

1 **ENROLLED**

2 **COMMITTEE SUBSTITUTE**

3 **FOR**

4 **Senate Bill No. 435**

5 (SENATORS SNYDER, MILLER, KESSLER (MR. PRESIDENT), JENKINS, YOST, STOLLINGS,
6 PLYMALE, MCCABE, FITZSIMMONS, PALUMBO AND BEACH, *original sponsors*)

7 _____
8 [Passed April 13, 2013; to take effect July 1, 2013.]
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11 AN ACT to amend and reenact §8-1-5a of the Code of West Virginia,
12 1931, as amended, relating to continuing the Municipal Home
13 Rule Pilot Program; continuing the Municipal Home Rule Pilot
14 Program; continuing the Municipal Home Rule Board; setting
15 forth legislative findings; authorizing Class I, II, III and
16 IV municipalities to participate in the program; clarifying
17 the voting privileges of members of the Municipal Home Rule
18 Board; clarifying the powers and duties of the board;
19 establishing written plan requirements for municipalities;
20 establishing requirements for the adoption of ordinances;
21 requiring public hearings; setting forth powers and duties of
22 the participating municipalities; prohibiting certain acts by
23 participating municipalities; providing the opportunity for
24 participating municipalities to withdraw from the program;
25 providing for amendments to the written plan; requiring a

1 performance review of the pilot program; establishing
2 reporting requirements; validating the continuance of certain
3 ordinances passed by the municipalities participating in the
4 pilot program; prohibiting municipalities participating in the
5 pilot program from restricting the right of any person to
6 purchase, possess, transfer, own, carry, transport, sell or
7 store any firearm, firearm accessory or accoutrement, or any
8 ammunition or ammunition component; providing limited
9 exceptions to the firearms prohibition; providing for
10 applicability and effective dates of prohibition; and
11 establishing a termination date of the pilot program.

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

13 That §8-1-5a of the Code of West Virginia, 1931, as amended,
14 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.

(a) *Legislative findings.* -- 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) Continuing the Municipal Home Rule Pilot Program is in the public interest; and

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

(b) *Continuance of pilot program.* -- The Municipal Home Rule Pilot Program is continued until July 1, 2019. The ordinances enacted by the four participating municipalities pursuant to the initial Municipal Home Rule Pilot Program are hereby authorized and may remain in effect until the ordinances are repealed, but are null and void if amended and such amendment is not approved by the Municipal Home Rule Board: *Provided*, That any ordinance enacting a municipal occupation tax is hereby null and void.

(c) *Authorizing participation.* --

(1) Commencing July 1, 2013, twenty Class I, Class II, Class III and/or Class IV municipalities that are current in payment of

all state fees may participate in the Municipal Home Rule Pilot Program pursuant to the provisions of this section.

(2) The four municipalities participating in the pilot program on July 1, 2012, are hereby authorized to continue in the pilot program and may amend current written plans and/or submit new written plans in accordance with the provisions of this section.

(3) If any of the four municipalities participating in the pilot program on July 1, 2012, do not want to participate in the pilot program, then on or before June 1, 2014, the municipality must submit a written letter to the board indicating the municipality's intent not to participate and the board may choose another municipality to fill the vacancy: *Provided*, That if a municipality chooses not to participate further in the pilot program, its ordinances enacted pursuant to the Municipal Home Rule Pilot Program are hereby authorized and may remain in effect until the ordinances are repealed, but are null and void if amended: *Provided, however*, That any ordinance enacting a municipal occupation tax is null and void.

(d) *Municipal Home Rule Board*. -- The Municipal Home Rule Board is hereby continued. The board members serving on the board on July 1, 2012, may continue to serve, except that the chair of the Senate Committee on Government Organization and the chair of the House Committee on Government Organization shall be ex officio nonvoting members. Effective July 1, 2013, 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;

(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 American Institute of Certified Planners, appointed by the Governor with the advice and consent of the Senate.

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

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

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

(4) Approve or reject, by a majority vote of the board, each ordinance submitted by a participating municipality pursuant to its written plan or its amendments to the written plan;

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

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

(f) *Written plan.* -- On or before June 1, 2014, a Class I, Class II, Class III or Class IV municipality desiring to participate in the Municipal Home Rule Pilot Program 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 the 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 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 West Virginia, stating that the proposed written plan does not violate the provisions of this section.

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

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

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

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

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

(h) *Selection of municipalities.* -- On or after June 1, 2014, 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 Pilot Program.

(i) *Ordinance, act, resolution, rule or regulation.* -- After being selected to participate in the Municipal Home Rule Pilot Program and prior to enacting an ordinance, act, resolution, rule or regulation based on the written plan, the municipality shall:

(1) Hold a public hearing on the proposed ordinance, act, resolution, rule or regulation;

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

(3) Make a copy of the proposed ordinance, act, resolution, rule or regulation available for public inspection at least thirty days prior to the public hearing;

(4) After the public hearing, submit the comments, either in audio or written form, to the Municipal Home Rule Board;

(5) Obtain approval, from the Municipal Home Rule Board by a majority vote, for the proposed ordinance, act, resolution, rule or

regulation; and

(6) After obtaining approval from the Municipal Home Rule Board, read the proposed ordinance, act, resolution, rule or regulation at least two times.

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

- (1) Environmental law;
- (2) Bidding on government construction and other contracts;
- (3) The Freedom of Information Act;
- (4) The Open Governmental Proceedings Act;
- (5) Wages for construction of public improvements;
- (6) The provisions of this section; and
- (7) The municipality's written plan.

