

E N G R O S S E D
COMMITTEE SUBSTITUTE
FOR
COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 317

(By Senators Unger, Nohe, Kessler (Mr. President), D. Hall,
Stollings, Tucker, Cann, Fitzsimmons, Kirkendoll, Miller, Laird,
Williams, Yost, Beach, Edgell, Plymale, Prezioso and Snyder)

[Originating in the Committee on the Judiciary;
reported February 19, 2014.]

A BILL 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

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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.

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.

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30 until the ordinances are repealed, but are null and void if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

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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 the American Institute of Certified Planners, appointed by

77 the Governor with the advice and consent of the Senate.

78 (e) *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:

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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;

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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
156 Pilot 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;

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

168 ~~(7)~~ (8) The municipality's written plan.

169 (k) *Prohibited acts.* – The municipalities participating in
170 the Municipal Home Rule Pilot Program do not have the
171 authority to pass an ordinance, act, resolution, rule or
172 regulation, under the provisions of this section, pertaining to:

173 (1) The Constitution of the United States or West
174 Virginia;

175 (2) Federal law or crimes and punishment;

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

178 (4) Pensions or retirement plans;

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179 (5) Annexation;

180 (6) Taxation: *Provided*, That a participating municipality

181 may enact a municipal sales tax up to one percent if it

182 reduces or eliminates its municipal business and occupation

183 tax: *Provided, however*, That if a municipality subsequently

184 reinstates or raises the municipal business and occupation tax

185 it previously reduced or eliminated under the Municipal

186 Home Rule Pilot Program, it shall eliminate the municipal

187 sales tax enacted under the Municipal Home Rule Pilot

188 Program: *Provided further*, That any municipality that

189 imposes a municipal sales tax pursuant to this section shall

190 use the services of the Tax Commissioner to administer,

191 enforce and collect the tax in the same manner as the state

192 consumers sales and service tax and use tax under the

193 provisions of articles fifteen, fifteen-a and fifteen-b, chapter

194 eleven of this code and all applicable provisions of the

195 streamlined sales and use tax agreement: *And provided*

196 *further*, That such tax will not apply to the sale of motor fuel

197 or motor vehicles;

198 (7) Tax increment financing;

199 (8) Extraction of natural resources;

200 (9) Persons or property outside the boundaries of the

201 municipality: *Provided*, That this prohibition under the

202 Municipal Home Rule Pilot Program does not affect a

203 municipality's powers outside its boundary lines under other

204 sections of this chapter, other chapters of this code or court

205 decisions;

206 (10) Marriage and divorce laws;

207 ~~(11) Restricting the carrying of a firearm, as that term is~~

208 ~~defined in section two, article seven, chapter sixty-one of this~~

209 ~~code. *Provided*, That, notwithstanding the provisions of~~

210 ~~subsection (p) of this section, municipalities may regulate the~~

211 ~~carrying of a firearm in municipal buildings dedicated to~~

212 ~~government operations other than parking buildings or~~

213 ~~garages. *Provided, however*, That on other municipal~~

214 ~~property, municipalities may regulate only those persons not~~

215 ~~licensed to carry a concealed firearm; and~~

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216 ~~(12)~~ (11) An occupation tax, fee or assessment payable
217 by a nonresident of a municipality.

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

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

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

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

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

238 (3) A recommendation as to whether any legislation is
239 necessary; and

240 (4) Any other issues considered relevant.

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

252 ~~(p) *Additional requirements for participation.*~~

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

262 ~~(2) *Definitions.*~~

263 ~~As used in this subsection:~~

264 ~~(A) "Ammunition" means fixed cartridge ammunition,~~
265 ~~shotgun shells, the individual components of fixed cartridge~~
266 ~~ammunition and shotgun shells, projectiles for~~
267 ~~muzzle-loading firearms and any propellant used in firearms~~
268 ~~or ammunition.~~

269 ~~(B) "Firearm accessory" means a device specifically~~
270 ~~designed or adapted to enable the wearing or carrying about~~
271 ~~one's person, or the storage or mounting in or on a~~

272 ~~conveyance, of a firearm, or an attachment or device~~
273 ~~specifically designed or adapted to be inserted into or affixed~~
274 ~~onto a firearm to enable, alter or improve the functioning or~~
275 ~~capabilities of the firearm.~~

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

278 ~~(3) General rule. =~~

279 ~~(A) Notwithstanding any other provision of this code to~~
280 ~~the contrary, except as otherwise provided in this section,~~
281 ~~municipalities participating in the Municipal Home Rule~~
282 ~~Pilot Program, pursuant to this section, shall not restrict in~~
283 ~~any manner the right of any person to purchase, possess,~~
284 ~~transfer, own, carry, transport, sell or store any revolver,~~
285 ~~pistol, rifle or shotgun, or any other firearm, or any~~
286 ~~ammunition or ammunition components to be used therewith,~~
287 ~~or the keeping of gunpowder so as to directly or indirectly~~
288 ~~prohibit the ownership of the ammunition, or, to restrict in~~
289 ~~any manner the right of any person to purchase, possess,~~
290 ~~transfer, own, carry, transport, sell or store any other firearm~~

