

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 317**

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

7 \_\_\_\_\_  
8 [Originating in the Committee on Government Organization;  
9 reported February 13, 2014.]  
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12  
13 A BILL to amend and reenact §8-1-5a of the Code of West Virginia,  
14 1931, as amended; and to amend and reenact §8-12-5a of said  
15 code, all relating to municipal firearm laws; repealing  
16 firearm provisions in the Municipal Home Rule Pilot Program;  
17 prohibiting ordinances from being enacted under the Municipal  
18 Home Rule Pilot Program that restrict the sale or carry of a  
19 firearm; and repealing the grandfather clause excepting  
20 certain municipal ordinances limiting the purchase,  
21 possession, transfer, ownership, carrying, transporting,  
22 selling or storing of guns or ammunition from the general  
23 provision prohibiting such ordinances.

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

1           That §8-1-5a of the Code of West Virginia, 1931, as amended,  
2 be amended and reenacted; and that §8-12-5a of said code be amended  
3 and reenacted, all to read as follows:

4 **ARTICLE 1.       PURPOSE AND SHORT TITLE; DEFINITIONS; GENERAL**  
5                   **PROVISIONS; CONSTRUCTION.**

6 **§8-1-5a.   Municipal Home Rule Pilot Program.**

7           (a) *Legislative findings.* -- The Legislature finds and  
8 declares that:

9           (1) The initial Municipal Home Rule Pilot Program brought  
10 innovative results, including novel municipal ideas that became  
11 municipal ordinances which later resulted in new statewide  
12 statutes;

13           (2) The initial Municipal Home Rule Pilot Program also brought  
14 novel municipal ideas that resulted in court challenges against  
15 some of the participating municipalities;

16           (3) The Municipal Home Rule Board was an essential part of the  
17 initial Municipal Home Rule Pilot Program but it lacked some needed  
18 powers and duties;

19           (4) Municipalities still face challenges delivering services  
20 required by federal and state law or demanded by their  
21 constituents;

22           (5) Municipalities are sometimes restrained by state statutes,  
23 policies and rules that challenge their ability to carry out their  
24 duties and responsibilities in a cost-effective, efficient and

1 timely manner;

2 (6) Continuing the Municipal Home Rule Pilot Program is in the  
3 public interest; and

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

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

14 (c) *Authorizing participation.* --

15 (1) Commencing July 1, 2013, twenty Class I, Class II, Class  
16 III and/or Class IV municipalities that are current in payment of  
17 all state fees may participate in the Municipal Home Rule Pilot  
18 Program pursuant to the provisions of this section.

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

23 (3) If any of the four municipalities participating in the  
24 pilot program on July 1, 2012, do not want to participate in the

1 pilot program, then on or before June 1, 2014, the municipality  
2 must submit a written letter to the board indicating the  
3 municipality's intent not to participate and the board may choose  
4 another municipality to fill the vacancy: *Provided*, That if a  
5 municipality chooses not to participate further in the pilot  
6 program, its ordinances enacted pursuant to the Municipal Home Rule  
7 Pilot Program are hereby authorized and may remain in effect until  
8 the ordinances are repealed, but are null and void if amended:  
9 *Provided, however*, That any ordinance enacting a municipal  
10 occupation tax is null and void.

11 (d) *Municipal Home Rule Board*. -- The Municipal Home Rule  
12 Board is hereby continued. The board members serving on the board  
13 on July 1, 2012, may continue to serve, except that the chair of  
14 the Senate Committee on Government Organization and the chair of  
15 the House Committee on Government Organization shall be ex officio  
16 nonvoting members. Effective July 1, 2013, the Municipal Home Rule  
17 Board shall consist of the following five voting members:

- 18 (1) The Governor, or a designee, who shall serve as chair;
- 19 (2) The Executive Director of the West Virginia Development  
20 Office or a designee;
- 21 (3) One member representing the Business and Industry Council,  
22 appointed by the Governor with the advice and consent of the  
23 Senate;
- 24 (4) One member representing the largest labor organization in

1 the state, appointed by the Governor with the advice and consent of  
2 the Senate; and

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

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

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

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

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

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

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

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

1 (f) *Written plan.* -- On or before June 1, 2014, a Class I,  
2 Class II, Class III or Class IV municipality desiring to  
3 participate in the Municipal Home Rule Pilot Program shall submit  
4 a written plan to the board stating in detail the following:

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

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

10 (3) The proposed solutions to the problems, including all  
11 proposed changes to ordinances, acts, resolutions, rules and  
12 regulations: *Provided*, That the specific municipal ordinance  
13 instituting the solution does not have to be included in the  
14 written plan; and

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

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

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

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

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

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

4           (h) *Selection of municipalities.* -- On or after June 1, 2014,  
5 by a majority vote, the Municipal Home Rule Board may select from  
6 the municipalities that submitted written plans and were approved  
7 by the board by majority vote, new Class I, Class II, Class III  
8 and/or Class IV municipalities to participate in the Municipal Home  
9 Rule Pilot Program.

