

COMMITTEE SUBSTITUTE

FOR

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FOR

## **Senate Bill No. 317**

(By Senators Unger, Nohe, Kessler (Mr. President), D. Hall, Stollings, Tucker, Cann, Fitzsimmons, Kirkendoll, Miller, Laird, Williams, Yost, Beach, Edgell, Plymale, Prezioso and Snyder)

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[Originating in the Committee on the Judiciary;  
reported February 19, 2014.]

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A BILL to amend and reenact §8-1-5a of the Code of West Virginia, 1931, as amended; and to amend and reenact §8-12-5a of said code, all relating to municipal firearm laws; removing firearm provisions from the Municipal Home Rule Pilot Program; prohibiting ordinances from being enacted under the Municipal Home Rule Pilot Program that restrict the sale or carry of a firearm and creating exceptions thereto; repealing the

grandfather clause excepting certain municipal ordinances limiting the purchase, possession, transfer, ownership, carrying, transporting, selling or storing of guns or ammunition from the general provision prohibiting such ordinances; clarifying municipalities' authority to regulate possession and carrying of firearms in municipal owned or operated buildings or on municipally owned or operated property; and clarifying that municipalities cannot prohibit the otherwise lawful carrying of firearms on municipal streets and sidewalks except when a street or sidewalk is temporarily closed to traffic for purposes of municipally authorized events.

*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; and that §8-12-5a of said code be amended and reenacted, all 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  
26 Home Rule Pilot Program is continued until July 1, 2019.  
27 The ordinances enacted by the four participating  
28 municipalities pursuant to the initial Municipal Home Rule  
29 Pilot Program are hereby authorized and may remain in effect  
30 until the ordinances are repealed, but are null and void if  
31 amended and such amendment is not approved by the  
32 Municipal Home Rule Board: *Provided*, That any ordinance  
33 enacting a municipal occupation tax is hereby null and void.

34       (c) *Authorizing participation.* –

35       (1) Commencing July 1, 2013, twenty Class I, Class II,  
36 Class III and/or Class IV municipalities that are current in  
37 payment of all state fees may participate in the Municipal

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38 Home Rule Pilot Program pursuant to the provisions of this  
39 section.

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

45 (3) If any of the four municipalities participating in the  
46 pilot program on July 1, 2012, do not want to participate in  
47 the pilot program, then on or before June 1, 2014, the  
48 municipality must submit a written letter to the board  
49 indicating the municipality's intent not to participate and the  
50 board may choose another municipality to fill the vacancy:  
51 *Provided*, That if a municipality chooses not to participate  
52 further in the pilot program, its ordinances enacted pursuant  
53 to the Municipal Home Rule Pilot Program are hereby  
54 authorized and may remain in effect until the ordinances are  
55 repealed, but are null and void if amended: *Provided*,

56 *however*, That any ordinance enacting a municipal  
57 occupation tax is null and void.

58 (d) *Municipal Home Rule Board*. – The Municipal Home  
59 Rule Board is hereby continued. The board members serving  
60 on the board on July 1, 2012, may continue to serve, except  
61 that the chair of the Senate Committee on Government  
62 Organization and the chair of the House Committee on  
63 Government Organization shall be *ex officio* nonvoting  
64 members. Effective July 1, 2013, the Municipal Home Rule  
65 Board shall consist of the following five voting members:

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

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

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

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

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

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

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

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

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

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

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

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

98 (f) *Written plan.* – On or before June 1, 2014, a Class I,  
99 Class II, Class III or Class IV municipality desiring to  
100 participate in the Municipal Home Rule Pilot Program shall  
101 submit a written plan to the board stating in detail the  
102 following:

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

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

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

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

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

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

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

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

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

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

128 (h) *Selection of municipalities.* – On or after June 1,  
129 2014, by a majority vote, the Municipal Home Rule Board  
130 may select from the municipalities that submitted written

131 plans and were approved by the board by majority vote, new  
132 Class I, Class II, Class III and/or Class IV municipalities to  
133 participate in the Municipal Home Rule Pilot Program.

