

1 COMMITTEE SUBSTITUTE

2 FOR

3 COMMITTEE SUBSTITUTE

4 FOR

5 **Senate Bill No. 317**

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

9 _____
10 [Originating in the Committee on the Judiciary;
11 reported February 19, 2014.]

12 _____
13
14
15 A BILL to amend and reenact §8-1-5a of the Code of West Virginia,
16 1931, as amended; and to amend and reenact §8-12-5a of said
17 code, all relating to municipal firearm laws; removing firearm
18 provisions from the Municipal Home Rule Pilot Program;
19 prohibiting ordinances from being enacted under the Municipal
20 Home Rule Pilot Program that restrict the sale or carry of a
21 firearm and creating exceptions thereto; repealing the
22 grandfather clause excepting certain municipal ordinances
23 limiting the purchase, possession, transfer, ownership,
24 carrying, transporting, selling or storing of guns or

1 ammunition from the general provision prohibiting such
2 ordinances; clarifying municipalities' authority to regulate
3 possession and carrying of firearms in municipal owned or
4 operated buildings or on municipally owned or operated
5 property; and clarifying that municipalities cannot prohibit
6 the otherwise lawful carrying of firearms on municipal streets
7 and sidewalks except when a street or sidewalk is temporarily
8 closed to traffic for purposes of municipally authorized
9 events.

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

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

14 **ARTICLE 1. PURPOSE AND SHORT TITLE; DEFINITIONS; GENERAL**
15 **PROVISIONS; CONSTRUCTION.**

16 **§8-1-5a. Municipal Home Rule Pilot Program.**

17 (a) *Legislative findings.* -- The Legislature finds and
18 declares that:

19 (1) The initial Municipal Home Rule Pilot Program brought
20 innovative results, including novel municipal ideas that became
21 municipal ordinances which later resulted in new statewide
22 statutes;

23 (2) The initial Municipal Home Rule Pilot Program also brought
24 novel municipal ideas that resulted in court challenges against

1 some of the participating municipalities;

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

5 (4) Municipalities still face challenges delivering services
6 required by federal and state law or demanded by their
7 constituents;

8 (5) Municipalities are sometimes restrained by state statutes,
9 policies and rules that challenge their ability to carry out their
10 duties and responsibilities in a cost-effective, efficient and
11 timely manner;

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

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

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

24 (c) *Authorizing participation.* --

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

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

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

21 (d) *Municipal Home Rule Board*. -- The Municipal Home Rule
22 Board is hereby continued. The board members serving on the board
23 on July 1, 2012, may continue to serve, except that the chair of
24 the Senate Committee on Government Organization and the chair of

1 the House Committee on Government Organization shall be ex officio
2 nonvoting members. Effective July 1, 2013, the Municipal Home Rule
3 Board shall consist of the following five voting members:

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

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

7 (3) One member representing the Business and Industry Council,
8 appointed by the Governor with the advice and consent of the
9 Senate;

10 (4) One member representing the largest labor organization in
11 the state, appointed by the Governor with the advice and consent of
12 the Senate; and

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

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

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

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

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

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

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

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

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

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

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

20 (3) The proposed solutions to the problems, including all
21 proposed changes to ordinances, acts, resolutions, rules and
22 regulations: *Provided,* That the specific municipal ordinance
23 instituting the solution does not have to be included in the
24 written plan; and

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

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

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

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

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

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

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

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

24 (1) Hold a public hearing on the proposed ordinance, act,

1 resolution, rule or regulation;

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

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

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

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

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

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

20 (1) Environmental law;

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

22 (3) The Freedom of Information Act;

23 (4) The Open Governmental Proceedings Act;

24 (5) Wages for construction of public improvements;

1 (6) The provisions of this section; and

2 (7) The municipality's written plan.

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

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

8 (2) Federal law or crimes and punishment;

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

11 (4) Pensions or retirement plans;

12 (5) Annexation;

13 (6) Taxation: *Provided*, That a participating municipality may
14 enact a municipal sales tax up to one percent if it reduces or
15 eliminates its municipal business and occupation tax: *Provided*,
16 *however*, That if a municipality subsequently reinstates or raises
17 the municipal business and occupation tax it previously reduced or
18 eliminated under the Municipal Home Rule Pilot Program, it shall
19 eliminate the municipal sales tax enacted under the Municipal Home
20 Rule Pilot Program: *Provided further*, That any municipality that
21 imposes a municipal sales tax pursuant to this section shall use
22 the services of the Tax Commissioner to administer, enforce and
23 collect the tax in the same manner as the state consumers sales and
24 service tax and use tax under the provisions of articles fifteen,

1 fifteen-a and fifteen-b, chapter eleven of this code and all
2 applicable provisions of the streamlined sales and use tax
3 agreement: *And provided further,* That such tax will not apply to
4 the sale of motor fuel or motor vehicles;

5 (7) Tax increment financing;

6 (8) Extraction of natural resources;

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

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

13 ~~(11) Restricting the carrying of a firearm, as that term is~~
14 ~~defined in section two, article seven, chapter sixty-one of this~~
15 ~~code: *Provided,* That, notwithstanding the provisions of subsection~~
16 ~~(p) of this section, municipalities may regulate the carrying of a~~
17 ~~firearm in municipal buildings dedicated to government operations~~
18 ~~other than parking buildings or garages: *Provided, however,* That~~
19 ~~on other municipal property, municipalities may regulate only those~~
20 ~~persons not licensed to carry a concealed firearm; and~~

21 ~~(12)~~ (10) An occupation tax, fee or assessment payable by a
22 nonresident of a municipality.

