

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1972

ENROLLED

SENATE BILL NO. 320

(By Mr. HUBBARD)

PASSED MARCH 1, 1972

In Effect 90 Days FROM Passage



320

IN THE OFFICE
OF THE SECRETARY OF STATE
SECRETARY OF STATE

THIS DATE 3-8-72

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)
- 2 the constitution of this state, (ii) other provisions of
- 3 this chapter, (iii) other general law, and (iv) any charter,
- 4 and to the extent not inconsistent or in conflict with
- 5 any of the foregoing except a special legislative charter,
- 6 every municipality and the governing body thereof shall

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

10 (1) To lay off, establish, construct, open, alter, curb,
11 recurb, pave or repave and keep in good repair, or
12 vacate, discontinue and close, streets, avenues, roads,
13 alleys, ways, sidewalks, crosswalks, drains and gutters,
14 for the use of the public, and to improve and light the
15 same, and have them kept free from obstructions on or
16 over them which have not been authorized pursuant to the
17 succeeding provisions of this subdivision (1); and, subject
18 to such terms and conditions as the governing body shall
19 prescribe, to permit, without in any way limiting the pow-
20 er and authority granted by the provisions of article six-
21 teen of this chapter, any person to construct and maintain
22 a passageway, building or other structure overhanging or
23 crossing the airspace above a public street, avenue, road,
24 alley, way, sidewalk or crosswalk, but before any such
25 permission for any person to construct and maintain a
26 passageway, building or other structure overhanging or
27 crossing any such airspace is granted, a public hearing
28 thereon shall be held by the governing body after publi-
29 cation of a notice of the date, time, place and purpose of
30 such public hearing has been published as a Class I
31 legal advertisement in compliance with the provisions
32 of article three, chapter fifty-nine of this code, and
33 the publication area for such publication shall be the
34 municipality: *Provided, however,* That any such permit
35 so granted, shall automatically cease and terminate in
36 the event of abandonment and non-use thereof for the
37 purposes intended for a period of ninety days, and all
38 rights therein or thereto shall revert to such munici-
39 pality for its use and benefit;

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

45 (3) To prevent by proper penalties the throwing,
46 depositing or permitting to remain on any street, avenue,

47 road, alley, way, sidewalk, square or other public place
48 any glass, scrap iron, nails, tacks, wire, other litter, or any
49 offensive matter or anything likely to injure the feet
50 of individuals or animals or the tires of vehicles;

51 (4) To regulate the use of streets, avenues, roads,
52 alleys, ways, sidewalks, crosswalks and public places
53 belonging to the municipality;

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

61 (6) To establish, construct, alter, operate and main-
62 tain, or discontinue, bridges, tunnels and ferries and ap-
63 proaches thereto;

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

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

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

76 (10) To prohibit the accumulation and require the dis-
77 posal of garbage, refuse, wastes, ashes, trash and other
78 similar matters;

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

84 (12) To regulate or prohibit the purchase or sale of
85 articles intended for human use or consumption which

86 are unfit for such use or consumption, or which may be
87 contaminated or otherwise unsanitary;

88 (13) To prevent injury or annoyance to the public or
89 individuals from anything dangerous, offensive or un-
90 wholesome;

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

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

95 (16) To arrest, convict and punish any individual for
96 carrying about his person any revolver or other pistol,
97 dirk, bowie knife, razor, slungshot, billy, metallic or other
98 false knuckles, or any other dangerous or other deadly
99 weapon of like kind or character;

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

103 (18) To arrest, convict and punish any person for
104 keeping a house of ill fame, or for letting to another
105 person any house or other building for the purpose of
106 being used or kept as a house of ill fame, or for knowingly
107 permitting any house owned by him or under his con-
108 trol to be kept or used as a house of ill fame, or for
109 loafing, boarding or loitering in a house of ill fame, or
110 frequenting same;

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

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

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

119 (22) To arrest, convict and punish any person for
120 gambling or keeping any gaming tables, commonly called
121 "A, B, C," or "E, O," table or faro bank or keno table,
122 or table of like kind, under any denomination, whether
123 the gaming table be played with cards, dice or other-
124 wise, or any person who shall be a partner or concerned

125 in interest, in keeping or exhibiting such table or bank,
126 or keeping or maintaining any gaming house or place,
127 or betting or gambling for money or anything of value;

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

132 (24) To license, or for good cause to refuse to license
133 in a particular case, or in its discretion to prohibit in
134 all cases, the operation of pool and billiard rooms and
135 the maintaining for hire of pool and billiard tables not-
136 withstanding the general law as to state licenses for any
137 such business and the provisions of section four, article
138 thirteen of this chapter; and when the municipality, in
139 the exercise of its discretion, shall have refused to grant
140 a license to operate a pool or billiard room, mandamus
141 shall not lie to compel such municipality to grant such
142 license unless it shall clearly appear that the refusal
143 of the municipality to grant such license is discriminatory
144 or arbitrary; and in the event that the municipality
145 determines to license any such business, the municipality
146 shall have plenary power and authority, and it shall be
147 the duty of its governing body, to make and enforce
148 reasonable ordinances regulating the licensing and opera-
149 tion of such businesses;

