WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2008

ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 4121

(By Delegates Fragale, DeLong, Boggs, Barker and Eldridge)

Passed March 8, 2008

In Effect Ninety Days from Passage
AN ACT amend the Code of West Virginia, 1931, as amended, by adding thereto three new sections, designated §6-9-2a, §6-9-2b and §6-9-2c; to amend said code by adding thereto a new section, designated §7-5-7a; and to amend and reenact §8-12-5 of said code, all relating to authorizing the participation of local governments in a purchasing card program to be administered by the Auditor as chief inspector of public offices; authorizing auditor to contract with institutions for provision of the cards; authorizing auditor to propose rules; creating local Government Purchasing Card Expenditure Fund; use of moneys in fund; legislative appropriation of fund; and creating offenses and criminal penalties.

*Be it enacted by the Legislature of West Virginia:*

That the Code of West Virginia, 1931, as amended, be amended by adding thereto three new sections, designated §6-9-2a, §6-9-2b
and §6-9-2c; that said code be amended by adding thereto a new section, designated §7-5-7a; and that §8-12-5 of said code be amended and reenacted, all to read as follows:

CHAPTER 6. GENERAL PROVISIONS RESPECTING OFFICERS.

ARTICLE 9. SUPERVISION OF PUBLIC OFFICERS.


Notwithstanding any provisions of the code to the contrary, the Auditor may authorize and administer a purchasing card program for local governments under the auspices of the chief inspector division. The purchasing card program shall be conducted so that procedures and controls for the procurement and payment of goods and services are made more efficient and so that the accounting and reporting of such payments shall be uniform for all local governments utilizing the program. The program shall permit local governments to use a purchase charge card to purchase goods and services. Notwithstanding any other code provisions to the contrary, local government purchases may be made with the purchase charge card for any payment authorized by the Auditor, including regular routine payments, travel and emergency payments, and shall be set at an amount to be determined by the Auditor: Provided, That purchasing cards may not be utilized for the purpose of obtaining cash advances, whether the advances are made in cash or by other negotiable instrument: Provided, however, That purchasing cards may be used for cash advances for travel purchases upon approval of the Auditor. Selection of a charge card vendor to provide local government purchasing cards shall be based upon expressions of interest submitted by charge card vendors. The Auditor shall contract with the successful institution for provision of local government purchasing...
cards. The selection shall be based upon the combination of competence and qualification in the provision of services and a determination of the best financial arrangement for the program. The Auditor may propose rules for promulgation to govern the implementation of the local government purchase card program and may promulgate emergency rules for emergency payments to effectuate the provision of such services.

§6-9-2b. Local Government Purchasing Card Expenditure Fund Created.

There is hereby created a local Government Purchasing Card Expenditure Fund. Money received by the Auditor pursuant to an agreement with vendors providing local government purchasing charge cards and any interest or other return earned on the money shall be deposited in the special revenue revolving local Government Purchasing Card Expenditure Fund in the State Treasury to be administered by the Auditor. The fund shall be used to pay all expenses incurred by the Auditor in the implementation and operation of the local government purchasing card program. The Auditor may also utilize the fund to provide a proportionate share of rebate back to the general fund of local governments based upon utilization of the program. Expenditures from the fund shall be made in accordance with appropriations by the Legislature pursuant to the provisions of article three, chapter twelve of this code and upon fulfillment of the provisions set forth in article two, chapter five-a of this code.

§6-9-2c. Fraudulent or unauthorized use of purchasing card prohibited; penalties.

It is unlawful for any person to use a local government purchasing card, issued in accordance with the provisions of section two-a of this article, to make any purchase of goods
or services in a manner which is contrary to the provisions of section two-a of this article or the rules promulgated pursuant to that section. Any person who violates the provisions of this section is guilty of a felony and, upon conviction thereof, shall be confined in a state correctional facility not less than one year nor more than five years, or fined no more than five thousand dollars, or both fined and imprisoned.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 5. FISCAL AFFAIRS.

§7-5-7a. Authorization for Purchase Card utilization.

Notwithstanding any other code provision to the contrary, any county or county agency may participate in a purchasing card program for local governments authorized and administered by the State Auditor as an alternative payment method.

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.

§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 permission for any person to construct and maintain a passageway, building or other structure overhanging or crossing any 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 the 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 the publication shall be the municipality: Provided, That any 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 the 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 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 or her 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 her or under his or her 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 the 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,
refuses to grant a license to operate a pool or billiard room,
mandamus may not lie to compel the municipality to grant
the license unless it shall clearly appear that the refusal of the
municipality to grant a license is discriminatory or arbitrary;
and in the event that the municipality determines to license
any business, the municipality has 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 the 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 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
articles nineteen and twenty), within or without the corporate
limits of the municipality, except that the municipality may
not erect any 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 the
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 has 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 the 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 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 Bureau for Public Health;

(41) To establish, construct, acquire, maintain and operate hospitals, sanitarians 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 terms and conditions as to price and otherwise as may be determined by the governing body and, in order to carry into effect the 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 bonds from any officers, when considered necessary, payable to the municipality, in its corporate name, with such sureties and in a penalty as the governing body may see fit, conditioned upon the faithful discharge of their duties;
(47) To require and take from the employees and contractors such bonds in a 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 consider 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 the classes thereof as may be considered advisable;

(51) To require owners, residents or occupants of factory-built homes situated in a factory-built rental home community with at least ten factory-built homes, to visibly post the specific numeric portion of the address of each factory-built home on the immediate premises of the factory-built home of sufficient size to be visible from the adjoining street: Provided, That in the event no numeric or other specific designation of an address exists for a factory-built home subject to the authorization granted by this subdivision, the municipality has the authority to provide a numeric or other specific designation of an address for the factory-built home and require that it be posted in accordance with the authority otherwise granted by this section.

(52) To appropriate and expend not exceeding twenty-five cents per capita per annum for advertising the municipality and the entertainment of visitors:
(53) To conduct programs to improve community relations and public relations generally and to expend municipal revenue for such purposes;

(54) To reimburse applicants for employment by the municipality for travel and other reasonable and necessary expenses actually incurred by the applicants in traveling to and from the municipality to be interviewed;

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

(56) To create and maintain an Employee Benefits Fund which may not exceed one tenth of one percent of the annual payroll budget for general employee benefits and which is set up for the purpose of stimulating and encouraging employees to develop and implement cost-saving ideas and programs and to expend moneys from the fund for these purposes;

(57) 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 these purposes;

(58) 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 may not exceed any penalties provided in this chapter and chapter sixty-one of this code for like offenses and violations; and

(59) To participate in a purchasing card program for local governments authorized and administered by the State Auditor as an alternative payment method.
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.

In 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 bill approved this the 18th day of April, 2008.

Governor