

APPROVED AND SIGNED BY THE GOVERNOR

Date 4-28-81

Time _____

No: 422

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1981



ENROLLED

SENATE BILL NO. 422

(By Mr. Moreland)



PASSED April 9, 1981

In Effect ninety days from Passage



ENROLLED
Senate Bill No. 422

(By MR. MORELAND)

[Passed April 9, 1981; in effect ninety days from passage.]

AN ACT to amend and reenact section twelve, article five, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section five, article twelve of said chapter, all relating to general powers of municipalities; compensation of officers and employees; and authorizing municipalities to expend municipal revenues for purposes of general employee benefits.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 5. ELECTION, APPOINTMENT, QUALIFICATION AND
COMPENSATION OF OFFICERS; GENERAL PROVISIONS
RELATING TO OFFICERS AND EMPLOYEES; ELECTIONS
AND PETITIONS GENERALLY; CONFLICT OF INTEREST.**

**PART VI. GENERAL PROVISIONS RELATING TO
OFFICERS AND EMPLOYEES.**

§8-5-12. Compensation of officers and employees.

1 Notwithstanding any charter provision to the contrary, the
2 governing body of every municipality shall by ordinance fix
3 or cause to be fixed the salary or compensation of every
4 municipal officer and employee: *Provided*, That the salary of
5 any officer shall not be increased or diminished during his
6 term.

7 The governing body of every municipality shall have
8 plenary power and authority to provide by ordinance for the
9 allowance of time off of officers and employees with pay for
10 vacations and illness and for personnel management
11 incentives, as additional consideration for their services and
12 employment.

**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 BOARDS.**

**§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
2 constitution of this state, (ii) other provisions of this chapter,
3 (iii) other general law, and (iv) any charter, and to the extent
4 not inconsistent or in conflict with any of the foregoing
5 except a special legislative charter, every municipality and
6 the governing body thereof shall have plenary power and
7 authority therein by ordinance or resolution, as the case may
8 require, and by appropriate action based thereon:

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

28 purpose of such public hearing has been published as a Class
29 I legal advertisement in compliance with the provisions of
30 article three, chapter fifty-nine of this code, and the
31 publication area for such publication shall be the
32 municipality: *Provided, however,* That any such permit so
33 granted, shall automatically cease and terminate in the event
34 of abandonment and nonuse thereof for the purposes
35 intended for a period of ninety days, and all rights therein or
36 thereto shall revert to such municipality for its use and
37 benefit;

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

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

48 (4) To regulate the use of streets, avenues, roads, alleys,
49 ways, sidewalks, crosswalks and public places belonging to
50 the municipality;

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

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

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

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

66 (9) To control and administer the waterfront and
67 waterways of the municipality, and to acquire, establish,
68 construct, operate and maintain and regulate flood control
69 works, wharves and public landings, warehouses and all
70 adjuncts and facilities for navigation and commerce and the

- 71 utilization of the waterfront and waterways and adjacent
72 property;
- 73 (10) To prohibit the accumulation and require the disposal
74 of garbage, refuse, wastes, ashes, trash and other similar
75 matters;
- 76 (11) To construct, establish, acquire, equip, maintain and
77 operate incinerator plants and equipment and all other
78 facilities for the efficient removal and destruction of garbage,
79 refuse, wastes, ashes, trash and other similar matters;
- 80 (12) To regulate or prohibit the purchase or sale of articles
81 intended for human use or consumption which are unfit for
82 such use or consumption, or which may be contaminated or
83 otherwise unsanitary;
- 84 (13) To prevent injury or annoyance to the public or
85 individuals from anything dangerous, offensive or
86 unwholesome;
- 87 (14) To regulate the keeping of gunpowder and other
88 combustibles;
- 89 (15) To make regulations guarding against danger or
90 damage by fire;
- 91 (16) To arrest, convict and punish any individual for
92 carrying about his person any revolver or other pistol, dirk,
93 bowie knife, razor, slungshot, billy, metallic or other false
94 knuckles, or any other dangerous or other deadly weapon of
95 like kind or character;
- 96 (17) To arrest, convict and punish any person for
97 importing, printing, publishing, selling or distributing any
98 pornographic publications;
- 99 (18) To arrest, convict and punish any person for keeping a
100 house of ill fame, or for letting to another person any house or
101 other building for the purpose of being used or kept as a
102 house of ill fame, or for knowingly permitting any house
103 owned by him or under his control to be kept or used as a
104 house of ill fame, or for loafing, boarding or loitering in a
105 house of ill fame, or frequenting same;
- 106 (19) To prevent and suppress conduct and practices which
107 are immoral, disorderly, lewd, obscene and indecent;
- 108 (20) To prevent the illegal sale of intoxicating liquors,
109 drinks, mixtures and preparations;
- 110 (21) To arrest, convict and punish any individual for
111 driving or operating a motor vehicle while intoxicated or
112 under the influence of liquor, drugs or narcotics;