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

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

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

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

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

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

1 regulation; and

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

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

10 (1) Environmental law;

11 (2) Bidding on government construction and other contracts;

12 (3) The Freedom of Information Act;

13 (4) The Open Governmental Proceedings Act;

14 (5) Wages for construction of public improvements;

15 (6) The provisions of this section; and

16 (7) The municipality's written plan.

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

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

22 (2) Federal law or crimes and punishment;

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



1 (4) Pensions or retirement plans;  
2 (5) Annexation;  
3 (6) Taxation: *Provided*, That a participating municipality may  
4 enact a municipal sales tax up to one percent if it reduces or  
5 eliminates its municipal business and occupation tax: *Provided*,  
6 *however*, That if a municipality subsequently reinstates or raises  
7 the municipal business and occupation tax it previously reduced or  
8 eliminated under the Municipal Home Rule Pilot Program, it shall  
9 eliminate the municipal sales tax enacted under the Municipal Home  
10 Rule Pilot Program: *Provided further*, That any municipality that  
11 imposes a municipal sales tax pursuant to this section shall use  
12 the services of the Tax Commissioner to administer, enforce and  
13 collect the tax in the same manner as the state consumers sales and  
14 service tax and use tax under the provisions of articles fifteen,  
15 fifteen-a and fifteen-b, chapter eleven of this code and all  
16 applicable provisions of the streamlined sales and use tax  
17 agreement: *And provided further*, That such tax will not apply to  
18 the sale of motor fuel or motor vehicles;  
19 (7) Tax increment financing;  
20 (8) Extraction of natural resources;  
21 (9) Persons or property outside the boundaries of the  
22 municipality: *Provided*, That this prohibition under the Municipal  
23 Home Rule Pilot Program does not affect a municipality's powers  
24 outside its boundary lines under other sections of this chapter,

1 other chapters of this code or court decisions;

2 (10) Marriage and divorce laws;

3 (11) Restricting the ~~carrying~~ sale or carry of a firearm, as  
4 that term is defined in section two, article seven, chapter sixty-  
5 one of this code: *Provided, That,* ~~notwithstanding the provisions of~~  
6 ~~subsection (p) of this section,~~ municipalities may regulate the  
7 carrying of a firearm in municipal buildings dedicated to  
8 government operations, other than parking buildings or garages:  
9 *Provided, however,* That on other municipal property, municipalities  
10 may regulate only those persons not licensed to carry a concealed  
11 firearm; and

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

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

17 (m) *Reporting requirements.* -- Commencing December 1, 2015,  
18 and each year thereafter, each participating municipality shall  
19 give a progress report to the Municipal Home Rule Board and  
20 commencing January 1, 2016, and each year thereafter, the Municipal  
21 Home Rule Board shall give a summary report of all the  
22 participating municipalities to the Joint Committee on Government  
23 and Finance.

24 (n) *Performance Evaluation and Review Division review.* --

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

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

7 (2) A recommendation as to whether the expanded home rule  
8 should be continued, reduced, expanded or terminated;

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

11 (4) Any other issues considered relevant.

12 (o) *Termination of the pilot program.* -- The Municipal Home  
13 Rule Pilot Program terminates on July 1, 2019. No ordinance, act,  
14 resolution, rule or regulation may be enacted by a participating  
15 municipality after July 1, 2019, pursuant to the provisions of this  
16 section. An ordinance, act, resolution, rule or regulation enacted  
17 by a participating municipality under the provisions of this  
18 section during the period of the Municipal Home Rule Pilot Program  
19 shall continue in full force and effect until repealed, but is null  
20 and void if it is amended and such amendment is not approved by the  
21 Municipal Home Rule Board.

