

# **WEST VIRGINIA LEGISLATURE**

**2018 REGULAR SESSION**

**Committee Substitute**

**for**

**House Bill 4158**

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[Originating in the Committee on Government

Organization; February 21, 2018.]



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5 Pilot Program shall continue until repealed; clarifying the authority of the Municipal Home  
6 Rule Board; allowing all municipalities to participate in the Municipal Home Rule Program;  
7 requiring certain notice prior to passing of an ordinance; prohibiting municipalities  
8 participating in the Municipal Home Rule Program from passing an ordinance, act,  
9 resolution, rule or regulation that is contrary to certain laws governing the professional  
10 licensing or certification of public employees; creating a Home Rule Board Operations  
11 Fund; providing for annual assessment of participants; providing for fund expenditures;  
12 proscribing fiscal year end funds not transfer to the General Revenue Fund; providing for  
13 petition procedures to protest enacted or amended ordinances; requiring ratification of  
14 certain ordinances by the voters in a municipal election; and eliminating the automatic  
15 termination of the Municipal Home Rule 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;~~  
15 Establishing the Municipal Home Rule Program as a permanent program available to all  
16 municipalities statewide is in the public interest; and

17 (7) Increasing the powers and duties of the Municipal Home Rule Board will enhance the  
18 Municipal Home Rule ~~Pilot~~ Program.

19 ~~(b) Continuation of pilot program. — The Municipal Home Rule Pilot Program is continued~~  
20 ~~until July 1, 2019. The ordinances enacted by the participating municipalities pursuant to the~~  
21 ~~Municipal Home Rule Pilot Program may remain in effect, subject to the requirements of this~~  
22 ~~section, until the ordinances are repealed: *Provided*, That any ordinance enacting a municipal~~  
23 ~~occupation tax is hereby null and void.~~

24 (b) Establishment of a permanent program and continuation of pilot plans. — The Municipal  
25 Home Rule Pilot Program is hereby established as a permanent program and shall be identified  
26 as the Municipal Home Rule Program. Any ordinance, act, resolution, rule or regulation enacted  
27 by a participating municipality under the provisions of this section before or during the period of  
28 the Municipal Home Rule Pilot Program shall continue in full force and effect until repealed:  
29 *Provided*, That municipalities that are participants in the Municipal Home Rule Program shall  
30 update their ordinances, acts, resolutions, rules, and regulations to comply with any additions or  
31 modifications to subsection (i) or subsection (j) of this section.

32 (c) *Authorizing participation. —*

33 (1) Commencing July 1, ~~2015~~ 2018, ~~thirty any~~ Class I, Class II and Class III municipalities  
34 ~~and four Class IV municipalities that are~~ municipality that is current in payment of all state fees  
35 may apply to participate in the Municipal Home Rule ~~Pilot~~ Program pursuant to the provisions of  
36 this section. Beginning July 1, 2018, up to four applications from Class IV municipalities may be  
37 approved annually by the board for participation in the Municipal Home Rule Program: *Provided,*  
38 That the Class IV municipality is current in the payment of all state fees.

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

44 (3) All municipalities currently participating in the Home Rule Pilot Program and all  
45 participants in the Municipal Home Rule Program shall pay an annual assessment of \$2,000.00  
46 for the operation and administration of the Board. The annual assessment is due July 1, 2018  
47 and every July 1 thereafter. Any participating municipality that fails to timely remit its assessment  
48 when due may be assessed a penalty of an additional \$2,000.00 by the Board.

49 (4) There is hereby created the "Home Rule Board Operations Fund". Expenditures are  
50 authorized from collections and are to be made in accordance with appropriation by the  
51 Legislature in accordance with the provisions of §12-3-1 et seq., of this code and upon fulfillment  
52 of the provisions of §11B-2-1 et seq., of this code: *Provided,* That collections received during fiscal  
53 year 2018 may be expended upon receipt without prior Legislative appropriation. Any balance  
54 remaining in the fund at the end of any state fiscal year shall not revert to the General Revenue  
55 Fund, but remain in the special revenue account to be used by the Board only in a manner  
56 consistent with this section. All costs and expenses lawfully incurred by the Board, including  
57 administrative and legal, shall be paid from the Home Rule Board Operations Fund. At such time  
58 as the unencumbered balance in the fund at the end of a state fiscal year is \$200,000 or more,

59 the annual assessment shall be suspended until such time as the unencumbered balance in the  
60 fund will be insufficient to meet future operating and legal expenses.

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

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

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

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

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

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

72 The Chair of the Senate Committee on Government Organization and the Chair of the  
73 House Committee on Government Organization shall continue to be ex officio nonvoting members  
74 of the board.

