

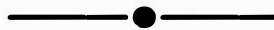
HB 4121

FILED

2008 APR -1 AM 11: 08

OF WEST VIRGINIA
SECRETARY OF STATE

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

E N R O L L E D

FILED

2008 APR -1 AM 11:08

COMMITTEE SUBSTITUTE

FOR

SECRETARY OF STATE

H. B. 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.

§6-9-2a. Local Government Purchasing Card Program.

1 Notwithstanding any provisions of the code to the
2 contrary, the Auditor may authorize and administer a
3 purchasing card program for local governments under the
4 auspices of the chief inspector division. The purchasing card
5 program shall be conducted so that procedures and controls
6 for the procurement and payment of goods and services are
7 made more efficient and so that the accounting and reporting
8 of such payments shall be uniform for all local governments
9 utilizing the program. The program shall permit local
10 governments to use a purchase charge card to purchase goods
11 and services. Notwithstanding any other code provisions to
12 the contrary, local government purchases may be made with
13 the purchase charge card for any payment authorized by the
14 Auditor, including regular routine payments, travel and
15 emergency payments, and shall be set at an amount to be
16 determined by the Auditor: *Provided*, That purchasing cards
17 may not be utilized for the purpose of obtaining cash
18 advances, whether the advances are made in cash or by other
19 negotiable instrument: *Provided, however*, That purchasing
20 cards may be used for cash advances for travel purchases
21 upon approval of the Auditor. Selection of a charge card
22 vendor to provide local government purchasing cards shall be
23 based upon expressions of interest submitted by charge card
24 vendors. The Auditor shall contract with the successful
25 institution for provision of local government purchasing

26 cards. The selection shall be based upon the combination of
27 competence and qualification in the provision of services and
28 a determination of the best financial arrangement for the
29 program. The Auditor may propose rules for promulgation
30 to govern the implementation of the local government
31 purchase card program and may promulgate emergency rules
32 for emergency payments to effectuate the provision of such
33 services.

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

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

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

1 It is unlawful for any person to use a local government
2 purchasing card, issued in accordance with the provisions of
3 section two-a of this article, to make any purchase of goods

4 or services in a manner which is contrary to the provisions of
5 section two-a of this article or the rules promulgated pursuant
6 to that section. Any person who violates the provisions of
7 this section is guilty of a felony and, upon conviction thereof,
8 shall be confined in a state correctional facility not less than
9 one year nor more than five years, or fined no more than five
10 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.

1 Notwithstanding any other code provision to the contrary,
2 any county or county agency may participate in a purchasing
3 card program for local governments authorized and
4 administered by the State Auditor as an alternative payment
5 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.

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
6 municipality and the governing body thereof shall have
7 plenary power and authority therein by ordinance or
8 resolution, as the case may require, and by appropriate action
9 based 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 to
14 improve and light the same, and have them kept free from
15 obstructions on or over them which have not been authorized
16 pursuant to the succeeding provisions of this subdivision;
17 and, subject to such terms and conditions as the governing
18 body shall prescribe, to permit, without in any way limiting
19 the power and authority granted by the provisions of article
20 sixteen of this chapter, any person to construct and maintain
21 a passageway, building or other structure overhanging or
22 crossing the airspace above a public street, avenue, road,
23 alley, way, sidewalk or crosswalk, but before any permission
24 for any person to construct and maintain a passageway,
25 building or other structure overhanging or crossing any
26 airspace is granted, a public hearing thereon shall be held by
27 the governing body after publication of a notice of the date,
28 time, place and purpose of the public hearing has been
29 published as a Class I legal advertisement in compliance with
30 the provisions of article three, chapter fifty-nine of this code
31 and the publication area for the publication shall be the
32 municipality: *Provided*, That any permit so granted shall
33 automatically cease and terminate in the event of
34 abandonment and nonuse thereof for the purposes intended
35 for a period of ninety days, and all rights therein or thereto
36 shall revert to the municipality for its use and benefit;

37 (2) To provide for the opening and excavation of streets,
38 avenues, roads, alleys, ways, sidewalks, crosswalks and

39 public places belonging to the municipality and regulate the
40 conditions under which any such opening may be made;

