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ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 435

(SENATORS SNYDER, MILLER, KESSLER (MR. PRESIDENT),
JENKINS, YOST, STOLLINGS, PLYMALE, McCABE, FITZSIMMONS,
PALUMBO AND BEACH, *ORIGINAL SPONSORS*)

[PASSED APRIL 13, 2013; TO TAKE EFFECT JULY 1, 2013.]

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PALUMBO AND BEACH, *original sponsors*)

[Passed April 13, 2013; to take effect July 1, 2013.]

AN ACT to amend and reenact §8-1-5a of the Code of West Virginia, 1931, as amended, relating to continuing the Municipal Home Rule Pilot Program; continuing the Municipal Home Rule Pilot Program; continuing the Municipal Home Rule Board; setting forth legislative findings; authorizing Class I, II, III and IV municipalities to participate in the program; clarifying the voting privileges of members of the Municipal Home Rule Board; clarifying the powers and duties of the board; establishing written plan requirements for municipalities; establishing requirements for the adoption of ordinances; requiring public hearings; setting forth powers and duties of the participating municipalities; prohibiting certain acts by participating municipalities; providing the opportunity for participating municipalities to withdraw from the program; providing for amendments to the written plan; requiring a performance review of the pilot program; establishing reporting requirements; validating the continuance of certain ordinances passed by the municipalities participating in the pilot program; prohibiting municipalities participating in the pilot program from restricting the right of any person to purchase, possess,

transfer, own, carry, transport, sell or store any firearm, firearm accessory or accouterment, or any ammunition or ammunition component; providing limited exceptions to the firearms prohibition; providing for applicability and effective dates of prohibition; and establishing a termination date of the pilot program.

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 four participating municipalities
28 pursuant to the initial Municipal Home Rule Pilot Program
29 are hereby authorized and may remain in effect until the
30 ordinances are repealed, but are null and void if amended and
31 such amendment is not approved by the Municipal Home
32 Rule Board: *Provided*, That any ordinance enacting a
33 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
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

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

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 Pilot
156 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 reduces
180 or eliminates its municipal business and occupation tax:
181 *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
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) An occupation tax, fee or assessment payable by a
215 non-resident of a municipality.

216 (l) *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.

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

302 Ninety days after a new municipality has been selected by
303 the Board to participate in the pilot program, or a previously
304 participating municipality has chosen to continue to

305 participate in the pilot program, any municipal gun
306 ordinances previously authorized by the provisions of section
307 five-a, article twelve of this chapter shall no longer be of any
308 force or effect for any municipality participating in this
309 program to the extent they are in conflict with the provisions
310 of this subsection: *Provided*, That no provision in this
311 subsection may be construed to limit the authority of a
312 municipality to restrict the commercial use of real estate in
313 designated areas through planning or zoning ordinances.

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

.....
Chairman Senate Committee

.....
Chairman House Committee

Originated in the Senate.

To take effect July 1, 2013.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

The within this the
Day of, 2013.

.....
Governor