

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

House Bill 4158

BY DELEGATES WESTFALL, AMBLER, MAYNARD, WAGNER,
ATKINSON, LANE, WARD, HIGGINBOTHAM AND HAMRICK

[Introduced January 16, 2018; Referred
to the Committee on Political Subdivisions then
Government Organization.]

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 5 Pilot Program shall continue until repealed; clarifying the authority of the Municipal Home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; providing for petition procedures to protest
 11 enacted or amended ordinances; requiring ratification of certain ordinances by the voters
 12 in a municipal election; and eliminating the automatic termination of the Municipal Home
 13 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 Pilot 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 during the period of the
28 Municipal Home Rule Pilot Program shall continue in full force and effect until repealed.

29 (c) *Authorizing participation.* --

30 (1) Commencing July 1, 2015 ~~2018~~, thirty Class I, Class II and Class III municipalities and
31 four Class IV municipalities that are current in payment of all state fees may participate in the
32 Municipal Home Rule Pilot Program pursuant to the provisions 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 for any reason, by a
54 majority vote of the board, each aspect of the written plan, or the written plan in its entirety,
55 submitted by a municipality;

56 (2) By a majority vote of the board, select, based on the municipality's written plan, new

57 Class I, Class II, Class III and/or Class IV municipalities to participate in the Municipal Home Rule
58 ~~Pilot~~ Program;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

90 (i) *Powers and duties of municipalities.* -- The municipalities participating in the Municipal
91 Home Rule ~~Pilot~~ Program have the authority to pass an ordinance, act, resolution, rule or
92 regulation, under the provisions of this section: Provided, That notice is given at least thirty days
93 prior to passage by a Class II legal advertisement, that is not contrary to:

94 (1) Environmental law;

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

96 (3) The Freedom of Information Act;

97 (4) The Open Governmental Proceedings Act;

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

99 (6) The provisions of this section;

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

101 (8) The municipality's written plan;

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

103 (10) Federal law or crimes and punishment;

104 (11) §60A-1-1 *et seq.* and §61-1-1 *et seq.* and 62-1-1 *et seq.* of this code or state crimes

105 and punishment;

106 (12) Laws governing pensions or retirement plans;

107 (13) Laws governing annexation;

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

120 (15) Laws governing tax increment financing;

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

122 (17) Marriage and divorce laws; and

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

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

127 (1) Affects persons or property outside the boundaries of the municipality: *Provided*, That
128 this prohibition under the Municipal Home Rule ~~Pilot~~ Program does not limit a municipality's

129 powers outside its boundary lines under other provisions of this section, other sections of this
130 chapter, other chapters of this code or court decisions; or

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

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

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

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

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

150 (n) In the event thirty percent of the qualified voters of the municipality that voted in the
151 previous municipal election, by petition duly signed by them in their own handwriting and filed with
152 the recorder of the municipality within forty-five days after the enactment or amendment of an

153 ordinance, protest against the ordinance as enacted or amended, the ordinance shall not become
154 effective until it is ratified by a majority of the legal votes cast by the qualified voters of the
155 municipality at a regular municipal election or special municipal election, as the governing body
156 directs. Voting shall not take place until after notice of the submission is given by publication as a
157 Class II legal advertisement in compliance with the provisions of §59-3-1 et seq of this code.

158 (o) Notwithstanding any other provision of this code to the contrary, on and after the
159 effective date of the enactment of this provision in 2015, no distributee under the provisions of
160 this section may seek from the Tax Division of the Department of Revenue a refund of revenues
161 or moneys collected by, or remitted to, the Tax Division of the Department of Revenue, nor seek
162 a change in past amounts distributed, or any other retrospective adjustment relating to any
163 amount distributed, to the extent that the moneys in question have been distributed to another
164 distributee, regardless of whether those distributions were miscalculated, mistaken, erroneous,
165 misdirected or otherwise inaccurate or incorrect. For purposes of this section, the term
166 "distributee" means any municipality that receives or is authorized to receive a specific distribution
167 of revenues or moneys collected by, or remitted to, the Tax Division of the Department of Revenue
168 pursuant to this section.

NOTE: The purpose of this bill is to establish the Municipal Home Rule Pilot Program as a permanent program identified as the Municipal Home Rule Program. The bill provides that any ordinance, act, resolution, rule or regulation enacted pursuant to the Municipal Home Rule Pilot Program shall continue until repealed. The bill clarifies the authority of the Municipal Home Rule Board. The bill allows all municipalities to participate in the Municipal Home Rule Program. The bill requires certain notice prior to passing of an ordinance. The bill prohibits municipalities participating in the Municipal Home Rule Program from passing an ordinance, act, resolution, rule or regulation that is contrary to certain laws governing the professional licensing or certification of public employees. The bill provides for petition procedures to protest enacted or amended ordinances. The bill requires ratification of certain ordinances by the voters in a municipal election. The bill eliminates the automatic termination of the Municipal Home Rule Pilot Program on July 1, 2019.

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