WEST VIRGINIA LEGISLATURE
EIGHTY-FIRST LEGISLATURE
REGULAR SESSION, 2014

ENROLLED
COMMITTEE SUBSTITUTE
FOR
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 317

(SENATORS UNGER, NOHE, KESSLER (MR. PRESIDENT), D. HALL, STOLLINGS, TUCKER, CANN, FITZSIMMONS, KIRKENDOLL, MILLER, LAIRD, WILLIAMS, YOST, BEACH, EDGELL, PLYMALE, PREZIOSO AND SNYDER, ORIGINAL SPONSORS)

[PASSED MARCH 8, 2014; IN EFFECT FROM PASSAGE.]
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[Passed March 8, 2014; in effect from passage.]

AN ACT to amend and reenact §8-1-5a of the Code of West Virginia, 1931, as amended; and to amend and reenact §8-12-5 and §8-12-5a of said code, all relating to municipal firearm laws; removing firearm provisions from the Municipal Home Rule Pilot Program; prohibiting ordinances from being enacted under the Municipal Home Rule Pilot Program that are in conflict with certain other state law; clarifying municipal authority to arrest, convict and punish individuals for certain firearms offenses authorized by code and federal law; removing the grandfather clause excepting certain municipal ordinances limiting the purchase, possession, transfer, ownership, carrying, transporting, selling or storing of guns or ammunition from the general provision prohibiting such ordinances; defining terms; clarifying municipalities’
authority to regulate possession and carrying of firearms; permitting municipalities to enact and enforce certain ordinances relating to limiting possession of firearms in municipal buildings and on municipal property; permitting persons to store firearms in vehicles on public property under certain circumstances; creating absolute defenses to a violation of municipal firearm ordinances; requiring posting of certain signs; specifying that private redress for violations may be brought under chapter fifty-three of this code and may include reasonable attorneys fees and costs; excluding municipalities from the use of section fourteen, article seven, chapter sixty-one of this code; and clarifying that municipalities cannot prohibit the otherwise lawful carrying of firearms on municipal streets and sidewalks except when a street or sidewalk is temporarily closed to traffic for purposes of municipally authorized events of limited duration.

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; and that §8-12-5 and §8-12-5a of said code be amended and reenacted, all 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) The initial Municipal Home Rule Pilot Program brought innovative results, including novel municipal ideas that became municipal ordinances which later resulted in new statewide statutes;
(2) The initial Municipal Home Rule Pilot Program also brought novel municipal ideas that resulted in court challenges against some of the participating municipalities;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) Board’s powers and duties. – The Municipal Home Rule Board has the following powers and duties:

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

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

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

(4) Approve or reject, by a majority vote of the board, each ordinance submitted by a participating municipality pursuant to its written plan or its amendments to the written plan;
(5) Consult with any agency affected by the written plans or the amendments to the written plans; and

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

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

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

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

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

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

(g) Public hearing on written plan. — Prior to submitting its written plan to the board, the municipality shall:

(1) Hold a public hearing on the written plan;
(2) Provide notice at least thirty days prior to the public hearing by a Class II legal advertisement;

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

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

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

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

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

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

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

(4) After the public hearing, submit the comments, either in audio or written form, to the Municipal Home Rule Board;
(5) Obtain approval, from the Municipal Home Rule Board by a majority vote, for the proposed ordinance, act, resolution, rule or regulation; and

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

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

(1) Environmental law;

(2) Bidding on government construction and other contracts;

(3) The Freedom of Information Act;

(4) The Open Governmental Proceedings Act;

(5) Wages for construction of public improvements;

(6) The provisions of this section;

(7) The provisions of section five-a, article twelve of this chapter; and

(8) The municipality’s written plan.

(k) Prohibited acts. – The municipalities participating in the Municipal Home Rule Pilot Program do not have the authority to pass an ordinance, act, resolution, rule or regulation, under the provisions of this section, pertaining to:
(1) The Constitution of the United States or West Virginia;

(2) Federal law or crimes and punishment;

(3) Chapters sixty-a, sixty-one and sixty-two of this code or state crimes and punishment;

(4) Pensions or retirement plans;

(5) Annexation;

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

(7) Tax increment financing;

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

(10) Marriage and divorce laws; and

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

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

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

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

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

(2) A recommendation as to whether the expanded home rule should be continued, reduced, expanded or terminated;
(3) A recommendation as to whether any legislation is necessary; and

(4) Any other issues considered relevant.

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

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.