(k) *Prohibited acts.* -- The municipalities participating in the Municipal Home Rule Pilot Program do not have the authority to pass an ordinance, act, resolution, rule or regulation, under the provisions of this section, pertaining to:

- (1) The Constitutions of the United States or West Virginia;
- (2) Federal law or crimes and punishment;
- (3) Chapters sixty-a, sixty-one and sixty-two of this code or state crimes and punishment;
- (4) Pensions or retirement plans;
- (5) Annexation;

(6) 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, it shall eliminate the municipal sales tax enacted under the Municipal Home Rule Pilot Program: *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 in the same manner as the state consumers sales and service tax and use tax under the provisions of articles fifteen, fifteen-a and fifteen-b, chapter eleven of this code and all applicable provisions of the streamlined sales and use tax agreement: *And provided further*, That such tax will not apply to the sale of motor fuel or motor vehicles;

(7) Tax increment financing;

(8) Extraction of natural resources;

(9) Persons or property outside the boundaries of the municipality: *Provided*, That this prohibition under the Municipal Home Rule Pilot Program does not affect a municipality's powers outside its boundary lines under other sections of this chapter, other chapters of this code or court decisions;

(10) Marriage and divorce laws;

(11) Restricting the carrying of a firearm, as that term is defined in section two, article seven, chapter sixty-one of this

code: *Provided, That,* notwithstanding the provisions of subsection (p) of this section, municipalities may regulate the carrying of a firearm in municipal buildings dedicated to government operations, other than parking buildings or garages: *Provided, however, That* on other municipal property, municipalities may regulate only those persons not licensed to carry a concealed firearm; and

(12) An occupation tax, fee or assessment payable by a non-resident of a municipality.

(l) *Amendments to written plans.* -- A municipality selected to participate in the Municipal Home Rule Pilot Program may amend its written plan at any time.

(m) *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.

(n) *Performance Evaluation and Review Division review.* -- Before January 1, 2019, the Performance Evaluation and Review Division of the Legislative Auditor's office shall conduct a performance review on the pilot program and the participating municipalities. The review shall include the following:

(1) An evaluation of the effectiveness of expanded home rule on the participating municipalities;

(2) A recommendation as to whether the expanded home rule

should be continued, reduced, expanded or terminated;

(3) A recommendation as to whether any legislation is necessary; and

(4) Any other issues considered relevant.

(o) *Termination of the pilot program.* -- The Municipal Home Rule Pilot Program terminates on July 1, 2019. No ordinance, act, resolution, rule or regulation may be enacted by a participating municipality after July 1, 2019, pursuant to the provisions of this section. An 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 until repealed, but is null and void if it is amended and such amendment is not approved by the Municipal Home Rule Board.

(p) *Additional requirements for participation.* --

(1) The Class I, Class II, Class III and/or Class IV municipalities that wish to participate in the Municipal Home Rule Pilot Program, pursuant to the provisions of this section, must agree to the requirements set forth in this subsection concerning regulation of firearms, ammunition and firearm accessories: *Provided*, That if the four municipalities participating in the pilot program on July 1, 2012, wish to continue in the pilot program then those municipalities must also agree to comply with the requirements of this subsection.

(2) *Definitions.* --

As used in this subsection:

(A) "Ammunition" means fixed cartridge ammunition, shotgun shells, the individual components of fixed cartridge ammunition and shotgun shells, projectiles for muzzle-loading firearms and any propellant used in firearms or ammunition.

(B) "Firearm accessory" means a device specifically designed or adapted to enable the wearing or carrying about one's person, or the storage or mounting in or on a conveyance, of a firearm, or an attachment or device specifically designed or adapted to be inserted into or affixed onto a firearm to enable, alter or improve the functioning or capabilities of the firearm.

(C) "Firearm" has the same meaning as in section two, article seven of chapter sixty-one.

(3) *General rule.* --

(A) Notwithstanding any other provision of this code to the contrary, except as otherwise provided in this section, municipalities participating in the Municipal Home Rule Pilot Program, pursuant to this section, shall not restrict in any manner the right of any person to purchase, possess, transfer, own, carry, transport, sell or store any revolver, pistol, rifle or shotgun, or any other firearm, or any ammunition or ammunition components to be used therewith, or the keeping of gunpowder so as to directly or indirectly prohibit the ownership of the ammunition, or, to restrict in any manner the right of any person to purchase, possess, transfer, own, carry, transport, sell or store any other firearm accessory or accoutrement, under any order, ordinance or rule promulgated or enforced by the municipality. This subsection

may not be construed to prevent any law enforcement official with appropriate authority from enforcing any statute enacted by the state.

(B) The authority of a municipality to regulate firearms, ammunition or firearm accessories may not be inferred from its proprietary authority, home rule status or any other inherent or general power.

(C) Any existing or future orders, ordinances or rules promulgated or enforced in violation of this subsection are null and void.

(4) *Applicability and effective dates.* --

Ninety days after a new municipality has been selected by the Board to participate in the pilot program, or a previously participating municipality has chosen to continue to participate in the pilot program, any municipal gun ordinances previously authorized by the provisions of section five-a, article twelve of this chapter shall no longer be of any force or effect for any municipality participating in this program to the extent they are in conflict with the provisions of this subsection: *Provided*, That no provision in this subsection may be construed to limit the authority of a municipality to restrict the commercial use of real estate in designated areas through planning or zoning ordinances.