23 (1) *Amendments to written plans.* -- A municipality selected to
24 participate in the Municipal Home Rule Pilot Program may amend its

1 written plan at any time.

2 (m) *Reporting requirements.* -- Commencing December 1, 2015,
3 and each year thereafter, each participating municipality shall
4 give a progress report to the Municipal Home Rule Board and
5 commencing January 1, 2016, and each year thereafter, the Municipal
6 Home Rule Board shall give a summary report of all the
7 participating municipalities to the Joint Committee on Government
8 and Finance.

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

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

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

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

20 (4) Any other issues considered relevant.

21 (o) *Termination of the pilot program.* -- The Municipal Home
22 Rule Pilot Program terminates on July 1, 2019. No ordinance, act,
23 resolution, rule or regulation may be enacted by a participating
24 municipality after July 1, 2019, pursuant to the provisions of this

1 section. An ordinance, act, resolution, rule or regulation enacted
2 by a participating municipality under the provisions of this
3 section during the period of the Municipal Home Rule Pilot Program
4 shall continue in full force and effect until repealed, but is null
5 and void if it is amended and such amendment is not approved by the
6 Municipal Home Rule Board.

7 ~~(p) Additional requirements for participation. --~~

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

17 ~~—— (2) Definitions. --~~

18 ~~—— As used in this subsection:~~

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

23 ~~—— (B) "Firearm accessory" means a device specifically designed~~
24 ~~or adapted to enable the wearing or carrying about one's person, or~~

~~1 the storage or mounting in or on a conveyance, of a firearm, or an
2 attachment or device specifically designed or adapted to be
3 inserted into or affixed onto a firearm to enable, alter or improve
4 the functioning or capabilities of the firearm.~~

~~5 (C) "Firearm" has the same meaning as in section two, article
6 seven of chapter sixty-one.~~

~~7 (3) General rule. --~~

~~8 (A) Notwithstanding any other provision of this code to the
9 contrary, except as otherwise provided in this section,
10 municipalities participating in the Municipal Home Rule Pilot
11 Program, pursuant to this section, shall not restrict in any manner
12 the right of any person to purchase, possess, transfer, own, carry,
13 transport, sell or store any revolver, pistol, rifle or shotgun, or
14 any other firearm, or any ammunition or ammunition components to be
15 used therewith, or the keeping of gunpowder so as to directly or
16 indirectly prohibit the ownership of the ammunition, or, to
17 restrict in any manner the right of any person to purchase,
18 possess, transfer, own, carry, transport, sell or store any other
19 firearm accessory or accoutrement, under any order, ordinance or
20 rule promulgated or enforced by the municipality. This subsection
21 may not be construed to prevent any law enforcement official with
22 appropriate authority from enforcing any statute enacted by the
23 state.~~

~~24 (B) The authority of a municipality to regulate firearms,~~

1 ~~ammunition or firearm accessories may not be inferred from its~~
2 ~~proprietary authority, home rule status or any other inherent or~~
3 ~~general power.~~

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

7 ~~— (4) Applicability and effective dates. --~~

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

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

23 **§8-12-5a. Limitations upon municipalities' power to restrict the**
24 **purchase, possession, transfer, ownership, carrying,**

1 **transport, sale and storage of certain weapons and**
2 **ammunition.**

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

12 ~~Nothing herein shall in any way~~

13 (b) This section does not:

14 (1) Impair the authority of any municipality, or the governing
15 body thereof, to enact any ordinance or resolution respecting the
16 power to arrest, convict and punish any individual under the
17 provisions of subdivision (16), section five of this article or
18 from enforcing any such ordinance or resolution; ~~Provided, That any~~
19 ~~municipal ordinance in place as of the effective date of this~~
20 ~~section shall be excepted from the provisions of this section:~~
21 ~~Provided, however, That no provision in this section may be~~
22 ~~construed to~~

23 (2) Impair the authority of municipalities to restrict and
24 regulate the carrying or possessing of a firearm in municipally

1 owned or operated buildings or on municipally owned or operated
2 property. A person may keep a firearm in his or her motor vehicle
3 in municipal public parking facilities if the vehicle is locked and
4 the firearm is out of view: *Provided,* That nothing in this
5 subdivision may be construed to authorize municipalities to
6 restrict the carrying or possessing of firearms, which are
7 otherwise lawfully possessed, on public streets and sidewalks of
8 the municipality except when a street or a sidewalk is closed to
9 motor vehicle or pedestrian traffic for purposes of a municipally
10 authorized event; or

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