In addition to the powers and authority granted by: (i) The Constitution of this state; (ii) other provisions of this chapter; (iii) other general law; and (iv) any charter, and to the extent not inconsistent or in conflict with any of the foregoing except special legislative charters, every municipality and the governing body thereof shall have plenary power and authority therein by ordinance or resolution, as the case may require, and by appropriate action based thereon:
(1) To lay off, establish, construct, open, alter, curb, recurb, pave or repave and keep in good repair, or vacate, discontinue and close, streets, avenues, roads, alleys, ways, sidewalks, drains and gutters, for the use of the public, and to improve and light the same, and have them kept free from obstructions on or over them which have not been authorized pursuant to the succeeding provisions of this subdivision; and, subject to such terms and conditions as the governing body shall prescribe, to permit, without in any way limiting the power and authority granted by the provisions of article sixteen of this chapter, any person to construct and maintain a passageway, building or other structure overhanging or crossing the airspace above a public street, avenue, road, alley, way, sidewalk or crosswalk, but before any permission for any person to construct and maintain a passageway, building or other structure overhanging or crossing any airspace is granted, a public hearing thereon shall be held by the governing body after publication of a notice of the date, time, place and purpose of the public hearing has been published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code and the publication area for the publication shall be the municipality: Provided, That any permit so granted shall automatically cease and terminate in the event of abandonment and nonuse thereof for the purposes intended for a period of ninety days, and all rights therein or thereto shall revert to the municipality for its use and benefit;

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

(3) To prevent by proper penalties the throwing, depositing or permitting to remain on any street, avenue, road, alley, way, sidewalk, square or other public place any
(4) To regulate the use of streets, avenues, roads, alleys, ways, sidewalks, crosswalks and public places belonging to the municipality, including the naming or renaming thereof, and to consult with local postal authorities, the Division of Highways and the directors of county emergency communications centers to assure uniform, nonduplicative addressing on a permanent basis;

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

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

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

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

(9) To control and administer the waterfront and waterways of the municipality and to acquire, establish, construct, operate and maintain and regulate flood control works, wharves and public landings, warehouses and all adjuncts and facilities for navigation and commerce and the utilization of the waterfront and waterways and adjacent property;
(10) To prohibit the accumulation and require the disposal of garbage, refuse, debris, wastes, ashes, trash and other similar accumulations whether on private or public property: Provided, That, in the event the municipality annexes an area which has been receiving solid waste collection services from a certificated solid waste motor carrier, the municipality and the solid waste motor carrier may negotiate an agreement for continuation of the private solid waste motor carrier services for a period of time, not to exceed three years, during which time the certificated solid waste motor carrier may continue to provide exclusive solid waste collection services in the annexed territory;

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

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

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

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

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

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

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

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

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

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

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

(22) To arrest, convict and punish any person for
gambling or keeping any gaming tables, commonly called
“A, B, C,” or “E, O,” table or faro bank or keno table, or
table of like kind, under any denomination, whether the
gaming table be played with cards, dice or otherwise, or any
person who shall be a partner or concerned in interest, in
keeping or exhibiting the table or bank, or keeping or
(23) To provide for the elimination of hazards to public health and safety and to abate or cause to be abated anything which in the opinion of a majority of the governing body is a public nuisance;

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

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

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

(27) To arrest, convict and punish any person for cruelly, unnecessarily or needlessly beating, torturing, mutilating,
(28) To provide for the regular building of houses or other structures, for the making of division fences by the owners of adjacent premises and for the drainage of lots by proper drains and ditches;

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

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

(31) To regulate the location and placing of signs, billboards, posters and similar advertising;

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

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

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

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

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

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

(38) To establish, construct, acquire, maintain and
operate a public library or museum or both for public use;
(39) To provide for the appointment and financial support of a library board in accordance with the provisions of article one, chapter ten of this code;

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

(41) To establish, construct, acquire, maintain and operate hospitals, sanitarians and dispensaries;

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

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

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

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

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

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

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

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

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

(51) To require owners, residents or occupants of factory-built homes situated in a factory-built rental home community with at least ten factory-built homes, to visibly post the specific numeric portion of the address of each factory-built home on the immediate premises of the factory-built home of sufficient size to be visible from the adjoining street: Provided, That in the event no numeric or other specific designation of an address exists for a factory-built home subject to the authorization granted by this subdivision, the municipality has the authority to provide a numeric or other specific designation of an address for the factory-built home and require that it be posted in accordance with the authority otherwise granted by this section.
(52) To appropriate and expend not exceeding twenty-five cents per capita per annum for advertising the municipality and the entertainment of visitors;

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

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

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

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

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

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

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

§8-12-5a. Limitations upon municipalities' power to restrict the purchase, possession, transfer, ownership, carrying, transport, sale and storage of certain weapons and ammunition.