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

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

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

60 (6) To establish, construct, alter, operate and maintain, or
61 discontinue, bridges, tunnels and ferries and approaches
62 thereto;

63 (7) To provide for the construction and maintenance of
64 water drains, the drainage of swamps or marshlands and
65 drainage systems;

66 (8) To provide for the construction, maintenance and
67 covering over of watercourses;

69 (9) To control and administer the waterfront and
70 waterways of the municipality and to acquire, establish,
71 construct, operate and maintain and regulate flood control
72 works, wharves and public landings, warehouses and all
73 adjuncts and facilities for navigation and commerce and the
74 utilization of the waterfront and waterways and adjacent
75 property;

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

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

92 (12) To regulate or prohibit the purchase or sale of
93 articles intended for human use or consumption which are
94 unfit for use or consumption, or which may be contaminated
95 or otherwise unsanitary;

96 (13) To prevent injury or annoyance to the public or
97 individuals from anything dangerous, offensive or
98 unwholesome;

99 (14) To regulate the keeping of gunpowder and other
100 combustibles;

101 (15) To make regulations guarding against danger or
102 damage by fire;

103 (16) To arrest, convict and punish any individual for
104 carrying about his or her person any revolver or other pistol,
105 dirk, bowie knife, razor, slingshot, billy, metallic or other
106 false knuckles or any other dangerous or other deadly
107 weapon of like kind or character;

108 (17) To arrest, convict and punish any person for
109 importing, printing, publishing, selling or distributing any
110 pornographic publications;

111 (18) To arrest, convict and punish any person for keeping
112 a house of ill fame, or for letting to another person any house
113 or other building for the purpose of being used or kept as a
114 house of ill fame, or for knowingly permitting any house
115 owned by him or her or under his or her control to be kept or
116 used as a house of ill fame, or for loafing, boarding or
117 loitering in a house of ill fame, or frequenting same;

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

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

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

125 (22) To arrest, convict and punish any person for
126 gambling or keeping any gaming tables, commonly called
127 "A, B, C," or "E, O," table or faro bank or keno table, or table
128 of like kind, under any denomination, whether the gaming
129 table be played with cards, dice or otherwise, or any person

130 who shall be a partner or concerned in interest, in keeping or
131 exhibiting the table or bank, or keeping or maintaining any
132 gaming house or place, or betting or gambling for money or
133 anything of value;

134 (23) To provide for the elimination of hazards to public
135 health and safety and to abate or cause to be abated anything
136 which in the opinion of a majority of the governing body is
137 a public nuisance;

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

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

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

160 (27) To arrest, convict and punish any person for cruelly,
161 unnecessarily or needlessly beating, torturing, mutilating,

162 killing, or overloading or overdriving or willfully depriving
163 of necessary sustenance any domestic animal;

164 (28) To provide for the regular building of houses or
165 other structures, for the making of division fences by the
166 owners of adjacent premises and for the drainage of lots by
167 proper drains and ditches;

168 (29) To provide for the protection and conservation of
169 shade or ornamental trees, whether on public or private
170 property, and for the removal of trees or limbs of trees in a
171 dangerous condition;

172 (30) To prohibit with or without zoning the location of
173 occupied house trailers or mobile homes in certain residential
174 areas;

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

177 (32) To erect, establish, construct, acquire, improve,
178 maintain and operate a gas system, a waterworks system, an
179 electric system or sewer system and sewage treatment and
180 disposal system, or any combination of the foregoing (subject
181 to all of the pertinent provisions of articles nineteen and
182 twenty of this chapter and particularly to the limitations or
183 qualifications on the right of eminent domain set forth in
184 articles nineteen and twenty), within or without the corporate
185 limits of the municipality, except that the municipality may
186 not erect any system partly without the corporate limits of the
187 municipality to serve persons already obtaining service from
188 an existing system of the character proposed and where the
189 system is by the municipality erected, or has heretofore been
190 so erected, partly within and partly without the corporate
191 limits of the municipality, the municipality has the right to
192 lay and collect charges for service rendered to those served
193 within and those served without the corporate limits of the

194 municipality and to prevent injury to the system or the
195 pollution of the water thereof and its maintenance in a
196 healthful condition for public use within the corporate limits
197 of the municipality;