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291 ~~accessory or accoutrement, under any order, ordinance or~~
292 ~~rule promulgated or enforced by the municipality. This~~
293 ~~subsection may not be construed to prevent any law~~
294 ~~enforcement official with appropriate authority from~~
295 ~~enforcing any statute enacted by the state.~~

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

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

303 ~~(4) *Applicability and effective dates.*—~~

304 ~~Ninety days after a new municipality has been selected~~
305 ~~by the Board to participate in the pilot program, or a~~
306 ~~previously participating municipality has chosen to continue~~
307 ~~to participate in the pilot program, any municipal gun~~
308 ~~ordinances previously authorized by the provisions of section~~
309 ~~five-a, article twelve of this chapter shall no longer be of any~~

310 ~~force or effect for any municipality participating in this~~
311 ~~program to the extent they are in conflict with the provisions~~
312 ~~of this subsection. *Provided*, That no provision in this~~
313 ~~subsection may be construed to limit the authority of a~~
314 ~~municipality to restrict the commercial use of real estate in~~
315 ~~designated areas through planning or zoning ordinances.~~

**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)
2 The Constitution of this state; (ii) other provisions of this
3 chapter; (iii) other general law; and (iv) any charter, and to
4 the extent not inconsistent or in conflict with any of the
5 foregoing except special legislative charters, every

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6 municipality and the governing body thereof shall have
7 plenary power and authority therein by ordinance or
8 resolution, as the case may require, and by appropriate action
9 based thereon:

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

25 building or other structure overhanging or crossing any
26 airspace is granted, a public hearing thereon shall be held by
27 the governing body after publication of a notice of the date,
28 time, place and purpose of the public hearing has been
29 published as a Class I legal advertisement in compliance with
30 the provisions of article three, chapter fifty-nine of this code
31 and the publication area for the publication shall be the
32 municipality: *Provided*, That any permit so granted shall
33 automatically cease and terminate in the event of
34 abandonment and nonuse thereof for the purposes intended
35 for a period of ninety days, and all rights therein or thereto
36 shall revert to the municipality for its use and benefit;

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

41 (3) To prevent by proper penalties the throwing,
42 depositing or permitting to remain on any street, avenue,
43 road, alley, way, sidewalk, square or other public place any

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44 glass, scrap iron, nails, tacks, wire, other litter or any
45 offensive matter or anything likely to injure the feet of
46 individuals or animals or the tires of vehicles;

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

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

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

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

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

68 (9) To control and administer the waterfront and
69 waterways of the municipality and to acquire, establish,
70 construct, operate and maintain and regulate flood control
71 works, wharves and public landings, warehouses and all
72 adjuncts and facilities for navigation and commerce and the
73 utilization of the waterfront and waterways and adjacent
74 property;

75 (10) To prohibit the accumulation and require the
76 disposal of garbage, refuse, debris, wastes, ashes, trash and
77 other similar accumulations whether on private or public
78 property: *Provided*, That, in the event the municipality
79 annexes an area which has been receiving solid waste
80 collection services from a certificated solid waste motor
81 carrier, the municipality and the solid waste motor carrier

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82 may negotiate an agreement for continuation of the private
83 solid waste motor carrier services for a period of time, not to
84 exceed three years, during which time the certificated solid
85 waste motor carrier may continue to provide exclusive solid
86 waste collection services in the annexed territory;

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

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

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

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

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

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

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

115 (18) To arrest, convict and punish any person for keeping
116 a house of ill fame, or for letting to another person any house
117 or other building for the purpose of being used or kept as a
118 house of ill fame, or for knowingly permitting any house

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119 owned by him or her or under his or her control to be kept or
120 used as a house of ill fame, or for loafing, boarding or
121 loitering in a house of ill fame, or frequenting same;

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

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

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

129 (22) To arrest, convict and punish any person for
130 gambling or keeping any gaming tables, commonly called
131 "A, B, C," or "E, O," table or faro bank or keno table, or
132 table of like kind, under any denomination, whether the
133 gaming table be played with cards, dice or otherwise, or any
134 person who shall be a partner or concerned in interest, in
135 keeping or exhibiting the table or bank, or keeping or
136 maintaining any gaming house or place, or betting or
137 gambling for money or anything of value;

138 (23) To provide for the elimination of hazards to public
139 health and safety and to abate or cause to be abated anything
140 which in the opinion of a majority of the governing body is
141 a public nuisance;

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

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

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

164 (27) To arrest, convict and punish any person for cruelly,
165 unnecessarily or needlessly beating, torturing, mutilating,
166 killing, or overloading or overdriving or willfully depriving
167 of necessary sustenance any domestic animal;