150 (25) To protect places of divine worship and to pre-
151 serve peace and order in and about the premises where
152 held;

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

157 (27) To arrest, convict and punish any person for
158 cruelly, unnecessarily or needlessly beating, torturing,
159 mutilating, killing or overloading or overdriving, or
160 willfully depriving of necessary sustenance, any domestic
161 animal;

162 (28) To provide for the regular building of houses or
163 other structures, for the making of division fences by

164 the owners of adjacent premises and for the drainage
165 of lots by proper drains and ditches;

166 (29) To provide for the protection and conservation
167 of shade or ornamental trees, whether on public or pri-
168 vate property, and for the removal of trees or limbs of
169 trees in a dangerous condition;

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

173 (31) To regulate the location and placing of signs, bill-
174 boards, posters and similar advertising;

175 (32) To erect, establish, construct, acquire, improve,
176 maintain and operate a gas system, an electric system,
177 a waterworks system, or sewer system and sewage
178 treatment and disposal system, or any combination of
179 the foregoing (subject to all of the pertinent provisions
180 of articles nineteen and twenty of this chapter and
181 particularly to the limitations or qualifications on the
182 right of eminent domain set forth in said articles nine-
183 teen and twenty), within or without the corporate
184 limits of the municipality, or partly within and partly
185 without the corporate limits of the municipality, except
186 that the municipality shall not erect any such system
187 partly without the corporate limits of the municipality
188 to serve persons already obtaining service from an exist-
189 ing system of the character proposed, and where such
190 system is by the municipality erected, or has hereto-
191 fore been so erected, partly within and partly without
192 the corporate limits of the municipality, the munici-
193 pality shall have the right to lay and collect charges
194 for service rendered to those served within and those
195 served without the corporate limits of the municipality,
196 and to prevent injury to such system or the pollution
197 of the water thereof and its maintenance in a health-
198 ful condition for public use within the corporate limits
199 of the municipality;

200 (33) To acquire watersheds, water and riparian rights,
201 plant sites, rights-of-way and any and all other property
202 and appurtenances necessary, appropriate, useful, con-

203 venient or incidental to any such system, waterworks
204 or sewage treatment and disposal works, as aforesaid,
205 subject to all of the pertinent provisions of articles nine-
206 teen and twenty of this chapter;

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

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

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

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

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

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

228 (40) To establish and maintain a public health unit
229 in accordance with the provisions of section two, article
230 two, chapter sixteen of this code, which unit shall exer-
231 cise its powers and perform its duties subject to the
232 supervision and control of the West Virginia board of
233 health and state department of health;

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

236 (42) To acquire, by purchase, condemnation or other-
237 wise, land within or near the corporate limits of the
238 municipality for providing and maintaining proper places
239 for the burial of the dead and to maintain and operate
240 the same and regulate interments therein upon such
241 terms and conditions as to price and otherwise as may

242 be determined by the governing body, and, in order to
243 carry into effect such authority the governing body
244 may acquire any cemetery or cemeteries already
245 established;

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

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

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

254 (46) Except as otherwise provided, to require and
255 take such bonds from such officers, when deemed neces-
256 sary, payable to the municipality, in its corporate name,
257 with such sureties and in such penalty as the governing
258 body may see fit, conditioned upon the faithful discharge
259 of their duties;

260 (47) To require and take from such employees and
261 contractors such bonds in such penalty, with such sure-
262 ties and with such conditions, as the governing body
263 may see fit;

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

266 (49) To establish, construct, require, maintain and
267 operate such instrumentalities, other than free public
268 schools, for the instruction, enlightenment, improvement,
269 entertainment, recreation and welfare of the munici-
270 pality's inhabitants as the governing body may deem
271 necessary or appropriate for the public interest;

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

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

279 (52) To conduct programs to improve community re-

280 lations and public relations generally and to expend
281 municipal revenue for such purposes;

282 (53) To reimburse applicants for employment by the
283 municipality for travel and other reasonable and neces-
284 sary expenses actually incurred by such applicants in
285 traveling to and from such municipality to be interviewed;

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

288 (55) To provide penalties for the offenses and viola-
289 tions of law mentioned in this section, subject to the pro-
290 visions of section one, article eleven of this chapter, and
291 such penalties shall not exceed any penalties provided
292 in this chapter, and chapter sixty-one of this code for
293 like offenses and violations.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

James H. Bruce

Chairman Senate Committee

Phyllis J. Riedel

Chairman House Committee

Originated in the Senate.

To take effect ninety days from passage.

Howard T. Larson

Clerk of the Senate

C. A. Blankenship

Clerk of the House of Delegates

Robert C. G. G. G.

President of the Senate

Louis J. McManus

Speaker House of Delegates

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

Arthur A. Shaver Jr.

Governor

PRESENTED TO THE
GOVERNOR

Date 3/4/72

Time 9:45 a.m.