ENROLLED
Committee Substitute for
SENATE BILL NO. 222

(By Senator Jackson, et al.)

PASSED April 8, 1989
In Effect 90 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.

In addition to all other powers and duties conferred by law upon county commissions, as set forth in this article, and county health officers, as set forth in section two, article two, chapter sixteen of this code, such commissions and health officers are hereby authorized and obliged to require clearance of any refuse or debris consisting of remnants or remains of any unused or unoccupied dwelling, non-farm building, structure or manmade appurtenance on all private lands within their respective scopes of authority by the owners thereof that has accumulated as the result of any natural or manmade force or effect which presents a safety or health hazard or which has deteriorated to such a degree as to be unsightly, visually offensive and be depressive of the value of the adjacent properties or uses of such properties.

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

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

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

(c) That if the landowner fails to both properly contest and comply with the commission’s or health officer’s demand, that removal will be achieved otherwise and that the reasonable costs incurred thereto will become a civil debt owed by the landowner to the county;
(d) That if the county incurs costs of removal and the landowner fails to pay such costs within two months of such removal that a judgement lien on the subject property will be filed in the county clerk's office wherein the subject property exists.

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

In the event any landowner desires to contest any demand brought forth pursuant to this section, the landowner shall do so in accordance with article three, 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
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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 munici-
41 pality for its use and benefit;

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

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

(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 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, debris, wastes, ashes, trash
and other similar accumulations whether on private or public property;

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

(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, a waterworks
system, an electric system, or sewer system and
sewage treatment and disposal system, or any combi-
nation of the foregoing (subject to all of the pertinent
provisions of articles nineteen and twenty of this
chapter and particularly to the limitations or qualifica-
tions on the right of eminent domain set forth in said
articles nineteen and twenty), within or 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, convenient or incidental to any such system,
waterworks or sewage treatment and disposal works,
as aforesaid, subject to all of the pertinent provisions
of articles nineteen and twenty of this chapter;

(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
necessary, 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
sureties 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, improve-
ment, entertainment, recreation and welfare of the
municipality's inhabitants as the governing body may
dean 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
thereeto, 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
relations 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 appli-
cants in traveling to and from such municipality to be
interviewed;

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

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

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

(57) To provide penalties for the offenses and viola-
tions 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.
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The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker House of Delegates

The within approved this the 26th day of April, 1989.

[Signature]
Governor