

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

ENGROSSED

Committee Substitute

for

House Bill 3354

By Delegates Rowe, Hanshaw (Mr. Speaker), Foster

and Steele

[Originating in the Committee on the Judiciary;

Reported on February 24, 2023]

1 A BILL to amend and reenact §8-12-5 of the Code of West Virginia, 1931, as amended, relating to
2 the power and duties of municipalities; authorizing municipalities to combine operations
3 with other municipalities and counties to provide governmental services; removing
4 authority for regulation of keeping gunpowder and other combustibles; and clarifying that a
5 firearm violation is a violation of only state law.

Be it enacted by the Legislature of West Virginia:

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

§8-12-5. General powers of every municipality and the governing body thereof.

1 In addition to the powers and authority granted by: (i) The Constitution of this state; (ii)
2 other provisions of this chapter; (iii) other general law; and (iv) any charter, and to the extent not
3 inconsistent or in conflict with any of the foregoing except special legislative charters, every
4 municipality and the governing body thereof shall have plenary power and authority therein by
5 ordinance or resolution, as the case may require, and by appropriate action based thereon:

6 (1) To lay off, establish, construct, open, alter, curb, recurb, pave or repave and keep in
7 good repair, or vacate, discontinue and close, streets, avenues, roads, alleys, ways, sidewalks,
8 drains and gutters, for the use of the public, and to improve and light the same, and have them kept
9 free from obstructions on or over them which have not been authorized pursuant to the succeeding
10 provisions of this subdivision; and, subject to such terms and conditions as the governing body
11 shall prescribe, to permit, without in any way limiting the power and authority granted by the
12 provisions of article sixteen of this chapter, any person to construct and maintain a passageway,
13 building or other structure overhanging or crossing the airspace above a public street, avenue,
14 road, alley, way, sidewalk or crosswalk, but before any permission for any person to construct and
15 maintain a passageway, building or other structure overhanging or crossing any airspace is

16 granted, a public hearing thereon shall be held by the governing body after publication of a notice
17 of the date, time, place and purpose of the public hearing has been published as a Class I legal
18 advertisement in compliance with the provisions of article three, chapter fifty-nine of this code and
19 the publication area for the publication shall be the municipality: *Provided*, That any permit so
20 granted shall automatically cease and terminate in the event of abandonment and nonuse thereof
21 for the purposes intended for a period of ninety days, and all rights therein or thereto shall revert to
22 the municipality for its use and benefit;

23 (2) To provide for the opening and excavation of streets, avenues, roads, alleys, ways,
24 sidewalks, crosswalks and public places belonging to the municipality and regulate the conditions
25 under which any such opening may be made;

26 (3) To prevent by proper penalties the throwing, depositing or permitting to remain on any
27 street, avenue, road, alley, way, sidewalk, square or other public place any glass, scrap iron, nails,
28 tacks, wire, other litter or any offensive matter or anything likely to injure the feet of individuals or
29 animals or the tires of vehicles;

30 (4) To regulate the use of streets, avenues, roads, alleys, ways, sidewalks, crosswalks and
31 public places belonging to the municipality, including the naming or renaming thereof, and to
32 consult with local postal authorities, the Division of Highways and the directors of county
33 emergency communications centers to assure uniform, nonduplicative addressing on a
34 permanent basis;

35 (5) To regulate the width of streets, avenues and roads, and, subject to the provisions of
36 article eighteen of this chapter, to order the sidewalks, footways and crosswalks to be paved,
37 repaved, curbed or recurbed and kept in good order, free and clean, by the owners or occupants
38 thereof or of the real property next adjacent thereto;

39 (6) To establish, construct, alter, operate and maintain, or discontinue, bridges, tunnels and
40 ferries and approaches thereto;

41 (7) To provide for the construction and maintenance of water drains, the drainage of
42 swamps or marshlands and drainage systems;

43 (8) To provide for the construction, maintenance and covering over of watercourses;

44 (9) To control and administer the waterfront and waterways of the municipality and to
45 acquire, establish, construct, operate and maintain and regulate flood control works, wharves and
46 public landings, warehouses and all adjuncts and facilities for navigation and commerce and the
47 utilization of the waterfront and waterways and adjacent property;