168 (28) To provide for the regular building of houses or
169 other structures, for the making of division fences by the
170 owners of adjacent premises and for the drainage of lots by
171 proper drains and ditches;

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

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

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

181 (32) To erect, establish, construct, acquire, improve,
182 maintain and operate a gas system, a waterworks system, an
183 electric system or sewer system and sewage treatment and
184 disposal system, or any combination of the foregoing (subject
185 to all of the pertinent provisions of articles nineteen and
186 twenty of this chapter and particularly to the limitations or
187 qualifications on the right of eminent domain set forth in
188 articles nineteen and twenty), within or without the corporate
189 limits of the municipality, except that the municipality may
190 not erect any system partly without the corporate limits of the
191 municipality to serve persons already obtaining service from
192 an existing system of the character proposed and where the
193 system is by the municipality erected, or has heretofore been
194 so erected, partly within and partly without the corporate

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195 limits of the municipality, the municipality has the right to
196 lay and collect charges for service rendered to those served
197 within and those served without the corporate limits of the
198 municipality and to prevent injury to the system or the
199 pollution of the water thereof and its maintenance in a
200 healthful condition for public use within the corporate limits
201 of the municipality;

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

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

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

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

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

223 (38) To establish, construct, acquire, maintain and
224 operate a public library or museum or both for public use;

225 (39) To provide for the appointment and financial support
226 of a library board in accordance with the provisions of article
227 one, chapter ten of this code;

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

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234 (41) To establish, construct, acquire, maintain and
235 operate hospitals, sanitariums and dispensaries;

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

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

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

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

251 (46) Except as otherwise provided, to require and take
252 bonds from any officers, when considered necessary, payable

253 to the municipality, in its corporate name, with such sureties
254 and in a penalty as the governing body may see fit,
255 conditioned upon the faithful discharge of their duties;

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

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

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

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

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271 (51) To require owners, residents or occupants of
272 factory-built homes situated in a factory-built rental home
273 community with at least ten factory-built homes, to visibly
274 post the specific numeric portion of the address of each
275 factory-built home on the immediate premises of the
276 factory-built home of sufficient size to be visible from the
277 adjoining street: *Provided*, That in the event no numeric or
278 other specific designation of an address exists for a
279 factory-built home subject to the authorization granted by
280 this subdivision, the municipality has the authority to provide
281 a numeric or other specific designation of an address for the
282 factory-built home and require that it be posted in accordance
283 with the authority otherwise granted by this section.

284 (52) To appropriate and expend not exceeding \$.25 per
285 capita per annum for advertising the municipality and the
286 entertainment of visitors;

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

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

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

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

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

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

314 (59) To participate in a purchasing card program for local
315 governments authorized and administered by the State
316 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.**

1 (a) ~~The~~ Except as provided by the provisions of this
2 section and the provisions of section five of this article,
3 ~~notwithstanding,~~ neither a municipality nor the governing
4 body of any municipality may, by ordinance or otherwise,
5 limit the right of any person to purchase, possess, transfer,
6 own, carry, transport, sell or store any revolver, pistol, rifle

7 or shotgun or any ammunition or ammunition components to
8 be used therewith nor to so regulate the keeping of
9 gunpowder so as to directly or indirectly prohibit the
10 ownership of the ammunition in any manner inconsistent
11 with or in conflict with state law.

12 ~~Nothing herein shall in any way~~

13 (b) For the purposes of this section:

14 (1) "Municipally owned or operated building" means any
15 building that is used for the business of the municipality,
16 such as a courthouse, city hall, convention center,
17 administrative building or other similar municipal building
18 used for a municipal purpose permitted by state law;
19 Provided, That "municipally owned or operated building"
20 does not include a building owned by a municipality that is
21 leased to a private entity where the municipality primarily
22 serves as a property owner receiving rental payments.

23 (2) "Municipally owned recreation facility" means any
24 municipal swimming pool, recreation center, sports facility,

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25 facility housing an after-school program or other similar
26 facility where children are regularly present.

27 (c)(1) A municipality may enact and enforce an ordinance
28 or ordinances that prohibit or regulate the carrying or
29 possessing of a firearm in municipally owned or operated
30 buildings.

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

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

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

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

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

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

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

79 (h) This section does not:

80 (1) Impair the authority of any municipality, or the
81 governing body thereof, to enact any ordinance or resolution
82 respecting the power to arrest, convict and punish any

83 individual under the provisions of subdivision (16), section
84 five of this article or from enforcing any such ordinance or
85 resolution; *Provided*, That any municipal ordinance in place
86 as of the effective date of this section shall be excepted from
87 the provisions of this section. *Provided, however*, That no
88 provision in this section may be construed to

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

99 (3) Limit the authority of a municipality to restrict the
100 commercial use of real estate in designated areas through
101 planning or zoning ordinances.