

July 1, 2013

1 Delegate Morgan, from the Committee on Conference on matters
2 of disagreement between the two houses, as to

3 **Com. Sub. for S. B. 435**, Continuing Municipal Home Rule Pilot
4 Program,

5 Submitted the following report, which was received:

6 Your Committee of Conference on the disagreeing votes of the
7 two houses as to the amendments of the House to Com. Sub. for S. B.
8 435 having met, after full and free conference, have agreed to
9 recommend and do recommend to their respective houses as follows:

10 That both houses recede from their respective positions as to
11 amendments of the House striking out everything following the
12 enacting section and inserting new language, and agree to the same
13 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

1 statutes;

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

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

8 (4) Municipalities still face challenges delivering services
9 required by federal and state law, or demanded by their
10 constituents;

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

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

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

19 (b) *Continuance of pilot program.* -- The Municipal Home Rule
20 Pilot Program is continued until July 1, 2019. The ordinances
21 enacted by the four participating municipalities pursuant to the
22 initial Municipal Home Rule Pilot Program are hereby authorized and
23 may remain in effect until the ordinances are repealed, but are
24 null and void if amended and such amendment is not approved by the

1 Municipal Home Rule Board: *Provided*, That any ordinance enacting
2 a Municipal Occupation tax is hereby null and void.

3 (c) *Authorizing participation.*

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

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

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

24 (d) *Municipal Home Rule Board.* -- The Municipal Home Rule

1 Board is hereby continued. The board members serving on the board
2 on July 1, 2012, may continue to serve, except that the chair of
3 the Senate Committee on Government Organization and the chair of
4 the House Committee on Government Organization shall be ex officio
5 nonvoting members. Effective July 1, 2013, the Municipal Home Rule
6 Board shall consist of the following five voting members:

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

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

10 (3) One member representing the Business and Industry Council,
11 appointed by the Governor with the advice and consent of the
12 Senate;

13 (4) One member representing the largest labor organization in
14 the state, appointed by the Governor with the advice and consent of
15 the Senate; and

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

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

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

24 (2) By a majority vote of the board, select, based on the

1 municipality's written plan, new Class I, Class II, Class III
2 and/or Class IV municipalities to participate in the Municipal Home
3 Rule Pilot Program;

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

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

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

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

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

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

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

23 (3) The proposed solutions to the problems, including all
24 proposed changes to ordinances, acts, resolutions, rules and

1 regulations: *Provided*, That the specific municipal ordinance
2 instituting the solution does not have to be included in the
3 written plan; and

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

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

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

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

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

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

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

23 (i) *Ordinance, act, resolution, rule or regulation.* -- After
24 being selected to participate in the Municipal Home Rule Pilot

1 Program and prior to enacting an ordinance, act, resolution, rule
2 or regulation based on the written plan, the municipality shall:

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

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

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

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

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

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

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

23 (1) Environmental law;

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

- 1 (3) The Freedom of Information Act;
- 2 (4) The Open Governmental Proceedings Act;
- 3 (5) Wages for construction of public improvements;
- 4 (6) The provisions of this section; and
- 5 (7) The municipality's written plan.

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

- 10 (1) The Constitutions of the United States or West Virginia;
- 11 (2) Federal law, or crimes and punishment;
- 12 (3) Chapters sixty-a, sixty-one and sixty-two of this code, or
13 state crimes and punishment;
- 14 (4) Pensions or retirement plans;
- 15 (5) Annexation;
- 16 (6) Taxation: *Provided*, That a participating municipality may
17 enact a municipal sales tax up to one percent if it reduces or
18 eliminates its municipal business and occupation tax: *Provided*,
19 *however*, That if a municipality subsequently reinstates or raises
20 the municipal business and occupation tax it previously reduced or
21 eliminated under the Municipal Home Rule Pilot Program, it shall
22 eliminate the municipal sales tax enacted under the Municipal Home
23 Rule Pilot Program: *Provided, further*, That any municipality that
24 imposes a municipal sales tax pursuant to this section shall use

1 the services of the Tax Commissioner to administer, enforce and
2 collect the tax in the same manner as the state consumers sales and
3 service tax and use tax under the provisions of articles fifteen,
4 fifteen-a and fifteen-b, chapter eleven of this code and all
5 applicable provisions of the streamlined sales and use tax
6 agreement: *And provided, further,* That such tax will not apply to
7 the sale of motor fuel or motor vehicles;

8 (7) Tax increment financing;

9 (8) Extraction of natural resources;

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

15 (10) Marriage and divorce laws;

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

24 (12) An occupation tax, fee or assessment payable by a non-

1 resident of a municipality.