22 ~~(p) Additional requirements for participation.~~

23 ~~----- (1) The Class I, Class II, Class III and/or Class IV~~  
24 ~~municipalities that wish to participate in the Municipal Home Rule~~

~~1 Pilot Program, pursuant to the provisions of this section, must  
2 agree to the requirements set forth in this subsection concerning  
3 regulation of firearms, ammunition and firearm accessories:  
4 Provided, That if the four municipalities participating in the  
5 pilot program on July 1, 2012, wish to continue in the pilot  
6 program then those municipalities must also agree to comply with  
7 the requirements of this subsection.~~

~~8 (2) Definitions. --~~

~~9 As used in this subsection:~~

~~10 (A) "Ammunition" means fixed cartridge ammunition, shotgun  
11 shells, the individual components of fixed cartridge ammunition and  
12 shotgun shells, projectiles for muzzle-loading firearms and any  
13 propellant used in firearms or ammunition.~~

~~14 (B) "Firearm accessory" means a device specifically designed  
15 or adapted to enable the wearing or carrying about one's person, or  
16 the storage or mounting in or on a conveyance, of a firearm, or an  
17 attachment or device specifically designed or adapted to be  
18 inserted into or affixed onto a firearm to enable, alter or improve  
19 the functioning or capabilities of the firearm.~~

~~20 (C) "Firearm" has the same meaning as in section two, article  
21 seven of chapter sixty-one.~~

~~22 (3) General rule. --~~

~~23 (A) Notwithstanding any other provision of this code to the  
24 contrary, except as otherwise provided in this section,~~

1 ~~municipalities participating in the Municipal Home Rule Pilot~~  
2 ~~Program, pursuant to this section, shall not restrict in any manner~~  
3 ~~the right of any person to purchase, possess, transfer, own, carry,~~  
4 ~~transport, sell or store any revolver, pistol, rifle or shotgun, or~~  
5 ~~any other firearm, or any ammunition or ammunition components to be~~  
6 ~~used therewith, or the keeping of gunpowder so as to directly or~~  
7 ~~indirectly prohibit the ownership of the ammunition, or, to~~  
8 ~~restrict in any manner the right of any person to purchase,~~  
9 ~~possess, transfer, own, carry, transport, sell or store any other~~  
10 ~~firearm accessory or accoutrement, under any order, ordinance or~~  
11 ~~rule promulgated or enforced by the municipality. This subsection~~  
12 ~~may not be construed to prevent any law enforcement official with~~  
13 ~~appropriate authority from enforcing any statute enacted by the~~  
14 ~~state.~~

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

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

22 ~~—— (4) *Applicability and effective dates.* ——~~

23 ~~—— Ninety days after a new municipality has been selected by the~~  
24 ~~Board to participate in the pilot program, or a previously~~

~~1 participating municipality has chosen to continue to participate in  
2 the pilot program, any municipal gun ordinances previously  
3 authorized by the provisions of section five-a, article twelve of  
4 this chapter shall no longer be of any force or effect for any  
5 municipality participating in this program to the extent they are  
6 in conflict with the provisions of this subsection: *Provided, That*  
7 no provision in this subsection may be construed to limit the  
8 authority of a municipality to restrict the commercial use of real  
9 estate in designated areas through planning or zoning ordinances.~~

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

**14 §8-12-5a. Limitations upon municipalities' power to restrict the  
15 purchase, possession, transfer, ownership, carrying,  
16 transport, sale and storage of certain weapons and  
17 ammunition.**

18 (a) The provisions of section five of this article  
19 notwithstanding, neither a municipality nor the governing body of  
20 any municipality may limit the right of any person to purchase,  
21 possess, transfer, own, carry, transport, sell or store any  
22 revolver, pistol, rifle or shotgun or any ammunition or ammunition  
23 components to be used therewith nor to so regulate the keeping of  
24 gunpowder so as to directly or indirectly prohibit the ownership of

1 the ammunition.

2 ~~Nothing herein shall in any way~~ (b) This section does not:

3 (1) Impair the authority of any municipality, or the governing  
4 body thereof, to enact any ordinance or resolution respecting the  
5 power to arrest, convict and punish any individual under the  
6 provisions of subdivision (16), section five of this article or  
7 from enforcing any such ordinance or resolution; ~~Provided, That~~  
8 ~~any municipal ordinance in place as of the effective date of this~~  
9 ~~section shall be excepted from the provisions of this section:~~  
10 ~~Provided, however, That no provision in this section may be~~  
11 ~~construed to~~ or

12 (2) Limit the authority of a municipality to restrict the  
13 commercial use of real estate in designated areas through planning  
14 or zoning ordinances.

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