198 (33) To acquire watersheds, water and riparian rights,
199 plant sites, rights-of-way and any and all other property and
200 appurtenances necessary, appropriate, useful, convenient or
201 incidental to any system, waterworks or sewage treatment
202 and disposal works, as aforesaid, subject to all of the
203 pertinent provisions of articles nineteen and twenty of this
204 chapter;

205 (34) To establish, construct, acquire, maintain and
206 operate and regulate markets and prescribe the time of
207 holding the same;

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

210 (36) To establish, construct, acquire, maintain and
211 operate public buildings, municipal buildings or city halls,
212 Auditoriums, arenas, jails, juvenile detention centers or
213 homes, motor vehicle parking lots or any other public works;

214 (37) To establish, construct, acquire, provide, equip,
215 maintain and operate recreational parks, playgrounds and
216 other recreational facilities for public use and in this
217 connection also to proceed in accordance with the provisions
218 of article two, chapter ten of this code;

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

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

224 (40) To establish and maintain a public health unit in
225 accordance with the provisions of section two, article two,
226 chapter sixteen of this code, which unit shall exercise its
227 powers and perform its duties subject to the supervision and
228 control of the West Virginia Board of Health and State
229 Bureau for Public Health;

230 (41) To establish, construct, acquire, maintain and
231 operate hospitals, sanitariums and dispensaries;

232 (42) To acquire, by purchase, condemnation or otherwise,
233 land within or near the corporate limits of the municipality
234 for providing and maintaining proper places for the burial of
235 the dead and to maintain and operate the same and regulate
236 interments therein upon terms and conditions as to price and
237 otherwise as may be determined by the governing body and,
238 in order to carry into effect the authority, the governing body
239 may acquire any cemetery or cemeteries already established;

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

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

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

247 (46) Except as otherwise provided, to require and take
248 bonds from any officers, when considered necessary, payable
249 to the municipality, in its corporate name, with such sureties
250 and in a penalty as the governing body may see fit,
251 conditioned upon the faithful discharge of their duties;

252 (47) To require and take from the employees and
253 contractors such bonds in a penalty, with such sureties and
254 with such conditions, as the governing body may see fit;

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

257 (49) To establish, construct, require, maintain and operate
258 such instrumentalities, other than free public schools, for the
259 instruction, enlightenment, improvement, entertainment,
260 recreation and welfare of the municipality's inhabitants as the
261 governing body may consider necessary or appropriate for
262 the public interest;

263 (50) To create, maintain and operate a system for the
264 enumeration, identification and registration, or either, of the
265 inhabitants of the municipality and visitors thereto, or the
266 classes thereof as may be considered advisable;

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

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

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

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

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

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

298 (57) To enter into reciprocal agreements with
299 governmental 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 these purposes;

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

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

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



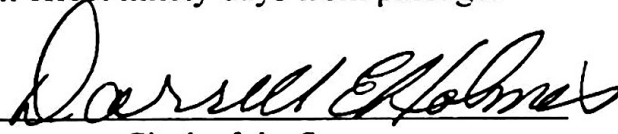
Chairman Senate Committee



Chairman House Committee

Originating in the House.

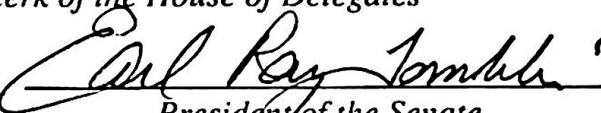
In effect ninety days from passage.



Clerk of the Senate



Clerk of the House of Delegates

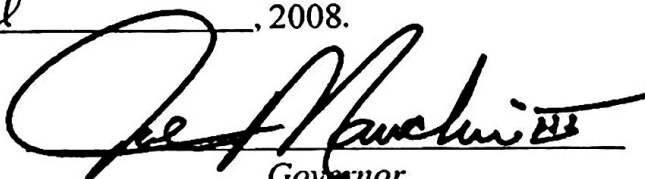


President of the Senate



Speaker of the House of Delegates

The within enc appended this the 18th
day of April, 2008.



Governor

PRESENTED TO THE
GOVERNOR

MAR 25 2008

Time 10:20am