

Senate Bill No. 290

(By Senator Carmichael)

[Introduced January 8, 2014; referred to the Committee on
Government Organization; and then to the Committee on the
Judiciary.]

A BILL to amend and reenact §8-1-5a of the Code of West Virginia,
1931, as amended, relating to extending indefinitely the
duration of the Municipal Home Rule Pilot Program; and making
all municipalities eligible to participate in the Municipal
Home Rule 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.

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

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

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

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

11 (4) Municipalities still face challenges delivering services
12 required by federal and state law or demanded by their
13 constituents;

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

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

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

22 (b) *Continuance of pilot program.* -- The Municipal Home Rule
23 Pilot Program is continued ~~until July 1, 2019~~ indefinitely. The
24 ordinances enacted by the four participating municipalities

1 pursuant to the initial Municipal Home Rule Pilot Program are
2 ~~hereby~~ authorized and may remain in effect until the ordinances are
3 repealed, but are ~~null and void~~ if amended and ~~such~~ the amendment
4 is not approved by the Municipal Home Rule Board: *Provided*, That
5 any ordinance enacting a municipal occupation tax is ~~hereby null~~
6 ~~and void~~.

7 (c) *Authorizing participation.* --

8 (1) ~~Commencing July 1, 2013 twenty Class I, Class II, Class~~
9 ~~III and/or Class IV municipalities~~ 2014, any municipality that ~~are~~
10 is current in payment of all state fees may participate in the
11 Municipal Home Rule Pilot Program pursuant to the provisions of
12 this section.

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

18 (3) If any of the four municipalities participating in the
19 pilot program on July 1, 2012, do not want to participate in the
20 pilot program, then on or before June 1, 2014, the municipality
21 ~~must~~ shall submit a written letter to the board indicating the
22 municipality's intent not to participate and the board may choose
23 another municipality to fill the vacancy: *Provided*, That if a
24 municipality chooses not to participate further in the pilot

1 program, its ordinances enacted pursuant to the Municipal Home Rule
2 Pilot Program are ~~hereby~~ authorized and may remain in effect until
3 the ordinances are repealed, but are ~~null and~~ void if amended:
4 *Provided, however,* That any ordinance enacting a municipal
5 occupation tax is ~~null and~~ void.

6 (d) *Municipal Home Rule Board.* -- The Municipal Home Rule
7 Board is ~~hereby~~ continued. The board members serving on the board
8 on July 1, 2012, may continue to serve, except that the chair of
9 the Senate Committee on Government Organization and the chair of
10 the House Committee on Government Organization ~~shall be~~ are ex
11 officio nonvoting members. Effective July 1, ~~2013~~ 2014, the
12 Municipal Home Rule Board ~~shall consist~~ consists of the following
13 five voting members:

14 (1) The Governor, or a designee, who ~~shall serve~~ serves as
15 chair;

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

18 (3) One member representing the Business and Industry Council,
19 appointed by the Governor with the advice and consent of the
20 Senate;

21 (4) One member representing the largest labor organization in
22 the state, appointed by the Governor with the advice and consent of
23 the Senate; and

24 (5) One member representing the West Virginia Chapter of

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

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

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

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

12 ~~(3)~~ (2) Review, evaluate, make recommendations and approve or
13 reject, by a majority vote of the board, the amendments to the
14 written plans submitted by municipalities;

15 ~~(4)~~ (3) Approve or reject, by a majority vote of the board,
16 each ordinance submitted by a participating municipality pursuant
17 to its written plan or its amendments to the written plan;

18 ~~(5)~~ (4) Consult with any agency affected by the written plans
19 or the amendments to the written plans; and

20 ~~(6)~~ (5) Perform any other powers or duties necessary to
21 effectuate the provisions of this section.

