

SB 435

**WEST VIRGINIA LEGISLATURE**  
**EIGHTY-FIRST LEGISLATURE**  
**REGULAR SESSION, 2013**



**ENROLLED**

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 435**

(SENATORS SNYDER, MILLER, KESSLER (MR. PRESIDENT),  
JENKINS, YOST, STOLLINGS, PLYMALE, McCABE, FITZSIMMONS,  
PALUMBO AND BEACH, *ORIGINAL SPONSORS*)

[PASSED APRIL 13, 2013; TO TAKE EFFECT JULY 1, 2013.]

2013 MAY -3 PM 4:27  
SECRETARY OF STATE

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**E N R O L L E D**  
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**Senate Bill No. 435**

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PALUMBO AND BEACH, *original sponsors*)

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[Passed April 13, 2013; to take effect July 1, 2013.]

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**AN ACT to amend and reenact §8-1-5a of the Code of West Virginia, 1931, as amended, relating to continuing the Municipal Home Rule Pilot Program; continuing the Municipal Home Rule Pilot Program; continuing the Municipal Home Rule Board; setting forth legislative findings; authorizing Class I, II, III and IV municipalities to participate in the program; clarifying the voting privileges of members of the Municipal Home Rule Board; clarifying the powers and duties of the board; establishing written plan requirements for municipalities; establishing requirements for the adoption of ordinances; requiring public hearings; setting forth powers and duties of the participating municipalities; prohibiting certain acts by participating municipalities; providing the opportunity for participating municipalities to withdraw from the program; providing for amendments to the written plan; requiring a performance review of the pilot program; establishing reporting requirements; validating the continuance of certain ordinances passed by the municipalities participating in the pilot program; prohibiting municipalities participating in the pilot program from restricting the right of any person to purchase, possess,**

transfer, own, carry, transport, sell or store any firearm, firearm accessory or accouterment, or any ammunition or ammunition component; providing limited exceptions to the firearms prohibition; providing for applicability and effective dates of prohibition; and establishing a termination date of the 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 I. PURPOSE AND SHORT TITLE; DEFINITIONS;  
GENERAL PROVISIONS; CONSTRUCTION.**

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

1           (a) *Legislative findings.* – The Legislature finds and  
2 declares that:

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

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

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

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

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

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

22           (7) Increasing the powers and duties of the Municipal  
23 Home Rule Board will enhance the Municipal Home Rule  
24 Pilot Program.

25           (b) *Continuance of pilot program.* – The Municipal Home  
26 Rule Pilot Program is continued until July 1, 2019. The  
27 ordinances enacted by the four participating municipalities  
28 pursuant to the initial Municipal Home Rule Pilot Program  
29 are hereby authorized and may remain in effect until the  
30 ordinances are repealed, but are null and void if amended and  
31 such amendment is not approved by the Municipal Home  
32 Rule Board: *Provided*, That any ordinance enacting a  
33 municipal occupation tax is hereby null and void.

34           (c) *Authorizing participation.* –

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

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

45           (3) If any of the four municipalities participating in the  
46 pilot program on July 1, 2012, do not want to participate in  
47 the pilot program, then on or before June 1, 2014, the  
48 municipality must submit a written letter to the board  
49 indicating the municipality's intent not to participate and the  
50 board may choose another municipality to fill the vacancy:  
51 *Provided*, That if a municipality chooses not to participate  
52 further in the pilot program, its ordinances enacted pursuant  
53 to the Municipal Home Rule Pilot Program are hereby  
54 authorized and may remain in effect until the ordinances are  
55 repealed, but are null and void if amended: *Provided*,  
56 *however*, That any ordinance enacting a municipal  
57 occupation tax is null and void.

58           (d) *Municipal Home Rule Board.* – The Municipal Home  
59 Rule Board is hereby continued. The board members serving  
60 on the board on July 1, 2012, may continue to serve, except  
61 that the chair of the Senate Committee on Government  
62 Organization and the chair of the House Committee on  
63 Government Organization shall be ex officio nonvoting  
64 members. Effective July 1, 2013, the Municipal Home Rule  
65 Board shall consist of the following five voting members:

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

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

69           (3) One member representing the Business and Industry  
70 Council, appointed by the Governor with the advice and  
71 consent of the Senate;

72           (4) One member representing the largest labor  
73 organization in the state, appointed by the Governor with the  
74 advice and consent of the Senate; and

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

78 (c) *Board's powers and duties.* – The Municipal Home  
79 Rule Board has the following powers and duties:

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

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

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

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

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

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

98 (f) *Written plan.* – On or before June 1, 2014, a Class I,  
99 Class II, Class III or Class IV municipality desiring to  
100 participate in the Municipal Home Rule Pilot Program shall  
101 submit a written plan to the board stating in detail the  
102 following:

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

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

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

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

117           (g) *Public hearing on written plan.* – Prior to submitting  
118 its written plan to the board, the municipality shall:

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

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

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

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

128           (h) *Selection of municipalities.* – On or after June 1,  
129 2014, by a majority vote, the Municipal Home Rule Board  
130 may select from the municipalities that submitted written

131 plans and were approved by the board by majority vote, new  
132 Class I, Class II, Class III and/or Class IV municipalities to  
133 participate in the Municipal Home Rule Pilot Program.

