

H. B. 4308

(By Delegates Folk, Hunt, Shott, Perry,
Householder, Eldridge, Kump, Faircloth,
Hartman, Butler and Cadle)

[Introduced January 24, 2014; referred to the Committee on Government Organization then the Judiciary.]

10 A BILL to amend and reenact §8-1-5a of the Code of West Virginia,
11 1931, as amended, relating to the Municipal Home Rule Pilot
12 Program; providing that attempted enforcement of formerly
13 valid firearms provisions nullified by the home rule pilot
14 program is a misdemeanor; and providing fines for violations.

15 Be it enacted by the Legislature of West Virginia:

16 That §8-1-5a of the Code of West Virginia, 1931, as amended,
17 be amended and reenacted to read as follows:

18 ARTICLE 1. PURPOSE AND SHORT TITLE; DEFINITIONS; GENERAL
19 PROVISIONS: CONSTRUCTION

PART TTT

GENERAL PROVISIONS

22 §8-1-5a. Municipal Home Rule Pilot Program.

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

25 (1) The initial Municipal Home Rule Pilot Program brought

1 innovative results, including novel municipal ideas that became
2 municipal ordinances which later resulted in new statewide
3 statutes;

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

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

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

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

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

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

21 (b) *Continuance of pilot program.* -- The Municipal Home Rule
22 Pilot Program is continued until July 1, 2019. The ordinances
23 enacted by the four participating municipalities pursuant to the
24 initial Municipal Home Rule Pilot Program are hereby authorized and

1 may remain in effect until the ordinances are repealed, but are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

5 (c) *Authorizing participation.* --

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

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

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

1 occupation tax is null and void.

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

9 (1) The Governor, or a designee, who shall serve as chair;
10 (2) The Executive Director of the West Virginia Development
11 Office or a designee;

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

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

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

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

23 (1) Review, evaluate, make recommendations and approve or
24 reject, by a majority vote of the board, each aspect of the written

1 plan submitted by a municipality;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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 proposed ordinance, act, resolution,
10 rule or regulation available for public inspection at least thirty
11 days prior to the public hearing;

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

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

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

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

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

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

- 12 (1) The Constitutions of the United States or West Virginia;
- 13 (2) Federal law or crimes and punishment;
- 14 (3) Chapters sixty-a, sixty-one and sixty-two of this code or
15 state crimes and punishment;
- 16 (4) Pensions or retirement plans;
- 17 (5) Annexation;

18 (6) Taxation: *Provided,* That a participating municipality may
19 enact a municipal sales tax up to one percent if it reduces or
20 eliminates its municipal business and occupation tax: *Provided,*
21 *however,* That if a municipality subsequently reinstates or raises
22 the municipal business and occupation tax it previously reduced or
23 eliminated under the Municipal Home Rule Pilot Program, it shall
24 eliminate the municipal sales tax enacted under the Municipal Home

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

10 (7) Tax increment financing;

11 (8) Extraction of natural resources;

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

17 (10) Marriage and divorce laws;

18 (11) Restricting the carrying of a firearm, as that term is
19 defined in section two, article seven, chapter sixty-one of this
20 code: *Provided,* That, notwithstanding the provisions of subsection
21 (p) of this section, municipalities may regulate the carrying of a
22 firearm in municipal buildings dedicated to government operations,
23 other than parking buildings or garages: *Provided, however,* That
24 on other municipal property, municipalities may regulate only those

1 persons not licensed to carry a concealed firearm; and

2 (12) An occupation tax, fee or assessment payable by a
3 nonresident of a municipality.

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

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

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

19 (1) An evaluation of the effectiveness of expanded home rule
20 on the participating municipalities;

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

23 (3) A recommendation as to whether any legislation is
24 necessary; and

1 (4) Any other issues considered relevant.

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

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

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

22 (2) *Definitions.* --

23 As used in this subsection:

24 (A) "Ammunition" means fixed cartridge ammunition, shotgun

1 shells, the individual components of fixed cartridge ammunition and
2 shotgun shells, projectiles for muzzle-loading firearms and any
3 propellant used in firearms or ammunition.

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

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

12 (3) *General rule.* --

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

1 rule promulgated or enforced by the municipality. This subsection
2 may not be construed to prevent any law enforcement official with
3 appropriate authority from enforcing any statute enacted by the
4 state.

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

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

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

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

24 After July 1, 2014, if any official of any municipality

1 participating in this program enforces, attempts to enforce,
2 orders or influences officers of the municipality to enforce the
3 municipal gun ordinances determined null and void in subsection
4 (p) of this section, that official is guilty of a misdemeanor and,
5 upon conviction, shall be fined \$500 for each day the official
6 continues to maintain that the ordinances are valid and by an
7 additional fine of \$500 for each occurrence upon which officers of
8 the municipality attempted to enforce these ordinances.

NOTE: The purpose of this bill is to provide that attempted enforcement of formerly valid firearms provisions determined null and void by this section is a misdemeanor. The bill provides fines for violations.

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