22 (f) *Written plan.* -- On or before June 1 2014, ~~a Class I,~~
23 ~~Class II, Class III or Class IV~~ of each year, any municipality
24 desiring to participate in the Municipal Home Rule Pilot Program

1 shall submit a written plan to the board stating in detail the
2 following:

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

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

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

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

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

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

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

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

23 (4) After the public hearing, adopt an ordinance authorizing
24 the municipality to submit a written plan to the Municipal Home

1 Rule Board after the proposed ordinance has been read two times.

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

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

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

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

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

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

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

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

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

9 (1) Environmental law;

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

11 (3) ~~The Freedom of Information Act~~ Article one, chapter
12 twenty-nine-b of this code;

13 (4) ~~The Open Governmental Proceedings Act~~ Article nine-a,
14 chapter six of this code;

15 (5) Wages for construction of public improvements;

16 (6) The provisions of this section; and

17 (7) The municipality's written plan.

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

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

23 (2) Federal law or crimes and punishment;

24 (3) Chapters sixty-a, sixty-one and sixty-two of this code or

1 state crimes and punishment;

2 (4) Pensions or retirement plans;

3 (5) Annexation;

4 (6) Taxation: *Provided*, That a participating municipality may
5 enact a municipal sales tax up to one percent if it reduces or
6 eliminates its municipal business and occupation tax: *Provided*,
7 *however*, That if a municipality subsequently reinstates or raises
8 the municipal business and occupation tax it previously reduced or
9 eliminated under the Municipal Home Rule Pilot Program, it shall
10 eliminate the municipal sales tax enacted under the Municipal Home
11 Rule Pilot Program: *Provided further*, That any municipality that
12 imposes a municipal sales tax pursuant to this section shall use
13 the services of the Tax Commissioner to administer, enforce and
14 collect the tax in the same manner as the state consumers sales and
15 service tax and use tax under the provisions of articles fifteen,
16 fifteen-a and fifteen-b, chapter eleven of this code and all
17 applicable provisions of the streamlined sales and use tax
18 agreement: *And provided further*, That ~~such~~ the tax ~~will~~ does not
19 apply to the sale of motor fuel or motor vehicles;

20 (7) Tax increment financing;

21 (8) Extraction of natural resources;

22 (9) Persons or property outside the boundaries of the
23 municipality: *Provided*, That this prohibition under the Municipal
24 Home Rule Pilot Program does not affect a municipality's powers

1 outside its boundary lines under other sections of this chapter,
2 other chapters of this code or court decisions;

3 (10) Marriage and divorce laws;

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

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

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

17 (m) *Reporting requirements*. -- Commencing December 1, 2015,
18 and each year ~~thereafter~~ after that, each participating
19 municipality shall give a progress report to the Municipal Home
20 Rule Board and commencing January 1, 2016, and each year ~~thereafter~~
21 after that, the Municipal Home Rule Board shall give a summary
22 report of all the participating municipalities to the Joint
23 Committee on Government 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 additional legislation
 10 is 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 If the Municipal Home Rule Pilot Program terminates,~~
 17 ~~ordinance, any act, resolution, rule or regulation enacted by a~~
 18 ~~participating municipality under the provisions of this section~~
 19 ~~during the period of the Municipal Home Rule Pilot Program shall~~
 20 ~~continue in full force and effect until repealed, but is null and~~
 21 ~~void if it is amended and ~~such~~ the amendment is not approved by the~~
 22 ~~Municipal Home Rule Board.~~

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

24 (1) ~~The Class I, Class II, Class III and/or Class IV~~

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

9 (2) *Definitions.* --

10 As used in this subsection:

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

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

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

23 (3) *General rule.* --

24 (A) Notwithstanding any other provision of this code to the

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

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

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

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

24 Ninety days after a new municipality has ~~been selected by the~~

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

NOTE: The purpose of this bill is to extend indefinitely the duration of the Municipal Home Rule Pilot Program, and to expand eligibility for the program to all municipalities that are current in payment of all state fees.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.