 employees; and eliminating the automatic termination of the Municipal Home Rule Pilot
10 Program on July 1, 2019.

Be it enacted by the Legislature of West Virginia:

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

**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~~ Establishing the Municipal Home Rule Pilot Program as a permanent
15 program available to all municipalities statewide is in the public interest; and

16 (7) Increasing the powers and duties of the Municipal Home Rule Board will enhance the
17 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) Establishment of a permanent program and continuation of pilot plans. -- The Municipal
24 Home Rule Pilot Program is hereby established as a permanent program and shall be identified
25 as the Municipal Home Rule Program. Any ordinance, act, resolution, rule or regulation enacted
26 by a participating municipality under the provisions of this section during the period of the
27 Municipal Home Rule Pilot Program shall continue in full force and effect until repealed.

28 (c) *Authorizing participation. --*

29 (1) Commencing ~~July 1, 2015~~ July 1, 2017, ~~thirty~~ any Class I, Class II, and Class III
30 ~~municipalities and four Class IV municipalities~~ municipality that ~~are~~ is current in payment of all
31 state fees may participate in the Municipal Home Rule ~~Pilot~~ Program pursuant to the provisions
32 of this section.

33 (2) The municipalities participating in the pilot program on the effective date of the
34 amendment and reenactment of this section are hereby authorized to continue in the ~~pilot~~

35 program, subject to the requirements of this section, and may amend current written plans and/or
36 submit new written plans in accordance with the provisions of this section.

37 (d) *Municipal Home Rule Board.* — The Municipal Home Rule Board is hereby continued.
38 Effective July 1, 2015, the Municipal Home Rule Board shall consist of the following five voting
39 members:

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

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

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

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

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

48 The Chair of the Senate Committee on Government Organization and the Chair of the
49 House Committee on Government Organization shall continue to be ex officio nonvoting members
50 of the board.

51 (e) *Board's powers and duties.* — The Municipal Home Rule Board has the following
52 powers and duties:

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

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

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

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

62 (5) Perform any other powers or duties necessary to effectuate the provisions of this
63 section.

64 (f) *Written plan.* — Any Class I, Class II, Class III or Class IV municipality desiring to
65 participate in the Municipal Home Rule ~~Pilot~~ Program shall submit a written plan to the board
66 stating in detail the following:

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

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

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

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

75 (g) *Public hearing on written plan.* — Prior to submitting its written plan to the board, the
76 municipality shall:

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

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

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

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

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

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

92 (1) Environmental law;

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

94 (3) The Freedom of Information Act;

95 (4) The Open Governmental Proceedings Act;

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

97 (6) The provisions of this section;

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

99 (8) The municipality's written plan;

100 (9) The Constitution of the United States or the Constitution of the State of West Virginia;

101 (10) Federal law or crimes and punishment;

102 (11) Chapters sixty-a, sixty-one and sixty-two of this code or state crimes and punishment;

103 (12) Laws governing pensions or retirement plans;

104 (13) Laws governing annexation;

105 (14) Laws governing taxation: *Provided*, That a participating municipality may enact a
106 municipal sales tax up to one percent if it reduces or eliminates its municipal business and
107 occupation tax: *Provided, however*, That if a municipality subsequently reinstates or raises the
108 municipal business and occupation tax it previously reduced or eliminated under the Municipal
109 Home Rule Pilot Program or the Municipal Home Rule Program, it shall eliminate the municipal
110 sales tax enacted under the Municipal Home Rule ~~Pilot~~ Program: *Provided further*, That any

111 municipality that imposes a municipal sales tax pursuant to this section shall use the services of
112 the Tax Commissioner to administer, enforce and collect the tax in the same manner as the state
113 consumers sales and service tax and use tax under the provisions of articles fifteen, fifteen-a
114 and fifteen-b, chapter eleven of this code and all applicable provisions of the Streamlined Sales
115 and Use Tax Agreement: *And provided further*, That such tax ~~will~~ shall not apply to the sale of
116 motor fuel or motor vehicles;

117 (15) Laws governing tax increment financing;

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

119 (17) Marriage and divorce laws-; and

120 (18) Laws governing the professional licensing or certification of public employees which
121 provide for or ensure the health, safety and welfare of the public, including the administration and
122 oversight of those laws by state agencies to the extent required by law.

123 (j) Municipalities may not pass an ordinance, act, resolution, rule or regulation under the
124 provisions of this section that:

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

129 (2) Enacts an occupation tax, fee or assessment payable by a nonresident of a
130 municipality.

131 (k) *Amendments to written plans.* — A municipality participating in the Municipal Home
132 Rule ~~Pilot~~ Program may amend its written plan at any time.

133 (l) *Amendments to ordinances, acts, resolutions, rules or regulations.* — A municipality
134 participating in the Municipal Home Rule ~~Pilot~~ Program may amend any ordinance, act, resolution,
135 rule or regulation enacted pursuant to the municipality's approved written plan at any time so long
136 as any amendment is consistent with the municipality's approved written plan, complies with the

137 provisions of subsections (i) and (j) of this section and the municipality complies with all applicable
138 state law procedures for enacting municipal legislation.

139 (m) *Reporting requirements.* — Commencing December 1, 2015, and each year
140 thereafter, each participating municipality shall give a progress report to the Municipal Home Rule
141 Board and commencing January 1, 2016, and each year thereafter, the Municipal Home Rule
142 Board shall give a summary report of all the participating municipalities to the Joint Committee on
143 Government and Finance.

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

148 (e) (n) Notwithstanding any other provision of this code to the contrary, on and after the
149 effective date of the enactment of this provision in 2015, no distributee under the provisions of
150 this section may seek from the Tax Division of the Department of Revenue a refund of revenues
151 or moneys collected by, or remitted to, the Tax Division of the Department of Revenue, nor seek
152 a change in past amounts distributed, or any other retrospective adjustment relating to any
153 amount distributed, to the extent that the moneys in question have been distributed to another
154 distributee, regardless of whether those distributions were miscalculated, mistaken, erroneous,
155 misdirected or otherwise inaccurate or incorrect. For purposes of this section, the term
156 “distributee” means any municipality that receives or is authorized to receive a specific distribution
157 of revenues or moneys collected by, or remitted to, the Tax Division of the Department of Revenue
158 pursuant to this section.

NOTE: The purpose of this bill is to establish the municipal home rule pilot program as a permanent program, to allow all municipalities to participate in the program, and to prohibit participating municipalities from passing ordinances contrary to certain laws governing the professional licensing or certification of public employees.

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