

HB 2474

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# WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 1999



# ENROLLED

COMMITTEE SUBSTITUTE  
FOR  
**House Bill No. 2474**

(By Delegates C. White, Campbell, J. Smith,  
Marshall, Yeager, Ashley and Martin)



Passed March 12, 1999

In Effect Ninety Days from Passage

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FOR

## H. B. 2474

(BY DELEGATES C. WHITE, CAMPBELL, J. SMITH,  
MARSHALL, YEAGER, ASHLEY AND MARTIN)

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[Passed March 12, 1999; in effect ninety days from passage.]

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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 generally to powers of municipalities and providing for the naming or renaming of streets and for consultation with local postal authorities, the division of highways and the directors of county emergency communications centers, to assure uniform, nonduplicative addressing on a permanent basis.

*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.**

**§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 not  
4 inconsistent or in conflict with any of the foregoing except  
5 special legislative charters, every municipality and the govern-  
6 ing body thereof shall have plenary power and authority therein  
7 by ordinance or resolution, as the case may require, and by  
8 appropriate action based thereon:

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

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

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

46 (4) To regulate the use of streets, avenues, roads, alleys,  
47 ways, sidewalks, crosswalks and public places belonging to the  
48 municipality, including the naming or renaming thereof, and to  
49 consult with local postal authorities, the division of highways  
50 and the directors of county emergency communications centers  
51 to assure uniform, nonduplicative addressing on a permanent  
52 basis;

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

59 (6) To establish, construct, alter, operate and maintain, or  
60 discontinue, bridges, tunnels and ferries and approaches 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 waterways  
67 of the municipality, and to acquire, establish, construct, operate  
68 and maintain and regulate flood control works, wharves and  
69 public landings, warehouses and all adjuncts and facilities for  
70 navigation and commerce and the utilization of the waterfront  
71 and waterways and adjacent property;

72 (10) To prohibit the accumulation and require the disposal  
73 of garbage, refuse, debris, wastes, ashes, trash and other similar  
74 accumulations whether on private or public property;

75 (11) To construct, establish, acquire, equip, maintain and  
76 operate incinerator plants and equipment and all other facilities  
77 for the efficient removal and destruction of garbage, refuse,  
78 wastes, ashes, trash and other similar matters;

79 (12) To regulate or prohibit the purchase or sale of articles  
80 intended for human use or consumption which are unfit for such  
81 use or consumption, or which may be contaminated or other-  
82 wise unsanitary;

83 (13) To prevent injury or annoyance to the public or  
84 individuals from anything dangerous, offensive or unwhole-  
85 some;

86 (14) To regulate the keeping of gunpowder and other  
87 combustibles;

88 (15) To make regulations guarding against danger or  
89 damage by fire;

90 (16) To arrest, convict and punish any individual for  
91 carrying about his person any revolver or other pistol, dirk,  
92 bowie knife, razor, slingshot, billy, metallic or other false  
93 knuckles, or any other dangerous or other deadly weapon of like  
94 kind or character;

95 (17) To arrest, convict and punish any person for importing,  
96 printing, publishing, selling or distributing any pornographic  
97 publications;

98 (18) To arrest, convict and punish any person for keeping  
99 a house of ill fame, or for letting to another person any house or  
100 other building for the purpose of being used or kept as a house  
101 of ill fame, or for knowingly permitting any house owned by  
102 him or under his control to be kept or used as a house of ill  
103 fame, or for loafing, boarding or loitering in a house of ill fame,  
104 or frequenting same;

105 (19) To prevent and suppress conduct and practices which  
106 are immoral, disorderly, lewd, obscene and indecent;

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

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

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

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

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

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

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

145 (27) To arrest, convict and punish any person for cruelly,  
146 unnecessarily or needlessly beating, torturing, mutilating,  
147 killing or overloading or overdriving, or willfully depriving of  
148 necessary sustenance, any domestic animal;

149 (28) To provide for the regular building of houses or other  
150 structures, for the making of division fences by the owners of  
151 adjacent premises and for the drainage of lots by proper drains  
152 and ditches;

153 (29) To provide for the protection and conservation of  
154 shade or ornamental trees, whether on public or private prop-  
155 erty, and for the removal of trees or limbs of trees in a danger-  
156 ous condition;

157 (30) To prohibit with or without zoning the location of  
158 occupied house trailers or mobile homes in certain residential  
159 areas;

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

162 (32) To erect, establish, construct, acquire, improve,  
163 maintain and operate a gas system, a waterworks system, an  
164 electric system, or sewer system and sewage treatment and  
165 disposal system, or any combination of the foregoing (subject  
166 to all of the pertinent provisions of articles nineteen and twenty  
167 of this chapter and particularly to the limitations or qualifica-  
168 tions on the right of eminent domain set forth in said articles  
169 nineteen and twenty), within or without the corporate limits of  
170 the municipality, except that the municipality shall not erect  
171 any such system partly without the corporate limits of the  
172 municipality to serve persons already obtaining service from an  
173 existing system of the character proposed, and where such  
174 system is by the municipality erected, or has heretofore been so  
175 erected, partly within and partly without the corporate limits of  
176 the municipality, the municipality shall have the right to lay and  
177 collect charges for service rendered to those served within and

