

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

House Bill 4548

BY DELEGATE CANTERBURY

[Introduced February 16, 2016; 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 disallowing municipalities not admitted to the Municipal Home Rule Pilot Program as of
 3 February 1, 2016, from participating in the Municipal Home Rule Pilot Program when more
 4 than half of the population served by the zip codes that serve the municipality live outside
 5 the limits of the municipality.

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 the Municipal Home Rule Pilot Program is in the public interest; and

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

17 (b) *Continuance of pilot program.* -- The Municipal Home Rule Pilot Program is continued
18 until July 1, 2019. The ordinances enacted by the participating municipalities pursuant to the
19 Municipal Home Rule Pilot Program may remain in effect, subject to the requirements of this
20 section, until the ordinances are repealed: *Provided*, That any ordinance enacting a municipal
21 occupation tax is hereby null and void: *Provided, however, That a municipality not admitted to the*
22 *Municipal Home Rule Pilot Program as of February 1, 2016, may not participate in the Municipal*
23 *Home Rule Pilot Program if more than half of the population served by the zip codes that serve*
24 *the municipality live outside the limits of the municipality.*

25 (c) *Authorizing participation.* --

26 (1) Commencing July 1, 2015, thirty Class I, Class II and Class III municipalities and four
27 Class IV municipalities that are current in payment of all state fees may participate in the Municipal
28 Home Rule Pilot Program pursuant to the provisions of this section.

29 (2) The municipalities participating in the pilot program on the effective date of the
30 amendment and reenactment of this section are hereby authorized to continue in the pilot
31 program, subject to the requirements of this section, and may amend current written plans and/or
32 submit new written plans in accordance with the provisions of this section.

33 (d) *Municipal Home Rule Board.* -- The Municipal Home Rule Board is hereby continued.
34 Effective July 1, 2015, the Municipal Home Rule Board shall consist of the following five voting
35 members:

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

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

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

40 (4) One member representing the largest labor organization in the state, appointed by the

41 Governor with the advice and consent of the Senate; and

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

44 The Chair of the Senate Committee on Government Organization and the Chair of the
45 House Committee on Government Organization shall continue to be ex officio nonvoting members
46 of the board.

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

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

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

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

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

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

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

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

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

66 (3) The proposed solutions to the problems, including all proposed changes to ordinances,

67 acts, resolutions, rules and regulations: *Provided*, That the specific municipal ordinance instituting
68 the solution does not have to be included in the written plan; and

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

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

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

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

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

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

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

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

88 (1) Environmental law;

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

90 (3) The Freedom of Information Act;

91 (4) The Open Governmental Proceedings Act;

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

- 93 (6) The provisions of this section;
- 94 (7) The provisions of section five-a, article twelve of this chapter;
- 95 (8) The municipality's written plan;
- 96 (9) The Constitution of the United States or the Constitution of the State of West Virginia;
- 97 (10) Federal law or crimes and punishment;
- 98 (11) Chapters sixty-a, sixty-one and sixty-two of this code or state crimes and punishment;
- 99 (12) Laws governing pensions or retirement plans;
- 100 (13) Laws governing annexation;
- 101 (14) Laws governing taxation: *Provided*, That a participating municipality may enact a
- 102 municipal sales tax up to one percent if it reduces or eliminates its municipal business and
- 103 occupation tax: *Provided, however*, That if a municipality subsequently reinstates or raises the
- 104 municipal business and occupation tax it previously reduced or eliminated under the Municipal
- 105 Home Rule Pilot Program, it shall eliminate the municipal sales tax enacted under the Municipal
- 106 Home Rule Pilot Program: *Provided further*, That any municipality that imposes a municipal sales
- 107 tax pursuant to this section shall use the services of the Tax Commissioner to administer, enforce
- 108 and collect the tax in the same manner as the state consumers sales and service tax and use tax
- 109 under the provisions of articles fifteen, fifteen-a and fifteen-b, chapter eleven of this code and all
- 110 applicable provisions of the Streamlined Sales and Use Tax Agreement: *And provided further*,
- 111 That such tax will not apply to the sale of motor fuel or motor vehicles;
- 112 (15) Laws governing tax increment financing;
- 113 (16) Laws governing extraction of natural resources; and
- 114 (17) Marriage and divorce laws.
- 115 (j) Municipalities may not pass an ordinance, act, resolution, rule or regulation under the
- 116 provisions of this section that:
- 117 (1) Affects persons or property outside the boundaries of the municipality: *Provided*, That
- 118 this prohibition under the Municipal Home Rule Pilot Program does not limit a municipality's

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

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

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

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

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

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

140 (o) Notwithstanding any other provision of this code to the contrary, on and after the
141 effective date of the enactment of this provision in 2015, no distributee under the provisions of
142 this section may seek from the Tax Division of the Department of Revenue a refund of revenues
143 or moneys collected by, or remitted to, the Tax Division of the Department of Revenue, nor seek
144 a change in past amounts distributed, or any other retrospective adjustment relating to any

145 amount distributed, to the extent that the moneys in question have been distributed to another
146 distributee, regardless of whether those distributions were miscalculated, mistaken, erroneous,
147 misdirected or otherwise inaccurate or incorrect. For purposes of this section, the term
148 “distributee” means any municipality that receives or is authorized to receive a specific distribution
149 of revenues or moneys collected by, or remitted to, the Tax Division of the Department of Revenue
150 pursuant to this section.

NOTE: The purpose of this bill is to disallowing municipalities not admitted to the Municipal Home Rule Pilot Program as of February 1, 2016, from participating in the Municipal Home Rule Pilot Program when more than half of the population served by the zip codes that serve the municipality live outside the limits of the municipality.

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