

Senate Bill 323 / June 2015

Municipal Home Rule Pilot Program Phase III APPLICATION

SECTION I: APPLICANT INFORMATION	
A. General Information	
Name of Municipality: Town of Auburn	
Certifying Official: Robert Lowther	Title: Mayor
Contact Person: Robert Lowther	Title: Mayor
Address: P.O. Box 37	
City, State, Zip: Auburn, WV 26325	
Telephone Number: 304-349-3357	Fax Number: 304-349-2494
E-Mail Address: townofauburn@yahoo.com	
2010 Census Population: 97	
B. Municipal Classification	
<input type="checkbox"/> Class 1 <input type="checkbox"/> Class II <input type="checkbox"/> Class III <input checked="" type="checkbox"/> Class IV	
C. Category of Issues to be Addressed (please attach descriptions for applicable categories)	
<input type="checkbox"/> Tax <input type="checkbox"/> Organization <input checked="" type="checkbox"/> Administration <input type="checkbox"/> Personnel <input type="checkbox"/> Other	

SECTION II: NARRATIVE (written plan, including the following)
<p>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.</p> <p>Specific problem(s) created by the laws, policies, acts, resolutions, rules or regulations.</p> <p>Proposed solution(s) to the perceived problem(s), including all proposed changes to law, policies, acts, resolutions, rules or regulations. Categorize and include:</p> <ol style="list-style-type: none"> 1) Proposed solution(s) in one of the five areas (tax/administrative/organization/personnel/other) 2) If revenue related, estimate(s) for proposed solution(s) and how the fiscal impact was determined. Example: Estimated reduction of administrative time and costs = X. Please attach the worksheet or formula used to determine "X" amount.

SECTION III: AFFIDAVITS
Hearing Mandate Verification Publication Mandate Verification Ordinance Authorizing Submission of Plan Fiscal Impact Worksheets/Formulas (if revenue related) Feasibility Study (if taxes are proposed) Attorney Opinion (application complies with statutory requirements) State of West Virginia Fees Statement (none outstanding)

SECTION II. NARRATIVE

Executive Summary

The Town of Auburn is a Class IV municipality located on State Route 74 in east south-east Ritchie County. The nearest neighboring counties are Gilmer County and Calhoun County. Auburn has a population of 97 persons, and approximately 50 housing units. No commercial businesses are located in the Town. The nearest municipalities to Auburn are Glenville, in Gilmer County, and Harrisville, in Ritchie County, both approximately 18 miles away from Auburn. Auburn's median household income is \$9,931.

Currently there are no public water or sewer services in Auburn. Residents obtain potable water from shallow wells, and wastewater is discharged untreated into roadside ditches, storm sewers, and into Bone Creek, a tributary of the Hughes River. The shallow water wells are being contaminated by the untreated wastewater discharges. Further, fecal coliform contamination, along with oxygen depletion, is causing Bone Creek to become a cesspool as it flows through Auburn, particularly when the stream volume declines in the summer and fall.

The residents of Auburn are experiencing a dire public health hazard from these conditions. Due to this health hazard, the Mid-Ohio Valley Health Department ("MOVHD") located in Parkersburg, West Virginia, has notified the Town and its residents that MOVHD will seek criminal action against the Town and individual property owners for the illegal sewage discharges unless the Town and its residents implement a sewage treatment project.

Auburn is working with the West Virginia Department of Environmental Protection ("DEP") to develop and implement a sewer project, and has submitted an application for grant money to the West Virginia Infrastructure and Jobs Development Council. Auburn has hired a consulting engineer to design the sewer system, and said design work is on-going. Due to the fact that almost all of the property in Auburn is in the 100 year floodplain, a conventional gravity collection and central treatment sewer system is not suitable. Thus, a decentralized sewer system, specifically, an individual Orenco recirculating filter treatment system, is being designed.

The Auburn sewer system will provide service for about 50 customers. The total project cost is estimated to be approximately \$2,714,725. Due to the severe public health hazard, and because this small group of customers cannot afford to pay loan debt service on the sewer system, the DEP has committed a Clean Water State Revolving Fund ("CWSRF") grant of \$303,000 for the Project's design and a CWSRF debt forgiveness loan of \$911,725 for the Project's construction. Additionally, the Town has submitted an application for a Small Cities Block Grant of \$1,500,000 for the project.¹

¹ The Small Cities Block Grant Fund is administered by the Development Office of the West Virginia Department of Commerce. The Small Cities Block Grant program ("SCBG") provides federal funds for community and economic development projects throughout West Virginia. The SCBG program supports the development of viable communities by assisting in the provision of a suitable living environment and expanding economic opportunity, principally for those of low and moderate income (80 percent and below median household income). Eligible units of local government may receive SCBG funds if they are documented to fulfill one of three national objectives:

- Activities benefiting low- and moderate-income people.
- Activities that aid in the prevention or elimination of slums or blight.