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

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

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

17 (1) An evaluation of the effectiveness of expanded home rule
18 on the participating municipalities;

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

21 (3) A recommendation as to whether any legislation is
22 necessary; and

23 (4) Any other issues considered relevant.

24 (o) *Termination of the pilot program.* -- The Municipal Home

1 Rule Pilot Program terminates on July 1, 2019. No ordinance, act,
2 resolution, rule or regulation may be enacted by a participating
3 municipality after July 1, 2019, pursuant to the provisions of this
4 section. An ordinance, act, resolution, rule or regulation enacted
5 by a participating municipality under the provisions of this
6 section during the period of the Municipal Home Rule Pilot Program
7 shall continue in full force and effect until repealed, but is null
8 and void if it is amended and such amendment is not approved by the
9 Municipal Home Rule Board.

10 (p) *Additional requirements for participation.*

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

20 (2) *Definitions.*

21 As used in this subsection:

22 (A) 'Ammunition' means fixed cartridge ammunition, shotgun
23 shells, the individual components of fixed cartridge ammunition and
24 shotgun shells, projectiles for muzzle-loading firearms and any

1 propellant used in firearms or ammunition.

2 (B) 'Firearm accessory' means a device specifically designed
3 or adapted to enable the wearing or carrying about one's person, or
4 the storage or mounting in or on a conveyance, of a firearm, or an
5 attachment or device specifically designed or adapted to be
6 inserted into or affixed onto a firearm to enable, alter or improve
7 the functioning or capabilities of the firearm.

8 (C) 'Firearm' has the same meaning as in section two, article
9 seven of chapter sixty-one.

10 (3) *General rule.*

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

1 appropriate authority from enforcing any statute enacted by the
2 state.

3 (B) The authority of a municipality to regulate firearms,
4 ammunition, or firearm accessories may not be inferred from its
5 proprietary authority, home rule status or any other inherent or
6 general power.

7 (C) Any existing or future orders, ordinances, or rules
8 promulgated or enforced in violation of this subsection are null
9 and void.

10 (4) *Applicability and effective dates.*

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

23 And,

24 That both houses recede from their respective positions as to

1 the title of the bill and agree to a new title as follows:

2 **Com. Sub. for S. B. 435** - "A BILL to amend and reenact §8-1-5a
3 of the Code of West Virginia, 1931, as amended, relating to
4 continuing the Municipal Home Rule Pilot Program; continuing the
5 Municipal Home Rule Pilot Program; continuing the Municipal Home
6 Rule Board; setting forth legislative findings; authorizing Class
7 I, II, III and IV municipalities to participate in the program;
8 clarifying the voting privileges of members of the Municipal Home
9 Rule Board; clarifying the powers and duties of the board;
10 establishing written plan requirements for municipalities;
11 establishing requirements for the adoption of ordinances; requiring
12 public hearings; setting forth powers and duties of the
13 participating municipalities; prohibiting certain acts by
14 participating municipalities; providing the opportunity for
15 participating municipalities to withdraw from the program;
16 providing for amendments to the written plan; requiring a
17 performance review of the pilot program; establishing reporting
18 requirements; validating the continuance of certain ordinances
19 passed by the municipalities participating in the pilot program;
20 prohibiting municipalities participating in the pilot program from
21 restricting the right of any person to purchase, possess, transfer,
22 own, carry, transport, sell or store any firearm, firearm accessory
23 or accouterment, or any ammunition or ammunition component;
24 providing limited exceptions to the firearms prohibition; providing

1 for applicability and effective dates of prohibition; and
2 establishing a termination date of the pilot program.”

Respectfully submitted,

HERB SNYDER

JIM MORGAN

RONALD MILLER

RANDY SWARTZMILLER

TOM AZINGER

DONNA BOLEY