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

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

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

83 (3) Review, evaluate, make recommendations and approve or reject for any reason, by a  
84 majority vote of the board, ~~the~~ amendments to ~~the~~ approved written plans submitted by

85 municipalities: Provided, That any new application or amendment that does not reasonably  
86 demonstrate the municipalities ability to manage the costs or potential liabilities associated with  
87 its proposed application or amendment may be rejected by the board;

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

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

94 (f) *Written plan.* — Any Class I, Class II, Class III or Class IV municipality desiring to  
95 participate in the Municipal Home Rule ~~Pilot~~ Program or any municipality desiring to amend its  
96 existing approved Home Rule plan, shall submit a written plan or a written amendment to its  
97 existing plan to the board stating in detail the following:

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

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

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

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

106 (g) *Public hearing on written plan.* — Prior to submitting its written plan, or amendment to  
107 its existing plan, to the board, the municipality shall:

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

109 (2) Provide notice of the public hearing at least thirty days prior to the public hearing by a  
110 Class II legal advertisement: Provided, however, That on or before the first day of publication, a

111 copy of the notice shall be sent by 1<sup>st</sup> class mail to the Chairman of the Municipal Home Rule  
112 Board and the Cabinet Secretary of any state agency identified in the application or amendment,  
113 whether by name of the state agency or by inclusion of state law or rule directly overseen by that  
114 state agency;

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

117 (4) After the public hearing, adopt an ordinance authorizing the municipality to submit a  
118 written plan or amendment to an approved plan to the Municipal Home Rule Board after the  
119 proposed ordinance has been read two times.

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

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

127 (1) Environmental law;

128 (2) Laws governing bidding on government construction and ~~other~~ related contracts;

129 (3) The Freedom of Information Act;

130 (4) The Open Governmental Proceedings Act;

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

132 (6) The provisions of this section;

133 (7) The provisions of §18-12-5a of this code;

134 (8) The municipality's written plan;

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

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



137 (11) §60A-1-1 *et seq.* and §61-1-1 *et seq.* and §62-1-1 *et seq.* of this code ~~or~~ governing  
138 state crimes and punishment;

139 (12) Laws governing pensions or retirement plans;

140 (13) Laws governing annexation;

141 (14) Laws governing taxation: *Provided*, That a participating municipality may enact a  
142 municipal sales tax up to one percent if it reduces or eliminates its municipal business and  
143 occupation tax: *Provided, however*, That if a municipality subsequently reinstates or raises the  
144 municipal business and occupation tax it previously reduced or eliminated under the Municipal  
145 Home Rule Pilot Program or the Municipal Home Rule Program, it shall reduce or eliminate the  
146 municipal sales tax enacted under the Municipal Home Rule ~~Pilot~~ Program: *Provided further*, That  
147 any municipality that imposes a municipal sales tax pursuant to this section shall use the services  
148 of the Tax Commissioner to administer, enforce and collect the tax in the same manner as the  
149 state consumers sales and service tax and use tax under the provisions of §11-15-1 *et seq.*, §11-  
150 15a-1 *et seq.* and §11-15b-1 *et seq.* of this code and all applicable provisions of the Streamlined  
151 Sales and Use Tax Agreement: *And provided further*, That such tax ~~will~~ may not apply to the sale  
152 of motor fuel or motor vehicles;

153 (15) Laws governing tax increment financing;

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

155 (17) Marriage and divorce laws;

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

158 (19) Federal laws, regulations, or standards related to transportation that would materially  
159 affect the states required compliance or result in the loss of federal funding.

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

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

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

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

171 (4) Prohibits or effectively limits the rental of a property, in whole or in part, or regulates  
172 the duration, frequency, or location of such rental, in whole or in part. A municipality may regulate  
173 activities that arise when a property is used as a rental, provided that such regulation applies  
174 uniformly to all properties, without regard to whether such properties are used as a rental.

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

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

183 (m) *Reporting requirements.* — ~~Commencing~~ On or before December 1, 2015, and of each  
184 year ~~thereafter~~, each participating municipality shall give a written progress report to the Municipal  
185 Home Rule Board ~~and commencing on or before January 1, 2016, and of~~ each year ~~thereafter~~,  
186 the Municipal Home Rule Board shall give a summary report of all the participating municipalities  
187 to the Joint Committee on Government and Finance.

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

192 (n) In the event thirty percent of the qualified voters of the municipality that voted in the  
193 previous municipal election, by petition duly signed by them in their own handwriting and filed with  
194 the recorder of the municipality within forty-five days after the enactment or amendment of an  
195 ordinance, act, resolution, rule or regulation, protest against the ordinance as enacted or  
196 amended, the ordinance, act, resolution, rule or regulation shall not become effective until it is  
197 ratified by a majority of the legal votes cast by the qualified voters of the municipality at a regular  
198 municipal election or special municipal election, as the governing body directs. Voting shall not  
199 take place until after notice of the submission is given by publication as a Class II legal  
200 advertisement in compliance with the provisions of §59-3-1 et seq. of this code.

201 (o) Notwithstanding any other provision of this code to the contrary, ~~on and after the~~  
202 ~~effective date of the enactment of this provision in 2015,~~ no distributee under the provisions of  
203 this section may seek from the Tax Division of the Department of Revenue a refund of revenues  
204 or moneys collected by, or remitted to, the Tax Division of the Department of Revenue, nor seek  
205 a change in past amounts distributed, or any other retrospective adjustment relating to any  
206 amount distributed, to the extent that the moneys in question have been to another distributee,  
207 regardless of whether those distributions were miscalculated, mistaken, erroneous, misdirected  
208 or otherwise inaccurate or incorrect. For purposes of this section, the term “distributee” means  
209 any municipality that receives or is authorized to receive a specific distribution of revenues or  
210 moneys collected by, or remitted to, the Tax Division of the Department of Revenue pursuant to  
211 this section.

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