

MUNICIPAL HOME RULE PILOT PROGRAM PHASE III

Senate Bill 323 / June 2015

*APPLICATION
GUIDELINES*

1. BACKGROUND

Future economic progress for the State of West Virginia is directly related to the success of its municipalities - strong municipalities will make for a stronger West Virginia. Municipalities face numerous challenges such as managing budgets and delivering services. They are sometimes restricted by the State, preventing them from carrying out their duties in a cost effective, efficient, and timely manner.

In 2007, the West Virginia Legislature passed Senate Bill 747 that established the Municipal Home Rule Pilot Program. This legislation gave municipalities the opportunity to participate in a pilot program designed to clarify and increase the powers of municipal self-governance, also known as home rule. By authorizing the pilot program, the West Virginia Legislature created an opportunity to evaluate the viability of allowing all municipalities to have broad-based state home rule. The intent of the Legislature in enacting this pilot program is to establish a framework for municipalities within which new ideas can be explored and, if feasible, implemented on a statewide basis.

In November 2012, the Legislative Auditor's Performance Evaluation & Research Division presented a special report to the Legislature finding "The Municipal Home Rule Pilot Program Has Been Effective in Improving Local Governance and Broad-Based Home Rule and Should Be Extended Statewide." The complete report may be reviewed at: http://www.legis.state.wv.us/Joint/PERD/perdrep/HomeRule_11_2012.pdf.

The West Virginia Legislature passed Senate Bill 435, effective July 1, 2013, that continued the Home Rule Pilot Program, and increased the powers and duties of the Board. The new law requires eligible municipalities interested in participating in the Program to prepare and submit a written plan to the Home Rule Board. The Municipal Home Rule Pilot Project is available to any of West Virginia's municipalities.

In March 2014, the West Virginia Legislature amended and reenacted W. Va. § 8-1-5a (Senate Bill 317).

A total of twenty (20) municipalities may be approved for the Pilot Program. The four (4) charter Home Rule Pilot cities (Charleston, Huntington, Wheeling, and Bridgeport) may continue in the Pilot Program. In addition, sixteen (16) new municipalities of any size will be chosen for Phase II of the Pilot Program. Any ordinance enacted under provisions and during the Pilot Program will continue in effect until repealed, but is null and void if amended outside Home Rule Board approval. Phase II of the Pilot Program terminates July 1, 2019.

On October 6, 2014, the Home Rule Board accepted the following cities into the Pilot Program: Bluefield, Buckhannon, Charles Town, Clarksburg, Dunbar, Fairmont, Martinsburg, Milton, Morgantown, Nitro, Parkersburg, Ranson, Shinnston, South Charleston, Vienna, and Weirton.

The West Virginia Legislature passed Senate Bill 323 on March 14, 2015, permitting 14 additional cities in the Home Rule Pilot Program, four of which must be Class IV municipalities.

2. PLAN REQUIREMENTS

A. Plans must include a completed "Application Checklist" at the front of the application.

B. Plans must address the following specifics:

1. Specific state laws, policies, acts, resolutions, rules or regulations that are preventing the municipality to carry out duties in the most cost effective, efficient, and timely manner.
2. Specific problems created by the state laws, policies, acts, resolutions, rules or regulations.
3. Proposed solutions to the perceived problems, including (once application is approved) all proposed changes to ordinances, acts, resolutions, rules and regulations.

C. Plans may not include:

1. Any changes to ordinances, acts, resolutions, rules, and regulations that are contrary to:

- Environmental laws.
- Bidding on government construction and other contracts.
- Freedom of Information Act.
- Open meetings.
- Wages for construction of public improvements (prevailing wage, etc.).
- The provisions of W. Va. Code § 8-1-5a.
- The written plan of the municipality.

2. Any changes to ordinances, acts, resolutions, rules, and regulation or resolution pertaining to:

- Federal law, or crimes and punishment.
- Chapters 60a, 61 and 62 of the Code of West Virginia or state crimes and punishment.
- Pensions or retirement plans.
- Annexation.
- Taxation: except up to a one percent sales tax, if it eliminates or reduces its Business and Occupation (B&O) Tax.
- Tax Increment Financing (TIF).
- Extraction of natural resources.

