

No. 222

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SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1989



ENROLLED
Committee Substitute for
SENATE BILL NO. 222

(By Senator Jackson, et al)



PASSED April 8, 1989
In Effect 90 days from Passage

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 222

(SENATORS JACKSON, TOMBLIN AND JONES, *original sponsors*)

[Passed April 8, 1989; in effect ninety days from passage.]

AN ACT to amend article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section three-ff; and to amend and reenact section five, article twelve, chapter eight of said code, all relating to county commissions' and county health officers' duties to require clearance of refuse and debris on private lands; notice of demand and the contents thereof to be sent to private landowners requiring them to clear their lands of refuse and debris; the proper procedure to contest a demand to clear private land; and municipalities' authorization to require the clearance of private land of refuse and debris.

Be it enacted by the Legislature of West Virginia:

That article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section three-ff; and that section five, article twelve, chapter eight of said code be amended and reenacted, all to read as follows:

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-3ff. Duty to require clearance of refuse and debris from private lands; notice of demand thereof; procedure to contest demand.

1 In addition to all other powers and duties conferred
2 by law upon county commissions, as set forth in this
3 article, and county health officers, as set forth in
4 section two, article two, chapter sixteen of this code,
5 such commissions and health officers are hereby
6 authorized and obliged to require clearance of any
7 refuse or debris consisting of remnants or remains of
8 any unused or unoccupied dwelling, non-farm build-
9 ing, structure or manmade appurtenance on all pri-
10 vate lands within their respective scopes of authority
11 by the owners thereof that has accumulated as the
12 result of any natural or manmade force or effect
13 which presents a safety or health hazard or which has
14 deteriorated to such a degree as to be unsightly,
15 visually offensive and be depressive of the value of the
16 adjacent properties or uses of such properties.

17 Upon a determination by a county commission or
18 county health officer that substantial accumulations of
19 refuse or the presence of debris, as described above,
20 exist on any such private lands, notice shall be
21 forwarded to the owner thereof informing the land-
22 owner of the following:

23 (a) Of the commission's or health officer's demand
24 to remove all refuse and debris within ninety days of
25 the receipt of such notice unless an extension be
26 granted by said commission or health officer;

27 (b) Of the landowner's right to contest such demand
28 and of the proper procedure in which to do so;

29 (c) That if the landowner fails to both properly
30 contest and comply with the commission's or health
31 officer's demand, that removal will be achieved
32 otherwise and that the reasonable costs incurred
33 thereto will become a civil debt owed by the land-
34 owner to the county;

35 (d) That if the county incurs costs of removal and
36 the landowner fails to pay such costs within two
37 months of such removal that a judgement lien on the
38 subject property will be filed in the county clerk's
39 office wherein the subject property exists.

40 The commission or health officer shall send notice as
41 described herein by certified mail. If, for any reason,
42 such certified mail is returned without evidence of
43 proper receipt thereof, then in such event, a Class III-
44 0 legal advertisement shall be published in a newspa-
45 per of general circulation in the county wherein such
46 land is situated, in order to render proper notice in
47 accordance with this section: *Provided*, That if the
48 commission or health officer determines, after notice
49 and inquiry as provided herein, that such refuse or
50 debris was created by someone other than the present
51 landowner, without such landowner's expressed or
52 implied permission, the commission or health officer
53 shall remove any such refuse or debris and shall apply
54 to and be eligible to receive from the solid waste
55 reclamation and environmental response fund created
56 under section five-a, article five-f, chapter twenty of
57 this code for reimbursement for all reasonable costs
58 incurred for such removal.

59 In the event any landowner desires to contest any
60 demand brought forth pursuant to this section, the
61 landowner shall do so in accordance with article three,
62 chapter fifty-eight of this code.

CHAPTER 8. MUNICIPAL CORPORATIONS.

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

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

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

42 (2) To provide for the opening and excavation of

43 streets, avenues, roads, alleys, ways, sidewalks, cross-
44 walks and public places belonging to the municipality
45 and regulate the conditions under which any such
46 opening may be made;

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

54 (4) To regulate the use of streets, avenues, roads,
55 alleys, ways, sidewalks, crosswalks and public places
56 belonging to the municipality;

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

64 (6) To establish, construct, alter, operate and main-
65 tain, or discontinue, bridges, tunnels and ferries and
66 approaches thereto;

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

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

72 (9) To control and administer the waterfront and
73 waterways of the municipality, and to acquire, estab-
74 lish, construct, operate and maintain and regulate
75 flood control works, wharves and public landings,
76 warehouses and all adjuncts and facilities for naviga-
77 tion and commerce and the utilization of the water-
78 front and waterways and adjacent property;

79 (10) To prohibit the accumulation and require the
80 disposal of garbage, refuse, debris, wastes, ashes, trash

81 and other similar accumulations whether on private or
82 public property;

83 (11) To construct, establish, acquire, equip, maintain
84 and operate incinerator plants and equipment and all
85 other facilities for the efficient removal and destruc-
86 tion of garbage, refuse, wastes, ashes, trash and other
87 similar matters;

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

92 (13) To prevent injury or annoyance to the public or
93 individuals from anything dangerous, offensive or
94 unwholesome;

95 (14) To regulate the keeping of gunpowder and other
96 combustibles;

97 (15) To make regulations guarding against danger or
98 damage by fire;

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

104 (17) To arrest, convict and punish any person for
105 importing, printing, publishing, selling or distributing
106 any pornographic publications;

