

FILED

2015 MAR 31 A 11:31

**WEST VIRGINIA LEGISLATURE**

**EIGHTY-SECOND LEGISLATURE**

**REGULAR SESSION, 2015**



**ENROLLED**

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 323**

(SENATOR BLAIR, *ORIGINAL SPONSOR*)

[PASSED MARCH 14, 2015; IN EFFECT NINETY DAYS FROM PASSAGE.]

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

SB323

FILED

2015 MAR 31 A 11:31

**E N R O L L E D**  
COMMITTEE SUBSTITUTE

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

FOR

## **Senate Bill No. 323**

(SENATOR BLAIR, *ORIGINAL SPONSOR*)

[Passed March 14, 2015; in effect ninety days from passage.]

AN ACT to amend and reenact §8-1-5a of the Code of West Virginia, 1931, as amended, relating to the Municipal Home Rule Pilot Program generally; allowing participation of thirty Class I, Class II and Class III municipalities; allowing participation of four Class IV municipalities; continuing ordinances in effect; removing requirements that Municipal Home Rule Board must approve a municipality's amendment to its home rule plan and that a municipal ordinance is nullified if the municipality's amendment to its home rule plan is not approved by the Municipal Home Rule Board; removing requirement that the board approve each municipal ordinance prior to enactment; removing process for enacting ordinance; authorizing amendments to municipal ordinances, acts, resolutions, rules or regulations enacted pursuant to the municipality's approved written plan; removing provisions prohibiting municipality from enacting ordinance, act, resolution, rule or regulation after the pilot program terminates in 2019; prohibiting municipalities from seeking refunds of moneys collected from taxpayers or moneys distributed to municipalities

by the Tax Division under the pilot program; removing obsolete provisions; and reorganizing existing provisions.

*Be it enacted by the Legislature of West Virginia:*

That §8-1-5a of the Code of West Virginia, 1931, as amended, be amended and reenacted 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  
2 declares that:

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

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

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

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

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

20 (6) Continuing the Municipal Home Rule Pilot Program  
21 is in the public interest; and

22 (7) Increasing the powers and duties of the Municipal  
23 Home Rule Board will enhance the Municipal Home Rule  
24 Pilot Program.

25 (b) *Continuance of pilot program.* – The Municipal Home  
26 Rule Pilot Program is continued until July 1, 2019. The  
27 ordinances enacted by the participating municipalities  
28 pursuant to the Municipal Home Rule Pilot Program may  
29 remain in effect, subject to the requirements of this section,  
30 until the ordinances are repealed: *Provided*, That any  
31 ordinance enacting a municipal occupation tax is hereby null  
32 and void.

33 (c) *Authorizing participation.* –

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

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

45 (d) *Municipal Home Rule Board.* – The Municipal Home  
46 Rule Board is hereby continued. Effective July 1, 2015, the  
47 Municipal Home Rule Board shall consist of the following  
48 five voting members:

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

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

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

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

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

61           The Chair of the Senate Committee on Government  
62 Organization and the Chair of the House Committee on  
63 Government Organization shall continue to be ex officio  
64 nonvoting members of the board.

65           (e) *Board's powers and duties.* – The Municipal Home  
66 Rule Board has the following powers and duties:

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

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

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

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

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

81 (f) *Written plan.* – Any Class I, Class II, Class III or Class  
82 IV municipality desiring to participate in the Municipal  
83 Home Rule Pilot Program shall submit a written plan to the  
84 board stating in detail the following:

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

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

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

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

99 (g) *Public hearing on written plan.* – Prior to submitting  
100 its written plan to the board, the municipality shall:

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

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

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

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

111       (h) *Selection of municipalities.* – On or after June 1,  
112 2015, by a majority vote, the Municipal Home Rule Board  
113 may select from the municipalities that submitted written  
114 plans and were approved by the board by majority vote, new  
115 Class I, Class II, Class III and/or Class IV municipalities to  
116 participate in the Municipal Home Rule Pilot Program.

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

122       (1) Environmental law;

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

125       (3) The Freedom of Information Act;

126       (4) The Open Governmental Proceedings Act;

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

129       (6) The provisions of this section;

130 (7) The provisions of section five-a, article twelve of this  
131 chapter;

132 (8) The municipality's written plan;

133 (9) The Constitution of the United States or the  
134 Constitution of the state of West Virginia;

135 (10) Federal law or crimes and punishment;

136 (11) Chapters sixty-a, sixty-one and sixty-two of this  
137 code or state crimes and punishment;

138 (12) Laws governing pensions or retirement plans;

139 (13) Laws governing annexation;

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

158 (15) Laws governing tax increment financing;

159 (16) Laws governing extraction of natural resources; and

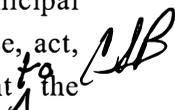
160 (17) Marriage and divorce laws.

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

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

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

172 (k) *Amendments to written plans.* – A municipality  
173 participating in the Municipal Home Rule Pilot Program may  
174 amend its written plan at any time.

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

185           (m) *Reporting requirements.* – Commencing December  
186 1, 2015, and each year thereafter, each participating  
187 municipality shall give a progress report to the Municipal  
188 Home Rule Board and commencing January 1, 2016, and  
189 each year thereafter, the Municipal Home Rule Board shall  
190 give a summary report of all the participating municipalities  
191 to the Joint Committee on Government and Finance.

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

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

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*Mark R. Spang*  
.....  
Chairman Senate Committee

*John B. Well*  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*Clark A. Barner*  
.....  
Clerk of the Senate

*Stepha J. Harmon*  
.....  
Clerk of the House of Delegates

*Phillip Phillips*  
.....  
President of the Senate

*Robert M. Bell*  
.....  
Speaker of the House of Delegates

The within *is approved* this the *31st*  
*March*  
Day of ....., 2015.

*Earl Ray Tomblin*  
.....  
Governor

PRESENTED TO THE GOVERNOR

MAR 27 2015

Time 3:25 pm