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COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 388

(By Senators Unger, Snyder, D. Facemire, Yost and Kessler (Acting
President))

[Originating in the Committee on Government Organization;
reported February 16, 2011.]

A BILL to amend and reenact §7-1-3ff of the Code of West Virginia,
1931, as amended, relating to allowing a fire chief from a
county fire company to appoint a member of the chief's fire
company to serve as the chief's designee on a property safety
enforcement agency.

Be it enacted by the Legislature of West Virginia:

That §7-1-3ff of the Code of West Virginia, 1931, as amended,
be amended and reenacted to read as follows:

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

**§7-1-3ff. Authority of county commission to regulate unsafe or
unsanitary structures and refuse on private land;
authority to establish an enforcement agency; county
litter control officers; procedure for complaints;
lien and sale of land to recover costs; entry on land
to perform repairs and alterations or to satisfy
lien; receipt of grants and subsidies.**

(a) Plenary power and authority are hereby conferred upon

1 every county commission to adopt ordinances regulating the repair,
2 alteration or improvement, or the vacating and closing or removal
3 or demolition, or any combination thereof, of any dwellings or
4 other buildings, except for buildings utilized for farm purposes on
5 land actually being used for farming, unfit for human habitation
6 due to dilapidation, defects increasing the hazard of fire,
7 accidents or other calamities, lack of ventilation, light or
8 sanitary facilities or any other conditions prevailing in any
9 dwelling or building, whether used for human habitation or not,
10 which would cause the dwellings or other buildings to be unsafe,
11 unsanitary, dangerous or detrimental to the public safety or
12 welfare, whether the result of natural or manmade force or effect.

13 (b) Plenary power and authority are hereby conferred upon
14 every county commission to adopt ordinances regulating the removal
15 and clean up of any accumulation of refuse or debris, overgrown
16 vegetation or toxic spillage or toxic seepage located on private
17 lands which is determined to be unsafe, unsanitary, dangerous or
18 detrimental to the public safety or welfare, whether the result of
19 natural or manmade force or effect.

20 (c) The county commission, in formally adopting ordinances,
21 shall designate an enforcement agency which shall consist of:

22 (1) The county engineer or other technically qualified county
23 employee or consulting engineer;

24 (2) The county health officer or his or her designee;

25 (3) A fire chief from a county fire company or a designee
26 selected from the members of the chief's fire company;

27 (4) The county litter control officer, if the commission
28 chooses to hire one; ~~and~~

1 (5) Two members at large selected by the county commission to
2 serve two-year terms;

3 (6) The county sheriff ~~shall serve~~ who serves as an ex officio
4 member ~~of the enforcement agency~~; and

5 (7) The county officer charged with enforcing the orders of
6 the county commission under this section who serves as an ex
7 officio member.

8 (d) In addition to the powers and duties imposed by this
9 section, county litter control officers shall have authority to
10 issue citations for open dumps, as prohibited by subsection (a),
11 section ten, article fifteen, chapter twenty-two of this code,
12 unlawful disposal of litter, as prohibited by section four, article
13 fifteen-a, chapter twenty-two of this code, and failure to provide
14 proof of proper disposal of solid waste, as prohibited by
15 subsection (a), section ten, article four, chapter twenty-two-c of
16 this code, after completing a training course offered by the West
17 Virginia Department of Environmental Protection. Nothing in this
18 subsection supercedes the authority or duty of the Department of
19 Environmental Protection or other law-enforcement officers to
20 preserve law and order and enforce the litter control program.

21 (e) Any ordinance adopted pursuant to the provisions of this
22 section shall provide fair and equitable rules of procedure and any
23 other standards considered necessary to guide the enforcement
24 agency, or its agents, in the investigation of dwelling or building
25 conditions, accumulation of refuse or debris, overgrown vegetation
26 or toxic spillage or toxic seepage and shall provide for fair and
27 equitable rules of procedure for instituting and conducting
28 hearings in the matters before the county commission. Any entrance

1 upon premises for the purpose of making examinations shall be made
2 in a manner as to cause the least possible inconvenience to the
3 persons in possession.