48 (10) To prohibit the accumulation and require the disposal of garbage, refuse, debris,
49 wastes, ashes, trash and other similar accumulations whether on private or public property:
50 *Provided, That, in the event the municipality annexes an area which has been receiving solid*
51 *waste collection services from a certificated solid waste motor carrier, the municipality and the*
52 *solid waste motor carrier may negotiate an agreement for continuation of the private solid waste*
53 *motor carrier services for a period of time, not to exceed three years, during which time the*
54 *certificated solid waste motor carrier may continue to provide exclusive solid waste collection*
55 *services in the annexed territory;*

56 (11) To construct, establish, acquire, equip, maintain and operate incinerator plants and
57 equipment and all other facilities for the efficient removal and destruction of garbage, refuse,
58 wastes, ashes, trash and other similar matters;

59 (12) To regulate or prohibit the purchase or sale of articles intended for human use or
60 consumption which are unfit for use or consumption, or which may be contaminated or otherwise
61 unsanitary;

62 (13) To prevent injury or annoyance to the public or individuals from anything dangerous,
63 offensive or unwholesome;

64 ~~(14) To regulate the keeping of gunpowder and other combustibles;~~

65 ~~(15)~~(14) To make regulations guarding against danger or damage by fire;

66 ~~(16)~~(15) To arrest, convict and punish any individual for carrying about his or her person
67 any revolver or other pistol, dirk, bowie knife, razor, slingshot, billy, metallic or other false knuckles
68 or any other dangerous or other deadly weapon of like kind or character: *Provided*, That with
69 respect to any firearm a municipality may only arrest, convict and punish someone if they are in
70 violation of ~~an ordinance authorized by subsection five-a of this article~~, a state law proscribing
71 certain conduct with a firearm ~~or applicable federal law~~;

72 ~~(17)~~(16) To arrest, convict and punish any person for importing, printing, publishing, selling
73 or distributing any pornographic publications;

74 ~~(18)~~(17) To arrest, convict and punish any person for keeping a house of ill fame, or for
75 letting to another person any house or other building for the purpose of being used or kept as a
76 house of ill fame, or for knowingly permitting any house owned by him or her or under his or her
77 control to be kept or used as a house of ill fame, or for loafing, boarding or loitering in a house of ill
78 fame, or frequenting same;

79 ~~(19)~~(18) To prevent and suppress conduct and practices which are immoral, disorderly,
80 lewd, obscene and indecent;

81 ~~(20)~~(19) To prevent the illegal sale of intoxicating liquors, drinks, mixtures and
82 preparations;

83 ~~(21)~~(20) To arrest, convict and punish any individual for driving or operating a motor vehicle
84 while intoxicated or under the influence of liquor, drugs or narcotics;

85 ~~(22)~~(21) To arrest, convict and punish any person for gambling or keeping any gaming
86 tables, commonly called "A, B, C," or "E, O," table or faro bank or keno table, or table of like kind,
87 under any denomination, whether the gaming table be played with cards, dice or otherwise, or any
88 person who shall be a partner or concerned in interest, in keeping or exhibiting the table or bank, or
89 keeping or maintaining any gaming house or place, or betting or gambling for money or anything of
90 value;

91 ~~(23)~~(22) To provide for the elimination of hazards to public health and safety and to abate
92 or cause to be abated anything which in the opinion of a majority of the governing body is a public
93 nuisance;

94 ~~(24)~~(23) To license, or for good cause to refuse to license in a particular case, or in its
95 discretion to prohibit in all cases, the operation of pool and billiard rooms and the maintaining for
96 hire of pool and billiard tables notwithstanding the general law as to state licenses for any such
97 business and the provisions of section four, article thirteen of this chapter; and when the
98 municipality, in the exercise of its discretion, refuses to grant a license to operate a pool or billiard
99 room, mandamus may not lie to compel the municipality to grant the license unless it shall clearly
100 appear that the refusal of the municipality to grant a license is discriminatory or arbitrary; and in the
101 event that the municipality determines to license any business, the municipality has plenary power
102 and authority and it shall be the duty of its governing body to make and enforce reasonable
103 ordinances regulating the licensing and operation of the businesses;

