

# **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5 Pilot Program shall continue until repealed; allowing all municipalities to participate in the  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       (o) (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.