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

115 (19) To prevent and suppress conduct and practices
116 which are immoral, disorderly, lewd, obscene and
117 indecent;

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

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

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

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

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

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

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

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

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

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

176 (30) To prohibit with or without zoning the location
177 of occupied house trailers or mobile homes in certain
178 residential 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
183 system, an electric system, or sewer system and
184 sewage treatment and disposal system, or any combi-
185 nation of the foregoing (subject to all of the pertinent
186 provisions of articles nineteen and twenty of this
187 chapter and particularly to the limitations or qualifica-
188 tions on the right of eminent domain set forth in said
189 articles nineteen and twenty), within or without the
190 corporate limits of the municipality, except that the
191 municipality shall not erect any such system partly
192 without the corporate limits of the municipality to
193 serve persons already obtaining service from an
194 existing system of the character proposed, and where
195 such system is by the municipality erected, or has
196 heretofore been so erected, partly within and partly
197 without the corporate limits of the municipality, the

198 municipality shall have the right to lay and collect
199 charges for service rendered to those served within
200 and those served without the corporate limits of the
201 municipality, and to prevent injury to such system or
202 the pollution of the water thereof and its maintenance
203 in a healthful condition for public use within the
204 corporate limits of the municipality;

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

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

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

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

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

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

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

233 (40) To establish and maintain a public health unit in
234 accordance with the provisions of section two, article
235 two, chapter sixteen of this code, which unit shall

236 exercise its powers and perform its duties subject to
237 the supervision and control of the West Virginia board
238 of health and state department of health;

239 (41) To establish, construct, acquire, maintain and
240 operate hospitals, sanitarium and dispensaries;

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

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

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

256 (45) To adopt rules for the transaction of business
257 and the government and regulation of its governing
258 body;

259 (46) Except as otherwise provided, to require and
260 take such bonds from such officers, when deemed
261 necessary, payable to the municipality, in its corporate
262 name, with such sureties and in such penalty as the
263 governing body may see fit, conditioned upon the
264 faithful discharge of their duties;

265 (47) To require and take from such employees and
266 contractors such bonds in such penalty, with such
267 sureties and with such conditions, as the governing
268 body may see fit;

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

271 (49) To establish, construct, require, maintain and
272 operate such instrumentalities, other than free public
273 schools, for the instruction, enlightenment, improve-

274 ment, entertainment, recreation and welfare of the
275 municipality's inhabitants as the governing body may
276 deem necessary or appropriate for the public interest;

277 (50) To create, maintain and operate a system for the
278 enumeration, identification and registration, or either,
279 of the inhabitants of the municipality and visitors
280 thereto, or such classes thereof as may be deemed
281 advisable;

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

285 (52) To conduct programs to improve community
286 relations and public relations generally and to expend
287 municipal revenue for such purposes;

288 (53) To reimburse applicants for employment by the
289 municipality for travel and other reasonable and
290 necessary expenses actually incurred by such appli-
291 cants in traveling to and from such municipality to be
292 interviewed;

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

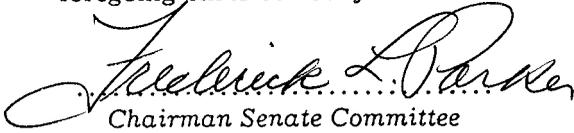
295 (55) To create and maintain an employee benefits
296 fund, which shall not exceed one tenth of one percent
297 of the annual payroll budget for general employee
298 benefits and which shall be set up for the purpose of
299 stimulating and encouraging employees to develop and
300 implement cost-saving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

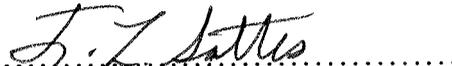
302 (56) To enter into reciprocal agreements with gov-
303 ernmental subdivisions or agencies of any state shar-
304 ing a common border for the protection of people and
305 property from fire and for emergency medical services
306 and for the reciprocal use of equipment and personnel
307 for such purposes; and

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

Enr. Com. Sub. For S. B. No. 222]12

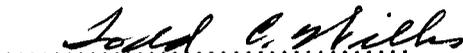
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

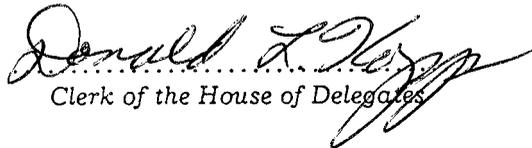

Chairman Senate Committee

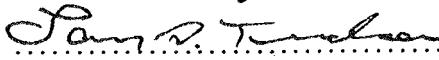

Chairman House Committee

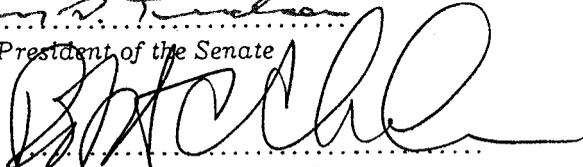
Originated in the Senate.

In effect ninety days from passage.

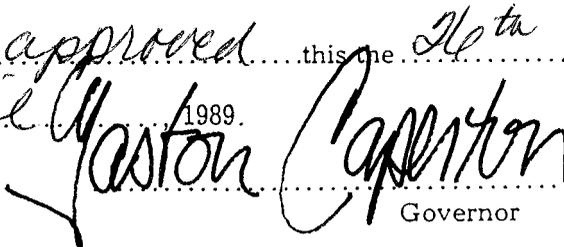

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker House of Delegates

The within *is approved* this the *16th*
day of *April* 1989.


Governor

PRESENTED TO THE

GOVERNOR

Date

4/24/89

Time

5:31