134 (i) *Ordinance, act, resolution, rule or regulation.* – After  
135 being selected to participate in the Municipal Home Rule  
136 Pilot Program and prior to enacting an ordinance, act,  
137 resolution, rule or regulation based on the written plan, the  
138 municipality shall:

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

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

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

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

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

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

154 (j) *Powers and duties of Municipalities.* – The  
155 municipalities participating in the Municipal Home Rule Pilot  
156 Program have the authority to pass an ordinance, act,  
157 resolution, rule or regulation, under the provisions of this  
158 section, that is not contrary to:



- 159 (1) Environmental law;
- 160 (2) Bidding on government construction and other  
161 contracts;
- 162 (3) The Freedom of Information Act;
- 163 (4) The Open Governmental Proceedings Act;
- 164 (5) Wages for construction of public improvements;
- 165 (6) The provisions of this section; and
- 166 (7) The municipality's written plan.
- 167 (k) *Prohibited acts.* – The municipalities participating in  
168 the Municipal Home Rule Pilot Program do not have the  
169 authority to pass an ordinance, act, resolution, rule or  
170 regulation, under the provisions of this section, pertaining to:
- 171 (1) The Constitutions of the United States or West  
172 Virginia;
- 173 (2) Federal law or crimes and punishment;
- 174 (3) Chapters sixty-a, sixty-one and sixty-two of this code  
175 or state crimes and punishment;
- 176 (4) Pensions or retirement plans;
- 177 (5) Annexation;
- 178 (6) Taxation: *Provided*, That a participating municipality  
179 may enact a municipal sales tax up to one percent if it reduces  
180 or eliminates its municipal business and occupation tax:  
181 *Provided, however*, That if a municipality subsequently  
182 reinstates or raises the municipal business and occupation tax

183 it previously reduced or eliminated under the Municipal  
184 Home Rule Pilot Program, it shall eliminate the municipal  
185 sales tax enacted under the Municipal Home Rule Pilot  
186 Program: *Provided further*, That any municipality that  
187 imposes a municipal sales tax pursuant to this section shall  
188 use the services of the Tax Commissioner to administer,  
189 enforce and collect the tax in the same manner as the state  
190 consumers sales and service tax and use tax under the  
191 provisions of articles fifteen, fifteen-a and fifteen-b, chapter  
192 eleven of this code and all applicable provisions of the  
193 streamlined sales and use tax agreement: *And provided*  
194 *further*, That such tax will not apply to the sale of motor fuel  
195 or motor vehicles;

196 (7) Tax increment financing;

197 (8) Extraction of natural resources;

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

204 (10) Marriage and divorce laws;

205 (11) Restricting the carrying of a firearm, as that term is  
206 defined in section two, article seven, chapter sixty-one of this  
207 code: *Provided*, That, notwithstanding the provisions of  
208 subsection (p) of this section, municipalities may regulate the  
209 carrying of a firearm in municipal buildings dedicated to  
210 government operations, other than parking buildings or  
211 garages: *Provided, however*, That on other municipal  
212 property, municipalities may regulate only those persons not  
213 licensed to carry a concealed firearm; and

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

216 (l) *Amendments to written plans.* – A municipality  
217 selected to participate in the Municipal Home Rule Pilot  
218 Program may amend its written plan at any time.

219 (m) *Reporting requirements.* – Commencing December  
220 1, 2015, and each year thereafter, each participating  
221 municipality shall give a progress report to the Municipal  
222 Home Rule Board and commencing January 1, 2016, and  
223 each year thereafter, the Municipal Home Rule Board shall  
224 give a summary report of all the participating municipalities  
225 to the Joint Committee on Government and Finance.

226 (n) *Performance Evaluation and Review Division review.*  
227 –Before January 1, 2019, the Performance Evaluation and  
228 Review Division of the Legislative Auditor’s office shall  
229 conduct a performance review on the pilot program and the  
230 participating municipalities. The review shall include the  
231 following:

232 (1) An evaluation of the effectiveness of expanded home  
233 rule on the participating municipalities;

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

236 (3) A recommendation as to whether any legislation is  
237 necessary; and

238 (4) Any other issues considered relevant.