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

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

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

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

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

148 (5) Obtain approval, from the Municipal Home Rule  
149 Board by a majority vote, for the proposed ordinance, act,  
150 resolution, rule or regulation; and

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

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

159 (1) Environmental law;

160 (2) Bidding on government construction and other  
161 contracts;

162 (3) The Freedom of Information Act;

163 (4) The Open Governmental Proceedings Act;

164 (5) Wages for construction of public improvements;

165 (6) The provisions of this section; and

166 (7) The municipality's written plan.

167 (k) *Prohibited acts.* – The municipalities participating in  
168 the Municipal Home Rule Pilot Program do not have the

169 authority to pass an ordinance, act, resolution, rule or  
170 regulation, under the provisions of this section, pertaining to:

171 (1) The Constitutions of the United States or West  
172 Virginia;

173 (2) Federal law or crimes and punishment;

174 (3) Chapters sixty-a, sixty-one and sixty-two of this code  
175 or state crimes and punishment;

176 (4) Pensions or retirement plans;

177 (5) Annexation;

178 (6) Taxation: *Provided*, That a participating municipality  
179 may enact a municipal sales tax up to one percent if it  
180 reduces or eliminates its municipal business and occupation  
181 tax: *Provided, however*, That if a municipality subsequently  
182 reinstates or raises the municipal business and occupation tax  
183 it previously reduced or eliminated under the Municipal  
184 Home Rule Pilot Program, it shall eliminate the municipal  
185 sales tax enacted under the Municipal Home Rule Pilot  
186 Program: *Provided further*, That any municipality that  
187 imposes a municipal sales tax pursuant to this section shall

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188 use the services of the Tax Commissioner to administer,  
189 enforce and collect the tax in the same manner as the state  
190 consumers sales and service tax and use tax under the  
191 provisions of articles fifteen, fifteen-a and fifteen-b, chapter  
192 eleven of this code and all applicable provisions of the  
193 streamlined sales and use tax agreement: *And provided*  
194 *further*, That such tax will not apply to the sale of motor fuel  
195 or motor vehicles;

196 (7) Tax increment financing;

197 (8) Extraction of natural resources;

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

204 ~~(10) Marriage and divorce laws;~~

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

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

214       ~~(12)~~ (10) An occupation tax, fee or assessment payable  
215 by a nonresident of a municipality.

216       (1) *Amendments to written plans.* – A municipality  
217 selected to participate in the Municipal Home Rule Pilot  
218 Program may amend its written plan at any time.

219       (m) *Reporting requirements.* – Commencing December  
220 1, 2015, and each year thereafter, each participating  
221 municipality shall give a progress report to the Municipal  
222 Home Rule Board and commencing January 1, 2016, and  
223 each year thereafter, the Municipal Home Rule Board shall  
224 give a summary report of all the participating municipalities  
225 to the Joint Committee on Government and Finance.

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226 (n) *Performance Evaluation and Review Division review.*

227 – Before January 1, 2019, the Performance Evaluation and

228 Review Division of the Legislative Auditor’s office shall

229 conduct a performance review on the pilot program and the

230 participating municipalities. The review shall include the

231 following:

232 (1) An evaluation of the effectiveness of expanded home

233 rule on the participating municipalities;

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

235 rule should be continued, reduced, expanded or terminated;

236 (3) A recommendation as to whether any legislation is

237 necessary; and

238 (4) Any other issues considered relevant.

239 (o) *Termination of the pilot program.* – The Municipal

240 Home Rule Pilot Program terminates on July 1, 2019. No

241 ordinance, act, resolution, rule or regulation may be enacted

242 by a participating municipality after July 1, 2019, pursuant to

243 the provisions of this section. An ordinance, act, resolution,

244 rule or regulation enacted by a participating municipality

245 under the provisions of this section during the period of the  
246 Municipal Home Rule Pilot Program shall continue in full  
247 force and effect until repealed, but is null and void if it is  
248 amended and such amendment is not approved by the  
249 Municipal Home Rule Board.