In moving forward with the sewer project in order to address the Town's public health hazard and keep its residents from facing criminal action, the Town has recognized that the sewer system cannot be operated as a typical, regulated public utility, because the burden of the costs of a regulated public utility would be too great for this small number of low-income customers to bear. In fact, the Town believes that to be successful, and for monthly operational fees to stay in a range that the residents can afford, the Town needs the flexibility to utilize innovative ideas, such as leasing to the residents individualized treatment units that will be installed on residents' property. While the Town will own and lease individualized treatment units to residents, the "system" will be operated and maintained through a Wastewater Management Association, a nonprofit corporation operated by residents of the Town. This type of program has worked successfully in the Left Fork Community of Lincoln County, West Virginia, to address a situation similar to the Town's.

It is important to note that Auburn's proposed sewer system will be regulated by the DEP. Each treatment unit will have an individual WV NPDES General permit, and will be accountable to the DEP for filing periodic effluent test results. The MOVHD will also have a regulatory role. Thus, the fact that Auburn's proposed decentralized sewer system would not be a regulated public utility will have no adverse impact on the regulation of water quality in Bone Creek.

In this written plan, Auburn seeks the approval of the Municipal Home Rule Board to address its pressing need to solve its public health hazard through the construction and operation of a public sewer system without the attendant public utility requirements, and to have flexibility to lease equipment related to individual home treatment units to residents without auction and at less than fair and adequate consideration, which the Town is powerless to do under current West Virginia law.

•Activities designed to meet community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community and where other financial resources are not available to meet such needs.

Specific State Laws, Policies, Acts, Resolutions, Rules or Regulations

Problem No. 1:

The primary problem is W. Va. Code § 24-2-1, which reads, in relevant part:

§24-2-1. *Jurisdiction of [Public Service] commission; waiver of jurisdiction.*

(a) The jurisdiction of the commission shall extend to all public utilities in this state and shall include any utility engaged in any of the following public services:

Common carriage of passengers or goods, . . . sewer systems servicing twenty-five or more persons or firms other than the owner of the sewer systems: Provided, That if a public utility other than a political subdivision intends to provide sewer service by an innovative, alternative method . . . the innovative, alternative method is a public utility function and subject to the jurisdiction of the Public Service Commission regardless of the number of customers served by the innovative, alternative method. . . . (Emphasis added.)

Specific Problem Caused by the Legal Barrier:

The cost and administrative burden for the Town to be required to operate as a public utility under the Public Service Commission's rules and regulations will cause the needed sewer system to be too costly for the residents to bear.

If the sewer system is required to operate as a public utility under the Public Service Commission's rules and regulations, the cost of operating the system will significantly increase and impose additional administrative burdens on the Town. It is likely that a public utility will need to charge residents more than they can realistically afford to pay, given Auburn's median household income is only \$9,931.

Proposed Solution:

Permit the Town of Auburn to exercise control over the implementation of an innovative, decentralized sanitary sewer system to serve the Town's residents without being a public utility and without being subject to the jurisdiction of the Public Service Commission. This would provide the Town the flexibility needed to operate the system in a manner that best serves its residents. Additionally, the Town would have the flexibility to assist with the establishment of a nonprofit Wastewater Management Association governed by the property owners, the Town's residents.

Categorization of Solution:

_____ Tax Administrative _____ Organization _____ Personnel

Fiscal Impact: None

Problem No. 2:

The West Virginia Code mandates that leases of real or personal property owned by a municipality be for fair and adequate consideration. W. Va. Code § 8-12-18 (sale, lease or disposition of other municipal property) reads, in relevant part:

(c) In all other cases involving a lease, any municipality is hereby empowered and authorized to lease as lessor any of its real or personal property or any interest therein or any part thereof for a fair and adequate consideration and for a term not exceeding fifty years. Every lease shall be authorized by resolution of the governing body of the municipality, which resolution may specify terms and conditions which must be contained in such lease: *Provided*, That before any proposed lease is authorized by resolution of the governing body, a public hearing on the proposed lease shall be held by the governing body after notice of the date, time, place and purpose of the public hearing has been published as a Class I legal advertisement in compliance with the provision of article three, chapter fifty-nine of this code and the publication area for the publication shall be the municipality. The power and authority granted in this subsection shall be in addition to, and not in derogation of, any power and authority vested in any municipality under any constitutional or other statutory provision now or hereafter in effect. (Emphasis added.)

Specific Problem Caused by the Legal Barrier:

The requirements imposed by this statutory provision to lease personal property for “fair and adequate consideration,” after a public hearing and the publication of a Class I legal advertisement, will prevent the Town from leasing treatment units to the property owners whose property will be served by said units at an affordable price to advance the purpose of eliminating the current public health hazard.

Proposed Solution:

Auburn seeks authority to enact an ordinance allowing it to lease treatment units and necessary appurtenances to a property owner who is a resident of the Town for use in treating sanitary sewage for less than its fair market value and without hearing or legal advertisement in order to facilitate the implementation of the public sewer system and eradicate the current public health hazard.

Categorization of Solution:

_____ Tax X Administrative _____ Organization _____ Personnel

Fiscal Impact: None