(a) Except as provided by the provisions of this section and the provisions of section five of this article, neither a municipality nor the governing body of any municipality may, by ordinance or otherwise, limit the right of any person to purchase, possess, transfer, own, carry, transport, sell or store any revolver, pistol, rifle or shotgun or any ammunition or ammunition components to be used therewith nor to so regulate the keeping of gunpowder so as to directly or indirectly prohibit the ownership of the ammunition in any manner inconsistent with or in conflict with state law.

(b) For the purposes of this section:

(1) “Municipally owned or operated building” means any building that is used for the business of the municipality, such as a courthouse, city hall, convention center, administrative building or other similar municipal building used for a municipal purpose permitted by state law: Provided, That “municipally owned or operated building” does not include a building owned by a municipality that is leased to a private entity where the municipality primarily serves as a property owner receiving rental payments.

(2) “Municipally owned recreation facility” means any municipal swimming pool, recreation center, sports facility, facility housing an after-school program or other similar facility where children are regularly present.
(c)(1) A municipality may enact and enforce an ordinance or ordinances that prohibit or regulate the carrying or possessing of a firearm in municipally owned or operated buildings.

(2) A municipality may enact and enforce an ordinance or ordinances that prohibit a person from carrying or possessing a firearm openly or that is not lawfully concealed in a municipally owned recreation facility: Provided, That a municipality may not prohibit a person with a valid concealed handgun permit from carrying an otherwise lawfully possessed firearm into a municipally owned recreation facility and securely storing the firearm out of view and access to others during their time at the municipally owned recreation facility.

(3) A person may keep an otherwise lawfully possessed firearm in a motor vehicle in municipal public parking facilities if the vehicle is locked and the firearm is out of view.

(4) A municipality may not prohibit or regulate the carrying or possessing of a firearm on municipally owned or operated property other than municipally owned or operated buildings and municipally owned recreation facilities pursuant to subdivisions (1) and (2) of this section: Provided, That a municipality may prohibit persons who do not have a valid concealed handgun license from carrying or possessing a firearm on municipally owned or operated property.

(d) It shall be an absolute defense to an action for an alleged violation of an ordinance authorized by this section prohibiting or regulating the possession of a firearm that the person: (1) Upon being requested to do so, left the premises with the firearm or temporarily relinquished the firearm in response to being informed that his or her possession of the
firearm was contrary to municipal ordinance; and (2) but for
the municipal ordinance the person was lawfully in
possession of the firearm.

(e) Any municipality that enacts an ordinance regulating
or prohibiting the carrying or possessing of a firearm
pursuant to subsection (c) of this section shall prominently
post a clear statement at each entrance to all applicable
municipally owned or operated buildings or municipally
owned recreation facilities setting forth the terms of the
regulation or prohibition.

(f) Redress for an alleged violation of this section may be
sought through the provisions of chapter fifty-three of this
code, which may include the awarding of reasonable
attorneys fees and costs.

(g) Upon the effective date of this section, section
fourteen, article seven, chapter sixty-one of this code is
inapplicable to municipalities. For the purposes of that
section, municipalities may not be considered a person
charged with the care, custody and control of real property.

(h) This section does not:

(1) Impair the authority of any municipality, or the
governing body thereof, to enact any ordinance or resolution
respecting the power to arrest, convict and punish any
individual under the provisions of subdivision (16), section
five of this article or from enforcing any such ordinance or
resolution;

(2) Authorize municipalities to restrict the carrying or
possessing of firearms, which are otherwise lawfully
possessed, on public streets and sidewalks of the
municipality: Provided, That whenever pedestrian or
vehicular traffic is prohibited in an area of a municipality for the purpose of a temporary event of limited duration, not to exceed fourteen days, which is authorized by a municipality, a municipality may prohibit persons who do not have a valid concealed handgun license from possessing a firearm in the area where the event is held; or

(3) Limit the authority of a municipality to restrict the commercial use of real estate in designated areas through planning or zoning ordinances.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 25th Day of March, 2014.

Governor
PRESENTED TO THE GOVERNOR

MAR 21 2014

Time 2:50 pm