239 (o) *Termination of the pilot program.* – The Municipal  
240 Home Rule Pilot Program terminates on July 1, 2019. No  
241 ordinance, act, resolution, rule or regulation may be enacted  
242 by a participating municipality after July 1, 2019, pursuant to

243 the provisions of this section. An ordinance, act, resolution,  
244 rule or regulation enacted by a participating municipality  
245 under the provisions of this section during the period of the  
246 Municipal Home Rule Pilot Program shall continue in full  
247 force and effect until repealed, but is null and void if it is  
248 amended and such amendment is not approved by the  
249 Municipal Home Rule Board.

250 (p) *Additional requirements for participation.* –

251 (1) The Class I, Class II, Class III and/or Class IV  
252 municipalities that wish to participate in the Municipal Home  
253 Rule Pilot Program, pursuant to the provisions of this section,  
254 must agree to the requirements set forth in this subsection  
255 concerning regulation of firearms, ammunition and firearm  
256 accessories: *Provided*, That if the four municipalities  
257 participating in the pilot program on July 1, 2012, wish to  
258 continue in the pilot program then those municipalities must  
259 also agree to comply with the requirements of this subsection.

260 (2) *Definitions.* –

261 As used in this subsection:

262 (A) “Ammunition” means fixed cartridge ammunition,  
263 shotgun shells, the individual components of fixed cartridge  
264 ammunition and shotgun shells, projectiles for  
265 muzzle-loading firearms and any propellant used in firearms  
266 or ammunition.

267 (B) “Firearm accessory” means a device specifically  
268 designed or adapted to enable the wearing or carrying about  
269 one’s person, or the storage or mounting in or on a  
270 conveyance, of a firearm, or an attachment or device  
271 specifically designed or adapted to be inserted into or affixed  
272 onto a firearm to enable, alter or improve the functioning or  
273 capabilities of the firearm.

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

276 (3) *General rule.* –

277 (A) Notwithstanding any other provision of this code to  
278 the contrary, except as otherwise provided in this section,  
279 municipalities participating in the Municipal Home Rule Pilot  
280 Program, pursuant to this section, shall not restrict in any  
281 manner the right of any person to purchase, possess, transfer,  
282 own, carry, transport, sell or store any revolver, pistol, rifle  
283 or shotgun, or any other firearm, or any ammunition or  
284 ammunition components to be used therewith, or the keeping  
285 of gunpowder so as to directly or indirectly prohibit the  
286 ownership of the ammunition, or, to restrict in any manner  
287 the right of any person to purchase, possess, transfer, own,  
288 carry, transport, sell or store any other firearm accessory or  
289 accouterment, under any order, ordinance or rule  
290 promulgated or enforced by the municipality. This subsection  
291 may not be construed to prevent any law enforcement official  
292 with appropriate authority from enforcing any statute enacted  
293 by the state.

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

298 (C) Any existing or future orders, ordinances or rules  
299 promulgated or enforced in violation of this subsection are  
300 null and void.

301 (4) *Applicability and effective dates.* –

302 Ninety days after a new municipality has been selected by  
303 the Board to participate in the pilot program, or a previously  
304 participating municipality has chosen to continue to

305 participate in the pilot program, any municipal gun  
306 ordinances previously authorized by the provisions of section  
307 five-a, article twelve of this chapter shall no longer be of any  
308 force or effect for any municipality participating in this  
309 program to the extent they are in conflict with the provisions  
310 of this subsection: *Provided*, That no provision in this  
311 subsection may be construed to limit the authority of a  
312 municipality to restrict the commercial use of real estate in  
313 designated areas through planning or zoning ordinances.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*Rocky Fieber*  
.....  
Member ~~Chairman~~ Senate Committee

*Danny Wells*  
.....  
Chairman House Committee

Originated in the Senate.

To take effect July 1, 2013.

*Joseph M. Minard*  
.....  
Clerk of the Senate

*Gregg D. Scott*  
.....  
Clerk of the House of Delegates

*Jeffrey D. Cook*  
.....  
President of the Senate

*Robert L. Taylor*  
.....  
Speaker of the House of Delegates

2013 MAY -3 PM 4:27  
FILED  
SEN. CLERK OF SENATE

The within *is approved* ..... this the *3rd*  
Day of *May* ....., 2013.

*Earl Ray Tomblin*  
.....  
Governor

**PRESENTED TO THE GOVERNOR**

**APR 26 2013**

**Time** 10:30 am