WEST VIRGINIA CODE: §8-1-5a

§8-1-5a. Municipal Home Rule Program.

(a) — The Legislature finds and declares that:

(1) The initial Municipal Home Rule Pilot Program brought innovative results, including novel municipal ideas that became municipal ordinances which later resulted in new statewide statutes;

(2) The initial Municipal Home Rule Pilot Program also brought novel municipal ideas that resulted in court challenges against some of the participating municipalities;

(3) The Municipal Home Rule Board was an essential part of the initial Municipal Home Rule Pilot Program, but it lacked some needed powers and duties;

(4) Municipalities still face challenges delivering services required by federal and state law or demanded by their constituents;

(5) Municipalities are sometimes restrained by state statutes, policies, and rules that challenge their ability to carry out their duties and responsibilities in a cost-effective, efficient, and timely manner;

(6) Establishing the Municipal Home Rule Pilot Program as a permanent program is in the public interest; and

(7) Increasing the powers and duties of the Municipal Home Rule Board, subject to the limitations set forth herein, will enhance the Municipal Home Rule Program.

(b) The Municipal Home Rule Pilot Program is established as a permanent program and shall be identified as the Municipal Home Rule Program. Any plan or amendment to a plan approved by the board during the period of the Municipal Home Rule Pilot Program is continued. Any ordinance, act, resolution, rule, or regulation enacted by a participating municipality under the provisions of this section during the period of the Municipal Home Rule Pilot Program shall continue in full force and effect unless and until repealed: Provided, That municipalities that are participants in the Municipal Home Rule Program shall update their ordinances, acts, resolutions, rules, and regulations to comply with any additions or modifications to subsection (i), subsection (j), or subsection (k) of this section.

(c) (1) Commencing July 1, 2019, any Class I, Class II, or Class III municipality that is current in payment of all state fees may apply to participate in the Municipal Home Rule Program pursuant to the provisions of this section. Also, commencing July 1, 2019, up to four applications per year from Class IV municipalities may be approved by the board for participation in the Municipal Home Rule Program pursuant to the provisions of this section, provided the Class IV municipality is current in payment of all state fees.

WV Legislature

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

(3) On July 1, 2019, all municipalities currently participating in the Municipal Home Rule Pilot Program shall pay an annual assessment of $2,000 for the operation and administration of the Home Rule Board. On July 1 of each year thereafter, all municipalities participating in the Municipal Home Rule Program as of that date shall pay the annual assessment. Any participating municipality that fails to timely remit its assessment when due may be assessed a penalty of an additional $2,000 by the board.

(4) There is created in the office of the State Treasurer a special revenue account fund to be known as the Home Rule Board Operations Fund. The assessments required by the provisions of subdivision (3) of this subsection shall be deposited into the fund, and expenditures from the fund shall be made in accordance with appropriation of the Legislature under the provisions of §12-3-1 et seq. of this code, and in compliance with the provisions of §11B-2-1 et seq. of this code: Provided, That legislative appropriation is not required during fiscal year 2019.

(5) Any balance in the fund created under subdivision (4) of this subsection at the end of a fiscal year shall not revert to the General Revenue Fund but shall remain in the special revenue account for uses consistent with the provisions of this section.

(6) All costs and expenses lawfully incurred by the board may be paid from the fund created under subdivision (4) of this subsection.

(7) Notwithstanding any provision of this section to the contrary, if at the end of a fiscal year the unencumbered balance of the fund created in subdivision (4) of this subsection is $200,000 or more, then annual assessments shall be suspended until the board determines that the unencumbered balance in the fund is insufficient to meet operational expenses. The board shall notify all participating municipalities of the suspension of the annual assessment prior to the end of the fiscal year and provide an estimate of when payment of annual assessments will resume.

(d) The Municipal Home Rule Board is continued. The Municipal Home Rule Board shall consist of the following five voting members:

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

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

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

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

(5) One member representing the West Virginia Chapter of the American Planning Association, appointed by the Governor with the advice and consent of the Senate.

The Chair of the Senate Committee on Government Organization and the Chair of the House Committee on Government Organization shall serve as ex officio nonvoting members of the board.

(e) The Municipal Home Rule Board shall:

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

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

(3) Review, evaluate, make recommendations, and approve or reject, for any lawful reason, by a majority vote of the board, the amendments to the existing approved written plans submitted by municipalities: Provided, That any new application or amendment that does not reasonably demonstrate the municipality's ability to manage its associated costs or liabilities shall be rejected;

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

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

(f) Any Class I, Class II, Class III, or Class IV municipality desiring to participate in the Municipal Home Rule Program, or any municipality desiring to amend its existing approved written plan, shall submit a written plan to the board stating in detail the following:

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

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

(3) The proposed solutions to the problems, including all proposed changes to ordinances, acts, resolutions, rules, and regulations: Provided, That the specific municipal ordinance

WV Legislature

instituting the solution does not have to be included in the written plan; and

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

(g) Prior to submitting its written plan, or an amendment to an existing approved written plan, to the board, the municipality shall:

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

(2) Provide notice of the public hearing at least 30 days prior to the public hearing by a Class II legal advertisement: Provided, That on or before the first day of publication, the municipality shall send a copy of the notice by certified mail to the Municipal Home Rule Board and the cabinet secretary of every state department;

(3) Make a copy of the written plan or amendment available for public inspection at least 30 days prior to the public hearing; and

(4) After the public hearing, adopt an ordinance authorizing the municipality to submit a written plan or amendment to the Municipal Home Rule Board: Provided, That the proposed ordinance has been read two times, as required by §8-11-4 of this code.

