WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1972

ENROLLED
SENATE BILL NO. 320

(By Mr. Hubbard)

PASSED MARCH 1, 1972

In Effect 90 Days From Passage
ENROLLED

Senate Bill No. 320

(By Mr. Hubbard)

[Passed March 1, 1972; in effect ninety days from passage.]

AN ACT to amend and reenact section five, article twelve, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the general powers and authorities of every municipality and the governing body thereof; specifically authorizing any municipality and the governing body thereof to permit 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; and relating to criminal offenses and penalties.

Be it enacted by the Legislature of West Virginia:

That section five, article twelve, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

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

PART III. GENERAL POWERS OF MUNICIPALITIES AND GOV­ERNING BODIES.

§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) 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 a special legislative charter, 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, crosswalks, 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 (1); and, subject
to such terms and conditions as the governing body shall
prescribe, to permit, without in any way limiting the pow-
er and authority granted by the provisions of article six-
ten 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 such
permission for any person to construct and maintain a
passageway, building or other structure overhanging or
crossing any such airspace is granted, a public hearing
thereon shall be held by the governing body after publi-
cation of a notice of the date, time, place and purpose of
such 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 such publication shall be the
municipality: Provided, however, That any such permit
so granted, shall automatically cease and terminate in
the event of abandonment and non-use thereof for the
purposes intended for a period of ninety days, and all
rights therein or thereto shall revert to such munici-
pality for its use and benefit;

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

(3) To prevent by proper penalties the throwing,
depositing or permitting to remain on any street, avenue,
(4) To regulate the use of streets, avenues, roads, alleys, ways, sidewalks, crosswalks and public places belonging to the municipality;
(5) To regulate the width of sidewalks on the 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, wastes, ashes, trash and other similar matters;
(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 such 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 person any revolver or other pistol, dirk, bowie knife, razor, slungshot, billy, metallic or other false knuckles, or any other dangerous or other deadly weapon of like kind or character;

(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 under his 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
(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, shall have refused to grant a license to operate a pool or billiard room, mandamus shall not lie to compel such municipality to grant such license unless it shall clearly appear that the refusal of the municipality to grant such license is discriminatory or arbitrary; and in the event that the municipality determines to license any such business, the municipality shall have 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 such 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, killing or overloading or overdriving, or willfully depriving of necessary sustenance, any domestic animal;

(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, an electric system, a waterworks 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 said articles nineteen and twenty), within or without the corporate limits of the municipality, or partly within and partly without the corporate limits of the municipality, except that the municipality shall not erect any such 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 such 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 shall have 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 such 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, con-
(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 department of health;

(41) To establish, construct, acquire, maintain and operate hospitals, sanitaria 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 such terms and conditions as to price and otherwise as may
be determined by the governing body, and, in order to
carry into effect such 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 such bonds from such officers, when deemed neces-
sary, payable to the municipality, in its corporate name,
with such sureties and in such penalty as the governing
body may see fit, conditioned upon the faithful discharge
of their duties;
(47) To require and take from such employees and
contractors such bonds in such penalty, with such sure-
ties 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 munici-
pality's inhabitants as the governing body may deem
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 such classes thereof as may be deemed advisable;
(51) To appropriate and expend not exceeding twenty-
five cents per capita per annum for advertising the
municipality and the entertainment of visitors;
(52) To conduct programs to improve community re-
lations and public relations generally and to expend municipal revenue for such purposes;

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

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

(55) 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 shall not exceed any penalties provided in this chapter, and chapter sixty-one of this code for like offenses and violations.
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.

To take effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within article approved this the 8th day of March, 1972.

Governor
PRESENTED TO THE
GOVERNOR

Date  3/4/72
Time  9:45 a.m.