104 ~~(25)~~(24) To protect places of divine worship and to preserve peace and order in and about
105 the premises where held;

106 ~~(26)~~(25) To regulate or prohibit the keeping of animals or fowls and to provide for the
107 impounding, sale or destruction of animals or fowls kept contrary to law or found running at large;

108 ~~(27)~~(26) To arrest, convict and punish any person for cruelly, unnecessarily or needlessly
109 beating, torturing, mutilating, killing, or overloading or overdriving or willfully depriving of
110 necessary sustenance any domestic animal;

111 ~~(28)~~(27) To provide for the regular building of houses or other structures, for the making of
112 division fences by the owners of adjacent premises and for the drainage of lots by proper drains
113 and ditches;

114 ~~(29)~~(28) To provide for the protection and conservation of shade or ornamental trees,
115 whether on public or private property, and for the removal of trees or limbs of trees in a dangerous
116 condition;

117 ~~(30)~~(29) To prohibit with or without zoning the location of occupied house trailers or mobile
118 homes in certain residential areas;

119 ~~(34)~~(30) To regulate the location and placing of signs, billboards, posters and similar
120 advertising;

121 ~~(32)~~(31) To erect, establish, construct, acquire, improve, maintain and operate a gas
122 system, a waterworks system, an electric system or sewer system and sewage treatment and
123 disposal system, or any combination of the foregoing (subject to all of the pertinent provisions of
124 articles nineteen and twenty of this chapter and particularly to the limitations or qualifications on
125 the right of eminent domain set forth in articles nineteen and twenty), within or without the
126 corporate limits of the municipality, except that the municipality may not erect any system partly
127 without the corporate limits of the municipality to serve persons already obtaining service from an
128 existing system of the character proposed and where the system is by the municipality erected, or
129 has heretofore been so erected, partly within and partly without the corporate limits of the
130 municipality, the municipality has the right to lay and collect charges for service rendered to those
131 served within and those served without the corporate limits of the municipality and to prevent injury
132 to the system or the pollution of the water thereof and its maintenance in a healthful condition for
133 public use within the corporate limits of the municipality;

134 ~~(33)~~(32) To acquire watersheds, water and riparian rights, plant sites, rights-of-way and
135 any and all other property and appurtenances necessary, appropriate, useful, convenient or
136 incidental to any system, waterworks or sewage treatment and disposal works, as aforesaid,
137 subject to all of the pertinent provisions of articles nineteen and twenty of this chapter;

138 ~~(34)~~(33) To establish, construct, acquire, maintain and operate and regulate markets and
139 prescribe the time of holding the same;

140 ~~(35)~~(34) To regulate and provide for the weighing of articles sold or for sale;

141 ~~(36)~~(35) To establish, construct, acquire, maintain and operate public buildings, municipal
142 buildings or city halls, auditoriums, arenas, jails, juvenile detention centers or homes, motor
143 vehicle parking lots or any other public works;

144 ~~(37)~~(36) To establish, construct, acquire, provide, equip, maintain and operate recreational
145 parks, playgrounds and other recreational facilities for public use and in this connection also to
146 proceed in accordance with the provisions of article two, chapter ten of this code;

147 ~~(38)~~(37) To establish, construct, acquire, maintain and operate a public library or museum
148 or both for public use;

149 ~~(39)~~(38) To provide for the appointment and financial support of a library board in
150 accordance with the provisions of article one, chapter ten of this code;

151 ~~(40)~~(39) To establish and maintain a public health unit in accordance with the provisions of
152 section two, article two, chapter sixteen of this code, which unit shall exercise its powers and
153 perform its duties subject to the supervision and control of the West Virginia Board of Health and
154 State Bureau for Public Health;

155 ~~(41)~~(40) To establish, construct, acquire, maintain and operate hospitals, sanitarians and
156 dispensaries;