113 (22) To arrest, convict and punish any person for gambling
114 or keeping any gaming tables, commonly called "A, B, C," or
115 "E, O," table or faro bank or keno table, or table of like kind,
116 under any denomination, whether the gaming table be played
117 with cards, dice or otherwise, or any person who shall be a
118 partner or concerned in interest, in keeping or exhibiting
119 such table or bank, or keeping or maintaining any gaming
120 house or place, or betting or gambling for money or anything
121 of value;

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

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

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

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

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

153 (28) To provide for the regular building of houses or other
154 structures, for the making of division fences by the owners of

155 adjacent premises and for the drainage of lots by proper
156 drains and ditches;

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

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

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

166 (32) To erect, establish, construct, acquire, improve,
167 maintain and operate a gas system, an electric system, a
168 waterworks system, or sewer system and sewage treatment
169 and disposal system, or any combination of the foregoing
170 (subject to all of the pertinent provisions of articles nineteen
171 and twenty of this chapter and particularly to the limitations
172 or qualifications on the right of eminent domain set forth in
173 said articles nineteen and twenty), within or without the
174 corporate limits of the municipality, or partly within and
175 partly without the corporate limits of the municipality,
176 except that the municipality shall not erect any such system
177 partly without the corporate limits of the municipality to
178 serve persons already obtaining service from an existing
179 system of the character proposed, and where such system is
180 by the municipality erected, or has heretofore been so
181 erected, partly within and partly without the corporate limits
182 of the municipality, the municipality shall have the right to
183 lay and collect charges for service rendered to those served
184 within and those served without the corporate limits of the
185 municipality, and to prevent injury to such system or the
186 pollution of the water thereof and its maintenance in a
187 healthful condition for public use within the corporate limits
188 of the municipality;

189 (33) To acquire watersheds, water and riparian rights,
190 plant sites, rights-of-way and any and all other property and
191 appurtenances necessary, appropriate, useful, convenient or
192 incidental to any such system, waterworks or sewage
193 treatment and disposal works, as aforesaid, subject to all of
194 the pertinent provisions of articles nineteen and twenty of
195 this chapter;

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

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

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

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

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

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

215 (40) To establish and maintain a public health unit in
216 accordance with the provisions of section two, article two,
217 chapter sixteen of this code, which unit shall exercise its
218 powers and perform its duties subject to the supervision and
219 control of the West Virginia board of health and state
220 department of health;

221 (41) To establish, construct, acquire, maintain and operate
222 hospitals, sanitarium and dispensaries;

223 (42) To acquire, by purchase, condemnation or otherwise,
224 land within or near the corporate limits of the municipality
225 for providing and maintaining proper places for the burial of
226 the dead and to maintain and operate the same and regulate
227 interments therein upon such terms and conditions as to
228 price and otherwise as may be determined by the governing
229 body, and, in order to carry into effect such authority the
230 governing body may acquire any cemetery or cemeteries
231 already established;

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

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

237 (45) To adopt rules for the transaction of business and the
238 government and regulation of its governing body; *

239 (46) Except as otherwise provided, to require and take
240 such bonds from such officers, when deemed necessary,
241 payable to the municipality, in its corporate name, with such
242 sureties and in such penalty as the governing body may see
243 fit, conditioned upon the faithful discharge of their duties;

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

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

249 (49) To establish, construct, require, maintain and operate
250 such instrumentalities, other than free public schools, for the
251 instruction, enlightenment, improvement, entertainment,
252 recreation and welfare of the municipality's inhabitants as the
253 governing body may deem necessary or appropriate for the
254 public interest;

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

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

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

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

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

271 (55) To create and maintain an employee benefits fund
272 which shall not exceed one tenth of one percent of the annual
273 payroll budget for general employee benefits and which shall
274 be set up for the purpose of stimulating and encouraging
275 employees to develop and implement cost-saving ideas and
276 programs and to expend moneys from such fund for such
277 purposes; and

278 (56) To provide penalties for the offenses and violations of

279 law mentioned in this section, subject to the provisions of
280 section one, article eleven of this chapter, and such penalties
281 shall not exceed any penalties provided in this chapter, and
282 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.

R. P. Baylor
Chairman Senate Committee

Tom E. Whitlow
Chairman House Committee

Originated in the Senate.

To take effect ninety days from passage.

Todd C. Wells
Clerk of the Senate

W. Blankenship
Clerk of the House of Delegates

Mark R. ...
President of the Senate

Robert M. Beecher
Speaker House of Delegates

The within *is approved* this the *28* day of *April*, 1981.

Paul D. ...
Governor



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