

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 3170

By Delegates Clark, Hornsby, C. Pritt, Thorne, Ferrell,
Jeffries, and W. Hall

[Introduced January 31, 2023; Referred to the
Committee on Political Subdivisions then Technology
and Infrastructure]

1 A BILL to amend and reenact §8-12-5 of the Code of West Virginia, 1931, as amended, relating to
 2 prohibiting municipalities in their permitting from charging other government entities for
 3 rights of way within municipal boundaries that are at least fifteen feet above ground level at
 4 their lowest point and does not apply to right-of-way under the jurisdiction of the Division of
 5 Highways.

Be it enacted by the Legislature of West Virginia:

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

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

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

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

16 granted, a public hearing thereon shall be held by the governing body after publication of a notice
17 of the date, time, place and purpose of the public hearing has been published as a Class I legal
18 advertisement in compliance with the provisions of §59-3-1, *et seq.* of this code and the publication
19 area for the publication shall be the municipality: Provided, That no municipality may in its
20 permitting of any passageway, building or other structure overhanging or crossing the airspace
21 above a public street, avenue, road, alley, way, sidewalk or crosswalk charge another government
22 entity for any such right of way that is at least fifteen feet above ground level at its lowest point and
23 does not apply to right-of-way under the jurisdiction of the Division of Highways: *Provided further,*
24 That any permit so granted shall automatically cease and terminate in the event of abandonment
25 and nonuse thereof for the purposes intended for a period of ninety days, and all rights therein or
26 thereto shall revert to the municipality for its use and benefit;

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

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

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

39 (5) To regulate the width of streets, avenues and roads, and, subject to the provisions of
40 article eighteen of this chapter, to order the sidewalks, footways and crosswalks to be paved,
41 repaved, curbed or recurbed and kept in good order, free and clean, by the owners or occupants

42 thereof or of the real property next adjacent thereto;

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

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

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

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

52 (10) To prohibit the accumulation and require the disposal of garbage, refuse, debris,
53 wastes, ashes, trash and other similar accumulations whether on private or public property:

54 *Provided, That, in the event the municipality annexes an area which has been receiving solid*
55 *waste collection services from a certificated solid waste motor carrier, the municipality and the*
56 *solid waste motor carrier may negotiate an agreement for continuation of the private solid waste*
57 *motor carrier services for a period of time, not to exceed three years, during which time the*
58 *certificated solid waste motor carrier may continue to provide exclusive solid waste collection*
59 *services in the annexed territory;*

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

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

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

- 68 (14) To regulate the keeping of gunpowder and other combustibles;
- 69 (15) To make regulations guarding against danger or damage by fire;
- 70 (16) To arrest, convict and punish any individual for carrying about his or her person any
71 revolver or other pistol, dirk, bowie knife, razor, slingshot, billy, metallic or other false knuckles or
72 any other dangerous or other deadly weapon of like kind or character: *Provided*, That with respect
73 to any firearm a municipality may only arrest, convict and punish someone if they are in violation of
74 an ordinance authorized by subsection five-a of this article, a state law proscribing certain conduct
75 with a firearm or applicable federal law;
- 76 (17) To arrest, convict and punish any person for importing, printing, publishing, selling or
77 distributing any pornographic publications;
- 78 (18) To arrest, convict and punish any person for keeping a house of ill fame, or for letting to
79 another person any house or other building for the purpose of being used or kept as a house of ill
80 fame, or for knowingly permitting any house owned by him or her or under his or her control to be
81 kept or used as a house of ill fame, or for loafing, boarding or loitering in a house of ill fame, or
82 frequenting same;
- 83 (19) To prevent and suppress conduct and practices which are immoral, disorderly, lewd,
84 obscene and indecent;
- 85 (20) To prevent the illegal sale of intoxicating liquors, drinks, mixtures and preparations;
- 86 (21) To arrest, convict and punish any individual for driving or operating a motor vehicle
87 while intoxicated or under the influence of liquor, drugs or narcotics;
- 88 (22) To arrest, convict and punish any person for gambling or keeping any gaming tables,
89 commonly called "A, B, C," or "E, O," table or faro bank or keno table, or table of like kind, under
90 any denomination, whether the gaming table be played with cards, dice or otherwise, or any
91 person who shall be a partner or concerned in interest, in keeping or exhibiting the table or bank, or
92 keeping or maintaining any gaming house or place, or betting or gambling for money or anything of
93 value;

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

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

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

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

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

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

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

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

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

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

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

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

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

144 (36) To establish, construct, acquire, maintain and operate public buildings, municipal
145 buildings or city halls, auditoriums, arenas, jails, juvenile detention centers or homes, motor

146 vehicle parking lots or any other public works;

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

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

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

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

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

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

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

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

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

170 (46) Except as otherwise provided, to require and take bonds from any officers, when
171 considered necessary, payable to the municipality, in its corporate name, with such sureties and in

172 a penalty as the governing body may see fit, conditioned upon the faithful discharge of their duties;

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

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

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

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

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

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

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

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

198 the municipality to be interviewed;

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

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

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

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

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

NOTE: The purpose of this bill is to prohibit municipalities in their permitting from charging other government entities for rights of way within municipal boundaries that are at least fifteen feet above ground level at their lowest point and does not apply to right-of-way under the jurisdiction of the Division of Highways.

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