

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 3354

BY DELEGATES ROWE, HANSHAW (MR. SPEAKER),

FOSTER AND STEELE

[Passed March 11, 2023; in effect ninety days from passage.]

HB 3354

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

2023 MAR 29 P 1:19

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1 AN ACT to amend and reenact §8-12-5 of the Code of West Virginia, 1931, as amended, relating
2 to 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
5 a 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
9 kept free from obstructions on or over them which have not been authorized pursuant to the
10 succeeding provisions of this subdivision; and, subject to such terms and conditions as the
11 governing body shall prescribe, to permit, without in any way limiting the power and authority
12 granted by the provisions of article sixteen of this chapter, any person to construct and maintain
13 a passageway, building or other structure overhanging or crossing the airspace above a public
14 street, avenue, road, alley, way, sidewalk or crosswalk, but before any permission for any person
15 to construct and maintain a passageway, building or other structure overhanging or crossing any

16 airspace is granted, a public hearing thereon shall be held by the governing body after publication
17 of a notice of the date, time, place and purpose of the public hearing has been published as a
18 Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of
19 this code and the publication area for the publication shall be the municipality: *Provided*, That any
20 permit so granted shall automatically cease and terminate in the event of abandonment and
21 nonuse thereof for the purposes intended for a period of ninety days, and all rights therein or
22 thereto shall revert to 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,
28 nails, tacks, wire, other litter or any offensive matter or anything likely to injure the feet of
29 individuals or animals or the tires of vehicles;

30 (4) To regulate the use of streets, avenues, roads, alleys, ways, sidewalks, crosswalks
31 and 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
40 and 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 make regulations guarding against danger or damage by fire;

65 (15) To arrest, convict and punish any individual for carrying about his or her person any
66 revolver or other pistol, dirk, bowie knife, razor, slingshot, billy, metallic or other false knuckles or

67 any other dangerous or other deadly weapon of like kind or character: *Provided*, That with respect
68 to any firearm a municipality may only arrest, convict and punish someone if they are in violation
69 of a state law proscribing certain conduct with a firearm;

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

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

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

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

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

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

88 (22) To provide for the elimination of hazards to public health and safety and to abate or
89 cause to be abated anything which in the opinion of a majority of the governing body is a public
90 nuisance;

91 (23) To license, or for good cause to refuse to license in a particular case, or in its
92 discretion to prohibit in all cases, the operation of pool and billiard rooms and the maintaining for

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

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

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

105 (26) To arrest, convict and punish any person for cruelly, unnecessarily or needlessly
106 beating, torturing, mutilating, killing, or overloading or overdriving or willfully depriving of
107 necessary sustenance any domestic animal;

108 (27) To provide for the regular building of houses or other structures, for the making of
109 division fences by the owners of adjacent premises and for the drainage of lots by proper drains
110 and ditches;

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

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

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

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

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

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

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

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

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

144 (37) To establish, construct, acquire, maintain and operate a public library or museum or
145 both for public use;

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

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

152 (40) To establish, construct, acquire, maintain and operate hospitals, sanitarians and
153 dispensaries;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Clerk of the House of Delegates and the Clerk of the Senate hereby certify that the foregoing bill is correctly enrolled.

Steve Harris

.....
Clerk of the House of Delegates

Joe Linn

.....
Clerk of the Senate

Originated in the House of Delegates.

In effect ninety days from passage.

Ken Hancher

.....
Speaker of the House of Delegates

G. P. Blawie

.....
President of the Senate

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

2023 MAR 29 P 1:19

FILED

The within is *approved* this the *29th*
Day of *March* 2023.

James Justice

.....
Governor

PRESENTED TO THE GOVERNOR

MAR 27 2023

Time 2:52 pm