250 ~~(p) *Additional requirements for participation.*~~

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

260 ~~(2) *Definitions.*~~

261 ~~As used in this subsection:~~

262 ~~(A) "Ammunition" means fixed cartridge ammunition;~~  
263 ~~shotgun shells, the individual components of fixed cartridge~~

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264 ~~ammunition and shotgun shells, projectiles for~~  
265 ~~muzzle-loading firearms and any propellant used in firearms~~  
266 ~~or ammunition.~~

267 (B) ~~“Firearm accessory” means a device specifically~~  
268 ~~designed or adapted to enable the wearing or carrying about~~  
269 ~~one’s person, or the storage or mounting in or on a~~  
270 ~~conveyance, of a firearm, or an attachment or device~~  
271 ~~specifically designed or adapted to be inserted into or affixed~~  
272 ~~onto a firearm to enable, alter or improve the functioning or~~  
273 ~~capabilities of the firearm.~~

274 (C) ~~“Firearm” has the same meaning as in section two,~~  
275 ~~article seven of chapter sixty-one.~~

276 (3) ~~General rule.~~

277 (A) ~~Notwithstanding any other provision of this code to~~  
278 ~~the contrary, except as otherwise provided in this section,~~  
279 ~~municipalities participating in the Municipal Home Rule~~  
280 ~~Pilot Program, pursuant to this section, shall not restrict in~~  
281 ~~any manner the right of any person to purchase, possess,~~  
282 ~~transfer, own, carry, transport, sell or store any revolver,~~

283 ~~pistol, rifle or shotgun, or any other firearm, or any~~  
284 ~~ammunition or ammunition components to be used therewith,~~  
285 ~~or the keeping of gunpowder so as to directly or indirectly~~  
286 ~~prohibit the ownership of the ammunition, or, to restrict in~~  
287 ~~any manner the right of any person to purchase, possess,~~  
288 ~~transfer, own, carry, transport, sell or store any other firearm~~  
289 ~~accessory or accoutrement, under any order, ordinance or~~  
290 ~~rule promulgated or enforced by the municipality. This~~  
291 ~~subsection may not be construed to prevent any law~~  
292 ~~enforcement official with appropriate authority from~~  
293 ~~enforcing any statute enacted by the state.~~

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

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

301 ~~(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.~~

**ARTICLE 12. GENERAL AND SPECIFIC POWERS,  
DUTIES AND ALLIED RELATIONS  
OF MUNICIPALITIES, GOVERNING  
BODIES AND MUNICIPAL OFFICERS  
AND EMPLOYEES; SUITS AGAINST  
MUNICIPALITIES.**

**§8-12-5a. Limitations upon municipalities' power to restrict the  
purchase, possession, transfer, ownership,**

**carrying, transport, sale and storage of certain  
weapons and ammunition.**

1     (a) The provisions of section five of this article  
2 notwithstanding, neither a municipality nor the governing  
3 body of any municipality may limit the right of any person to  
4 purchase, ~~possess~~, transfer, own, ~~carry~~, transport, sell or store  
5 any revolver, pistol, rifle or shotgun or any ammunition or  
6 ammunition components to be used therewith nor to so  
7 regulate the keeping of gunpowder so as to directly or  
8 indirectly prohibit the ownership of the ammunition in any  
9 manner inconsistent with or in conflict with state law.

10     ~~Nothing herein shall in any way~~

11     (b) This section does not:

12     (1) Impair the authority of any municipality, or the  
13 governing body thereof, to enact any ordinance or resolution  
14 respecting the power to arrest, convict and punish any  
15 individual under the provisions of subdivision (16), section  
16 five of this article or from enforcing any such ordinance or  
17 resolution; ~~Provided, That any municipal ordinance in place~~

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18 ~~as of the effective date of this section shall be excepted from~~  
19 ~~the provisions of this section. *Provided, however,* That no~~  
20 ~~provision in this section may be construed to~~

21 (2) Impair the authority of municipalities to restrict and  
22 regulate the carrying or possessing of a firearm in  
23 municipally owned or operated buildings or on municipally  
24 owned or operated property. A person may keep a firearm in  
25 his or her motor vehicle in municipal public parking facilities  
26 if the vehicle is locked and the firearm is out of view:  
27 *Provided,* That nothing in this subdivision may be construed  
28 to authorize municipalities to restrict the carrying or  
29 possessing of firearms, which are otherwise lawfully  
30 possessed, on public streets and sidewalks of the municipality  
31 except when a street or a sidewalk is closed to motor vehicle  
32 or pedestrian traffic for purposes of a municipally authorized  
33 event; or

34 (3) Limit the authority of a municipality to restrict the  
35 commercial use of real estate in designated areas through  
36 planning or zoning ordinances.