WEST VIRGINIA LEGISLATURE
Regular Session, 2001

ENROLLED

SENATE BILL NO. 555

(By Senator Ross, et al)

PASSED April 12, 2001

In Effect from Passage
ENROLLED

Senate Bill No. 555

(By Senators Ross, Caldwell, Kessler, Minard and Redd)

[Passed April 12, 2001; in effect 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 generally to the power, duties and authority of municipalities; authorizing municipalities and private solid waste motor carriers to negotiate an agreement for continued private solid waste collection services in an annexed area; and limiting the agreement to a period of no more than three years.

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.
In addition to the powers and authority granted by: (i) The constitution of this state; (ii) other provisions of this chapter; (iii) other general law; and (iv) any charter and to the extent not inconsistent or in conflict with any of the foregoing except special legislative charters, every municipality and the governing body thereof shall have plenary power and authority therein by ordinance or resolution, as the case may require, and by appropriate action based thereon:

(1) To lay off, establish, construct, open, alter, curb, recurb, pave or repave and keep in good repair, or vacate, discontinue and close, streets, avenues, roads, alleys, ways, sidewalks, drains and gutters, for the use of the public, and to improve and light the same and have them kept free from obstructions on or over them which have not been authorized pursuant to the succeeding provisions of this subdivision; and, subject to such terms and conditions as the governing body shall prescribe, to permit, without in any way limiting the power and authority granted by the provisions of article sixteen of this chapter, 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, but before any such permission for any person to construct and maintain a passageway, building or other structure overhanging or crossing any such airspace is granted, a public hearing thereon shall be held by the governing body after publication of a notice of the date, time, place and purpose of such public hearing has been published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code and the publication area for such publication shall be the municipality: Provided, That any such permit so granted shall automatically cease and terminate in the event of abandonment and nonuse thereof for the purposes intended for a period of ninety days and all rights therein or thereto shall revert to such municipality for its use and benefit;
(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, including the naming or renaming thereof, and to consult 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;

(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: Provided, That, in the event the municipality annexes an area which has been receiving solid waste collection services from a certificated solid waste motor carrier, the municipality and the solid waste motor carrier may negotiate an agreement for continuation of the private solid waste motor carrier services for a period of time, not to exceed three years, during which time the certificated solid waste motor carrier may continue to provide exclusive solid waste collection services in the annexed territory;

(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, slingshot, 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 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 govern-
ing 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 notwith-
standing 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, saie or destruc-
tion 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, 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 residen-
tial 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 combination of the foregoing
(subject to all of the pertinent provisions of articles
nineteen and twenty of this chapter and particularly to the
limitations or qualifications on the right of eminent
domain set forth in said articles), 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, conve-
nient 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, improvement, entertainment, recreation and welfare of the municipality’s inhabitants as the governing body may deem 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 thereto, 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 applicants 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 governmental subdivisions or agencies of any state sharing 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 violations 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.
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 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 20th Day of April, 2001.

Governor