157 ~~(42)~~(41) To acquire, by purchase, condemnation or otherwise, land within or near the
158 corporate limits of the municipality for providing and maintaining proper places for the burial of the
159 dead and to maintain and operate the same and regulate interments therein upon terms and
160 conditions as to price and otherwise as may be determined by the governing body and, in order to
161 carry into effect the authority, the governing body may acquire any cemetery or cemeteries already
162 established;

163 ~~(43)~~(42) To exercise general police jurisdiction over any territory without the corporate
164 limits owned by the municipality or over which it has a right-of-way;

165 ~~(44)~~(43) To protect and promote the public morals, safety, health, welfare and good order;

166 ~~(45)~~(44) To adopt rules for the transaction of business and the government and regulation
167 of its governing body;

168 ~~(46)~~(45) Except as otherwise provided, to require and take bonds from any officers, when
169 considered necessary, payable to the municipality, in its corporate name, with such sureties and in
170 a penalty as the governing body may see fit, conditioned upon the faithful discharge of their duties;

171 ~~(47)~~(46) To require and take from the employees and contractors such bonds in a penalty,
172 with such sureties and with such conditions, as the governing body may see fit;

173 ~~(48)~~(47) To investigate and inquire into all matters of concern to the municipality or its
174 inhabitants;

175 ~~(49)~~(48) To establish, construct, require, maintain and operate such instrumentalities,
176 other than free public schools, for the instruction, enlightenment, improvement, entertainment,
177 recreation and welfare of the municipality's inhabitants as the governing body may consider
178 necessary or appropriate for the public interest;

179 ~~(50)~~(49) To create, maintain and operate a system for the enumeration, identification and
180 registration, or either, of the inhabitants of the municipality and visitors thereto, or the classes
181 thereof as may be considered advisable;

182 ~~(51)~~(50) To require owners, residents or occupants of factory-built homes situated in a
183 factory-built rental home community with at least ten factory-built homes, to visibly post the
184 specific numeric portion of the address of each factory-built home on the immediate premises of
185 the factory-built home of sufficient size to be visible from the adjoining street: *Provided*, That in the
186 event no numeric or other specific designation of an address exists for a factory-built home subject
187 to the authorization granted by this subdivision, the municipality has the authority to provide a
188 numeric or other specific designation of an address for the factory-built home and require that it be
189 posted in accordance with the authority otherwise granted by this section.

190 ~~(52)~~(51) To appropriate and expend not exceeding twenty-five cents per capita per annum
191 for advertising the municipality and the entertainment of visitors;

192 ~~(53)~~(52) To conduct programs to improve community relations and public relations
193 generally and to expend municipal revenue for such purposes;

194 ~~(54)~~(53) To reimburse applicants for employment by the municipality for travel and other
195 reasonable and necessary expenses actually incurred by the applicants in traveling to and from
196 the municipality to be interviewed;

197 ~~(55)~~(54) To provide revenue for the municipality and appropriate the same to its expenses;

198 ~~(56)~~(55) To create and maintain an employee benefits fund which may not exceed one
199 tenth of one percent of the annual payroll budget for general employee benefits and which is set up
200 for the purpose of stimulating and encouraging employees to develop and implement cost-saving
201 ideas and programs and to expend moneys from the fund for these purposes;

202 ~~(57)~~(56) To enter into reciprocal agreements with governmental subdivisions or agencies
203 of any state sharing a common border for the protection of people and property from fire and for
204 emergency medical services and for the reciprocal use of equipment and personnel for these
205 purposes;

206 ~~(58)~~(57) To provide penalties for the offenses and violations of law mentioned in this
207 section, subject to the provisions of section one, article eleven of this chapter, and such penalties
208 may not exceed any penalties provided in this chapter and chapter sixty-one of this code for like
209 offenses and violations; ~~and~~

210 ~~(59)~~(58) To participate in a purchasing card program for local governments authorized and
211 administered by the State Auditor as an alternative payment method; and

212 (59) To enter into agreements with one or more other municipalities, and with county
213 commissions to combine and share selected governmental services by combining operations,
214 equipment, and employees into a unified government service.

NOTE: The purpose of this bill is to authorize municipalities to combine operations with other municipalities and counties to provide governmental services.

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