- Persons or property outside the municipal boundaries, subject to a municipality's powers under other sections of this chapter, other chapters, or court decisions.
- Marriage and divorce laws.
- An occupation tax, fee or assessment payable by a non-resident.

D. Additional Requirements

1. Written plans may be submitted any time.
2. Each written plan must be submitted with a written opinion, by an attorney licensed to practice in West Virginia, stating that the proposed plan complies with W.Va. Code § 8-1-5a.
3. Prior to submission of written plans, each city shall:
 - Provide 30 day notice of public hearing published in a Class II legal ad (must be published once each week for two successive weeks).
 - Provide a copy of the plan to be made available for public inspection 30 days prior to the hearing.
 - Conduct a public hearing on the written plan.
 - After the public hearing, adopt an ordinance to be read twice, authorizing the submission of the plan to the Municipal Home Rule Board.
4. A municipality may implement a sales and use tax up to one percent, if it reduces or eliminates its municipal business and occupation tax. Note that if a municipality imposes a sales and use tax, it must use the services of the West Virginia Tax Commissioner to administer, enforce and collect the tax. The Tax Commissioner will retain reasonable administration costs up to five percent of collected taxes. Any sales and use tax may not apply to the sale of motor fuel or motor vehicles.
5. If a municipality subsequently reinstates or raises the Business and Occupation (B&O) Tax it previously reduced or eliminated, it must eliminate the municipal sales tax.
6. A municipality participating in the Municipal Home Rule Pilot Program may amend its written plan at any time following the procedure outlined by the Municipal Home Rule Board.

E. Amending Ordinance, Act, Resolution, Rule or Regulation

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 any amendment is consistent with the municipality's written plan, complies with the subsections

(i) and (j) of Senate Bill 323, and the municipality complies with all applicable state law procedures for enacting municipal legislation.

3. MUNICIPAL HOME RULE BOARD

A seven member Home Rule Board including two (2) legislative ex officio and nonvoting members consisting of the chairs of the West Virginia Legislature's Senate and House Government Organization Committees is established on July 1, 2013. In order to implement the Municipal Home Rule Pilot Program, the Municipal Home Board has the powers to:

- A. Review, evaluate, make recommendations and approve or reject, by a majority vote, each aspect of the proposed plans submitted by municipalities.
- B. Select municipalities to participate in the Pilot Program based on the written plan.
- C. Authorize amendments to the plans.
- D. Approve or reject each ordinance submitted by a participating municipality.
- E. Consult with state agencies affected by the plans or amendments.
- F. Perform any other power or duty necessary to effectuate the provisions of the Pilot Program.

4. REPORTING REQUIREMENTS

Commencing December 1, 2015, and each year thereafter, each participating municipality shall give a progress report to the Municipal Home Rule Board, and commencing January 1, 2016, and each year thereafter, the Municipal Home Rule Board shall give a summary report of all the participating municipalities to the Joint Committee on Government and Finance.

5. TERMINATION

The Municipal Home Rule Pilot Program will automatically terminate on July 1, 2019. All ordinances enacted during the Pilot Program shall continue in full force and effect until repealed.

6. SUBMISSION REQUIREMENTS

Municipalities interested in being considered for participation in Phase III of the Municipal Home Rule Pilot Program shall submit eight (8) originals and one (1) electronic PDF copy of the plan. Applicant cities may also be asked to present their proposed plan to the Home Rule Board.

Questions concerning the application process may be addressed to the West Virginia Municipal League at 800.344.7702.

Original plans shall be mailed to the following address. Electronic copies must be sent to debbie.a.browning@wv.gov.

Debbie Browning
West Virginia Development Office
West Virginia Home Rule Pilot Program
State Capitol Complex, Building 6, Room 553
Charleston, West Virginia 25305-0311
304.558.2234