(h) By a majority vote, the Municipal Home Rule Board may select from the municipalities that submitted written plans and were approved by the board by majority vote new Class I, Class II, Class III, and/or Class IV municipalities to participate in the Municipal Home Rule Program.

(i) The municipalities participating in the Municipal Home Rule Program may not pass an ordinance, act, resolution, rule, or regulation, under the provisions of this section, that is contrary to the following:

(1) Environmental law;

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

(3) The Freedom of Information Act;

(4) The Open Governmental Proceedings Act;

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

(6) The provisions of this section;

(7) The provisions of §8-12-5a of this code;

(8) The municipality’s written plan;

WV Legislature

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

(10) Federal law, including those governing crimes and punishment;

(11) Chapters 60A, 61, and 62 of this code or any other provisions of this code governing state crimes and punishment;

(12) Laws governing pensions or retirement plans;

(13) Laws governing annexation;

(14) Laws governing taxation: Provided, That a participating municipality may enact a municipal sales tax up to one percent if it reduces or eliminates its municipal business and occupation tax: Provided, however, That if a municipality subsequently reinstates or raises the municipal business and occupation tax it previously reduced or eliminated under the Municipal Home Rule Pilot Program or the Municipal Home Rule Program, it shall reduce or eliminate the municipal sales tax enacted under the Municipal Home Rule Pilot Program or the Municipal Home Rule Program in an amount comparable to the revenue estimated to be generated by the reinstated tax: Provided further, That any municipality that imposes a municipal sales tax pursuant to this section shall use the services of the Tax Commissioner to administer, enforce, and collect the tax required by the provisions of §11-15-1 et seq., §11-15A-1 et seq., and §11-15B-1 et seq. of this code and all applicable provisions of the Streamlined Sales and Use Tax Agreement: And provided further, That the tax does not apply to the sale of motor fuel or motor vehicles;

(15) Laws governing tax increment financing;

(16) Laws governing extraction of natural resources;

(17) Marriage and divorce laws;

(18) Laws governing professional licensing or certification, including the administration and oversight of those laws, by state agencies to the extent required by law; (19) Laws, rules, or regulations governing the enforcement of state building or fire codes;

(20) Federal laws, regulations, or standards that would affect the state's required compliance or jeopardize federal funding;

(21) Laws or rules governing procurement of architectural and engineering services: Provided, That notwithstanding any other provision of this section to the contrary, the change made in this subdivision applies prospectively and any ordinance enacted by the participating municipalities prior to the effective date of the amendments to this section during the 2019 regular legislative session and pursuant to the Municipal Home Rule Pilot Program remains in effect.

(22) The provisions of chapter 17C of this code; or

WV Legislature

(23) Laws, rules, or regulations governing communication technologies or telecommunications carriers, as the term "telecommunications carrier" is defined by the Federal Communications Commission in 47 U.S.C. §153 or as determined by the Public Service Commission of West Virginia.

(24) Laws governing the sale, transfer, possession, use, storage, taxation, registration, licensing, or carrying firearms, ammunition, or accessories thereof.

(j) The municipalities participating in the Municipal Home Rule Program may not pass an ordinance, act, resolution, rule, or regulation under the provisions of this section that:

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

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

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

(k) Municipalities may not prohibit or effectively limit the rental of a property, in whole or in part, or regulate the duration, frequency, or location of such rental, in whole or in part. A municipality may regulate activities that arise when a property is used as a rental: Provided, That such regulation applies uniformly to all properties, without regard to whether such properties are used as a rental: Provided, however, That nothing in this subdivision may be construed to prohibit a municipality from imposing a hotel occupancy tax as prescribed in §7-18-1 et seq. of this code.

(l) A municipality participating in the Municipal Home Rule Program may amend its written plan at any time subject to the requirements of this section.

(m) A municipality participating in the Municipal Home Rule Program may amend any ordinance, act, resolution, rule, or regulation enacted pursuant to the municipality's approved written plan at any time as long as the amendment is consistent with the municipality's approved written plan, as modified by any amendments adopted pursuant to this section, complies with the provisions of this section, and the municipality complies with all applicable state law procedures for enacting municipal legislation.

(n) On or before December 1 of each year, each participating municipality shall give a written progress report to the Municipal Home Rule Board, and on or before January 1 of each year, the Municipal Home Rule Board shall give a summary report of all the participating municipalities to the Joint Committee on Government and Finance.

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(o) Notwithstanding any other provision of this code to the contrary, a distributee under the provisions of this section may not seek from the Tax Division of the Department of Revenue a refund of revenues or moneys collected by, or remitted to, the Tax Division of the Department of Revenue, nor seek a change in past amounts distributed, or any other retrospective adjustment relating to any amount distributed, to the extent that the moneys in question have been distributed by the Tax Division to another distributee, regardless of whether those distributions were miscalculated, mistaken, erroneous, misdirected, or otherwise inaccurate or incorrect. For purposes of this section, the term "distributee" means any municipality that has enacted a sales and use tax under this section or as otherwise permitted by law that receives or is authorized to receive a specific distribution of revenues or moneys collected by, or remitted to, the Tax Division of the Department of Revenue pursuant to this section.

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