178 those served without the corporate limits of the municipality,  
179 and to prevent injury to such system or the pollution of the  
180 water thereof and its maintenance in a healthful condition for  
181 public use within the corporate limits of the municipality;

182 (33) To acquire watersheds, water and riparian rights, plant  
183 sites, rights-of-way and any and all other property and appurte-  
184 nances necessary, appropriate, useful, convenient or incidental  
185 to any such system, waterworks or sewage treatment and  
186 disposal works, as aforesaid, subject to all of the pertinent  
187 provisions of articles nineteen and twenty of this chapter;

188 (34) To establish, construct, acquire, maintain and operate  
189 and regulate markets, and prescribe the time of holding the  
190 same;

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

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

197 (37) To establish, construct, acquire, provide, equip,  
198 maintain and operate recreational parks, playgrounds and other  
199 recreational facilities for public use, and in this connection also  
200 to proceed in accordance with the provisions of article two,  
201 chapter ten of this code;

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

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

207 (40) To establish and maintain a public health unit in  
208 accordance with the provisions of section two, article two,  
209 chapter sixteen of this code, which unit shall exercise its powers  
210 and perform its duties subject to the supervision and control of  
211 the West Virginia board of health and state department of  
212 health;



213 (41) To establish, construct, acquire, maintain and operate  
214 hospitals, sanitarium and dispensaries;

215 (42) To acquire, by purchase, condemnation or otherwise,  
216 land within or near the corporate limits of the municipality for  
217 providing and maintaining proper places for the burial of the  
218 dead and to maintain and operate the same and regulate  
219 interments therein upon such terms and conditions as to price  
220 and otherwise as may be determined by the governing body,  
221 and, in order to carry into effect such authority the governing  
222 body may acquire any cemetery or cemeteries already estab-  
223 lished;

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

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

229 (45) To adopt rules for the transaction of business and the  
230 government and regulation of its governing body;

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

236 (47) To require and take from such employees and contrac-  
237 tors such bonds in such penalty, with such sureties and with  
238 such conditions, as the governing body may see fit;

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

241 (49) To establish, construct, require, maintain and operate  
242 such instrumentalities, other than free public schools, for the  
243 instruction, enlightenment, improvement, entertainment,  
244 recreation and welfare of the municipality's inhabitants as the  
245 governing body may deem necessary or appropriate for the  
246 public interest;

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

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

254 (52) To conduct programs to improve community relations  
255 and public relations generally and to expend municipal revenue  
256 for such purposes;

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

261 (54) To provide revenue for the municipality and appropri-  
262 ate the same to its expenses;

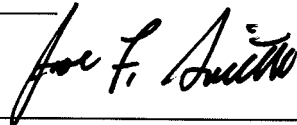
263 (55) To create and maintain an employee benefits fund,  
264 which shall not exceed one tenth of one percent of the annual  
265 payroll budget for general employee benefits and which shall be  
266 set up for the purpose of stimulating and encouraging employ-  
267 ees to develop and implement cost-saving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

269 (56) To enter into reciprocal agreements with governmental  
270 subdivisions or agencies of any state sharing a common border  
271 for the protection of people and property from fire and for  
272 emergency medical services and for the reciprocal use of  
273 equipment and personnel for such purposes; and

274 (57) To provide penalties for the offenses and violations of  
275 law mentioned in this section, subject to the provisions of  
276 section one, article eleven of this chapter, and such penalties  
277 shall not exceed any penalties provided in this chapter and  
278 chapter sixty-one of this code for like offenses and violations.

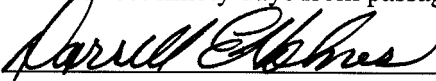
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

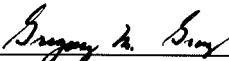
  
\_\_\_\_\_  
Chairman Senate Committee

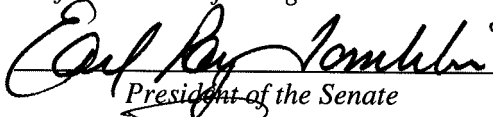
  
\_\_\_\_\_  
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

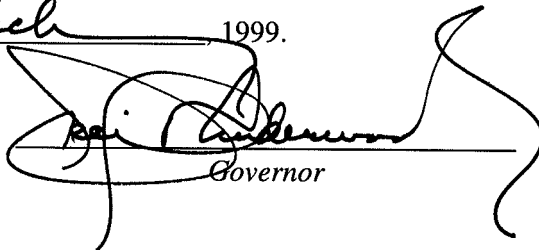
  
\_\_\_\_\_  
Clerk of the Senate

  
\_\_\_\_\_  
Clerk of the House of Delegates

  
\_\_\_\_\_  
President of the Senate

  
\_\_\_\_\_  
Speaker of the House of Delegates

The within approved this the 27<sup>th</sup>  
day of March 1999.

  
\_\_\_\_\_  
Governor

PRESENTED TO THE

GOVERNOR

Date 3/23/99

Time 3:55 pm