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2001 APR 20 P 5: 53

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**

*Regular Session, 2001*



**ENROLLED**

SENATE BILL NO. 555

(By Senator Ross, et al)



PASSED April 12, 2001

In Effect from Passage

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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**ENROLLED**

**Senate Bill No. 555**

(BY SENATORS ROSS, CALDWELL, KESSLER, MINARD AND REDD)

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[Passed April 12, 2001; in effect 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 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.**

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

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

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

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

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

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

63 (6) To establish, construct, alter, operate and maintain,  
64 or discontinue, bridges, tunnels and ferries and approaches  
65 thereto;

66 (7) To provide for the construction and maintenance of  
67 water

68 drains, the drainage of swamps or marshlands and drain-  
69 age 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, establish,  
74 construct, operate and maintain and regulate flood control  
75 works, wharves and public landings, warehouses and all  
76 adjuncts and facilities for navigation and commerce and  
77 the utilization of the waterfront and waterways and  
78 adjacent property;

79 (10) To prohibit the accumulation and require the  
80 disposal of garbage, refuse, debris, wastes, ashes, trash and  
81 other similar accumulations whether on private or public  
82 property: *Provided*, That, in the event the municipality  
83 annexes an area which has been receiving solid waste  
84 collection services from a certificated solid waste motor  
85 carrier, the municipality and the solid waste motor carrier  
86 may negotiate an agreement for continuation of the  
87 private solid waste motor carrier services for a period of  
88 time, not to exceed three years, during which time the  
89 certificated solid waste motor carrier may continue to  
90 provide exclusive solid waste collection services in the  
91 annexed territory;

92 (11) To construct, establish, acquire, equip, maintain  
93 and operate incinerator plants and equipment and all  
94 other facilities for the efficient removal and destruction of  
95 garbage, refuse, wastes, ashes, trash and other similar  
96 matters;

97 (12) To regulate or prohibit the purchase or sale of  
98 articles intended for human use or consumption which are  
99 unfit for such use or consumption, or which may be  
100 contaminated or otherwise unsanitary;

101 (13) To prevent injury or annoyance to the public or  
102 individuals from anything dangerous, offensive or un-  
103 wholesome;

104 (14) To regulate the keeping of gunpowder and other  
105 combustibles;

106 (15) To make regulations guarding against danger or  
107 damage by fire;

108 (16) To arrest, convict and punish any individual for  
109 carrying about his person any revolver or other pistol,  
110 dirk, bowie knife, razor, slingshot, billy, metallic or other  
111 false knuckles or any other dangerous or other deadly  
112 weapon of like kind or character;

113 (17) To arrest, convict and punish any person for import-  
114 ing, printing, publishing, selling or distributing any  
115 pornographic publications;

116 (18) To arrest, convict and punish any person for keep-  
117 ing a house of ill fame, or for letting to another person any  
118 house or other building for the purpose of being used or  
119 kept as a house of ill fame, or for knowingly permitting  
120 any house owned by him or under his control to be kept or  
121 used as a house of ill fame, or for loafing, boarding or  
122 loitering in a house of ill fame or frequenting same;

123 (19) To prevent and suppress conduct and practices  
124 which are immoral, disorderly, lewd, obscene and inde-  
125 cent;

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

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

131 (22) To arrest, convict and punish any person for gam-  
132 bling or keeping any gaming tables, commonly called "A,  
133 B, C" or "E, O" table, or faro bank or keno table, or table  
134 of like kind, under any denomination, whether the gaming  
135 table be played with cards, dice or otherwise, or any  
136 person who shall be a partner or concerned in interest, in  
137 keeping or exhibiting such table or bank, or keeping or  
138 maintaining any gaming house or place, or betting or  
139 gambling for money or anything of value;

140 (23) To provide for the elimination of hazards to public  
141 health and safety and to abate or cause to be abated

142 anything which in the opinion of a majority of the govern-  
143 ing body is a public nuisance;

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

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

163 (26) To regulate or prohibit the keeping of animals or  
164 fowls and to provide for the impounding, sale or destruc-  
165 tion of animals or fowls kept contrary to law or found  
166 running at large;

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

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

175 (29) To provide for the protection and conservation of  
176 shade or ornamental trees, whether on public or private

177 property, and for the removal of trees or limbs of trees in  
178 a dangerous condition;

179 (30) To prohibit with or without zoning the location of  
180 occupied house trailers or mobile homes in certain residen-  
181 tial areas;

182 (31) To regulate the location and placing of signs,  
183 billboards, posters and similar advertising;

184 (32) To erect, establish, construct, acquire, improve,  
185 maintain and operate a gas system, a waterworks system,  
186 an electric system or sewer system and sewage treatment  
187 and disposal system, or any combination of the foregoing  
188 (subject to all of the pertinent provisions of articles  
189 nineteen and twenty of this chapter and particularly to the  
190 limitations or qualifications on the right of eminent  
191 domain set forth in said articles), within or without the  
192 corporate limits of the municipality, except that the  
193 municipality shall not erect any such system partly  
194 without the corporate limits of the municipality to serve  
195 persons already obtaining service from an existing system  
196 of the character proposed and where such system is by the  
197 municipality erected, or has heretofore been so erected,  
198 partly within and partly without the corporate limits of  
199 the municipality, the municipality shall have the right to  
200 lay and collect charges for service rendered to those served  
201 within and those served without the corporate limits of the  
202 municipality and to prevent injury to such system or the  
203 pollution of the water thereof and its maintenance in a  
204 healthful condition for public use within the corporate  
205 limits of the municipality;

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

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

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

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

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

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

230 (39) To provide for the appointment and financial  
231 support of a library board in accordance with the provi-  
232 sions 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 two,  
235 chapter sixteen of this code, which unit shall exercise its  
236 powers and perform its duties subject to the supervision  
237 and control of the West Virginia board of health and state  
238 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 other-  
242 wise, land within or near the corporate limits of the  
243 municipality for providing and maintaining proper places  
244 for the burial of the dead and to maintain and operate the  
245 same and regulate interments therein upon such terms and  
246 conditions as to price and otherwise as may be determined

247 by the governing body and, in order to carry into effect  
248 such authority, the governing body may acquire any  
249 cemetery or cemeteries already established;

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

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

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

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

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

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

269 (49) To establish, construct, require, maintain and  
270 operate such instrumentalities, other than free public  
271 schools, for the instruction, enlightenment, improvement,  
272 entertainment, recreation and welfare of the municipal-  
273 ity's inhabitants as the governing body may deem neces-  
274 sary or appropriate for the public interest;

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

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

282 (52) To conduct programs to improve community  
283 relations and public relations generally and to expend  
284 municipal revenue for such purposes;

285 (53) To reimburse applicants for employment by the  
286 municipality for travel and other reasonable and necessary  
287 expenses actually incurred by such applicants in traveling  
288 to and from such municipality to be interviewed;

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

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

298 (56) To enter into reciprocal agreements with govern-  
299 mental subdivisions or agencies of any state sharing a  
300 common border for the protection of people and property  
301 from fire and for emergency medical services and for the  
302 reciprocal use of equipment and personnel for such  
303 purposes; and

304 (57) To provide penalties for the offenses and violations  
305 of law mentioned in this section, subject to the provisions  
306 of section one, article eleven of this chapter, and such  
307 penalties shall not exceed any penalties provided in this  
308 chapter and chapter sixty-one of this code for like offenses  
309 and violations.

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 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 is approved this the 20<sup>th</sup>  
Day of April, 2001.

*[Signature]*  
.....  
Governor

PRESENTED TO THE

GOVERNOR

Date 4/19/01

Time 5:00 pm