4 (f) (1) Complaints authorized by this section shall be brought
5 before the county commission. Complaints shall be initiated by
6 citation issued by the county litter control officer or petition of
7 the county engineer (or other technically qualified county employee
8 or consulting engineer) on behalf of and at the direction of the
9 enforcement agency, but only after that agency has investigated and
10 determined that any dwelling, building, accumulation of refuse or
11 debris, overgrown vegetation or toxic spillage or toxic seepage is
12 unsafe, unsanitary, dangerous or detrimental to the public safety
13 or welfare and should be repaired, altered, improved, vacated,
14 removed, closed, cleaned or demolished.

15 (2) The county commission shall cause the owner or owners of
16 the private land in question to be served with a copy of the
17 complaint. Service shall be accomplished in the manner provided in
18 rule four of the West Virginia Rules of Civil Procedure.

19 (3) The complaint shall state the findings and recommendations
20 of the enforcement agency and that unless the owner or owners of
21 the property file with the clerk of the county commission a written
22 request for a hearing within ten days of receipt of the complaint,
23 an order will be issued by the county commission implementing the
24 recommendations of the enforcement agency.

25 (4) If the owner or owners of the property file a request for
26 a hearing, the county commission shall issue an order setting this
27 matter down for hearing within twenty days. Hearings shall be
28 recorded by electronic device or by court reporter. The West

1 Virginia rules of evidence do not apply to the proceedings, but
2 each party has the right to present evidence and examine and cross-
3 examine all witnesses.

4 (5) The enforcement agency has the burden of proving its
5 allegation by a preponderance of the evidence and has the duty to
6 go forward with the evidence.

7 (6) At the conclusion of the hearing the county commission
8 shall make findings of fact, determinations and conclusions of law
9 as to whether the dwelling or building: Is unfit for human
10 habitation due to dilapidation; has defects that increase the
11 hazard of fire, accidents or other calamities, lacks ventilation,
12 light or sanitary facilities; or any other conditions prevailing in
13 the dwelling or building, whether used for human habitation or not
14 and whether the result of natural or manmade force or effect, which
15 would cause such dwelling or other building to be unsafe,
16 unsanitary, dangerous or detrimental to the public safety or
17 welfare; or whether there is an accumulation of refuse or debris,
18 overgrown vegetation, toxic spillage or toxic seepage on private
19 lands which is determined to be unsafe, unsanitary, dangerous or
20 detrimental to the public safety or welfare, whether the result of
21 natural or manmade force or effect.

22 (7) The county commission has authority to order the owner or
23 owners thereof to repair, alter, improve, vacate, remove, close,
24 clean up or demolish the dwelling or building in question or to
25 remove or clean up any accumulation of refuse or debris, overgrown
26 vegetation or toxic spillage or toxic seepage within a reasonable
27 time and to impose daily civil monetary penalties on the owner or
28 owners who fail to obey an order.

1 (8) Appeals from the county commission to the circuit court
2 shall be in accordance with the provisions of article three,
3 chapter fifty-eight of this code.

4 (g) Upon the failure of the owner or owners of the private
5 land to perform the ordered duties and obligations as set forth in
6 the order of the county commission, the county commission may
7 advertise for and seek contractors to make the ordered repairs,
8 alterations or improvements or the ordered demolition, removal or
9 clean up. The county commission may enter into any contract with
10 any contractor to accomplish the ordered repairs, alterations or
11 improvements or the ordered demolition, removal or clean up.

12 (h) A civil proceeding may be brought in circuit court by the
13 county commission against the owner or owners of the private land
14 or other responsible party that the subject matter of the order of
15 the county commission to subject the private land in question:

16 (1) To a lien for the amount of the contractor's costs in
17 making these ordered repairs, alterations or improvements or
18 ordered demolition, removal or clean up, together with any daily
19 civil monetary penalty imposed;

20 (2) To order and decree the sale of the private land in
21 question to satisfy the lien;

22 (3) To order and decree that the contractor may enter upon the
23 private land in question at any and all times necessary to make
24 ordered repairs, alterations or improvements, or ordered
25 demolition, removal or clean up; and

26 (4) To order the payment of all costs incurred by the county
27 with respect to the property and for reasonable attorney fees and
28 court costs incurred in the prosecution of the action.

1 (i) County commissions have the power and authority to receive
2 and accept grants, subsidies, donations and services in kind
3 consistent with the objectives of this section.