

Senate Bill No. 388

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

[Introduced February 2, 2011; referred to the Committee on Government Organization.]

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 enact ordinances regulating the repair, alteration, improvement, vacating, closing, removal or demolition of unsafe or unsanitary structures and the clearance and removal of refuse, debris, overgrown vegetation, toxic spills or toxic seepage on private land; authority to create enforcement agency; procedure for complaints; promulgation of rules governing

1 **investigation and hearing of complaints; remedies**
2 **for failure to comply with commission-ordered**
3 **repairs or alterations; lien and sale of land to**
4 **recover costs; entry on land to perform repairs and**
5 **alterations or to satisfy lien; receipt of grants**
6 **and subsidies.**

7 ~~(a) Plenary power and authority are hereby conferred upon~~
8 ~~every~~ A county commission ~~to~~ may adopt ordinances regulating the
9 repair, alteration or improvement, or the vacating and closing or
10 removal or demolition, or any combination thereof, of any dwellings
11 or other buildings, except for buildings ~~utilized~~ used for farm
12 purposes on land ~~actually~~ being used for farming, unfit for human
13 habitation due to dilapidation, defects increasing the hazard of
14 fire, accidents or other calamities, lack of ventilation, light or
15 sanitary facilities or any other conditions prevailing in any
16 dwelling or building, whether used for human habitation or not,
17 which would cause the dwellings or other buildings to be unsafe,
18 unsanitary, dangerous or detrimental to the public safety or
19 welfare, whether the result of natural or manmade force or effect.

20 ~~(b) Plenary power and authority are hereby conferred upon~~
21 ~~every~~ A county commission ~~to~~ may adopt ordinances regulating the
22 removal and clean up of any accumulation of refuse or debris,
23 overgrown vegetation or toxic spillage or toxic seepage located on
24 private lands which is determined to be unsafe, unsanitary,
25 dangerous or detrimental to the public safety or welfare, whether
26 the result of natural or manmade force or effect.

27 (c) The county commission, in formally adopting ordinances,

1 shall designate an enforcement agency which shall consist of the
2 county engineer (or other technically qualified county employee or
3 consulting engineer), county health officer or his or her designee,
4 a fire chief from a county fire company or the chief's designee
5 selected from the members of the chief's fire company, the county
6 litter control officer, if the commission chooses to hire one, and
7 two members at large selected by the county commission to serve
8 two-year terms. The county sheriff ~~shall serve as an~~ and the
9 county officer charged with enforcing the orders of the county
10 commission under this section serve as ex officio ~~member~~ members of
11 the enforcement agency. ~~and the county officer charged with~~
12 ~~enforcing the orders of the county commission under this section~~

13 (d) In addition to the powers and duties imposed by this
14 section, county litter control officers ~~shall have authority to~~ may
15 issue citations for violations of the provisions of section four,
16 article fifteen-a, chapter twenty-two of this code after completing
17 a training course offered by the West Virginia Department of
18 Environmental Protection. Nothing in this subsection supercedes
19 the authority or duty of other law-enforcement officers to preserve
20 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

1 hearings in the matters before the county commission. Any entrance
2 upon premises for the purpose of making examinations shall be made
3 in a manner as to cause the least possible inconvenience to the
4 persons in possession.

5 (f) Any county commission adopting ordinances authorized by
6 this section shall hear and determine complaints of the enforcement
7 agency. Complaints shall be initiated by citation issued by the
8 county litter control officer or petition of the county engineer
9 (or other technically qualified county employee or consulting
10 engineer) on behalf of and at the direction of the enforcement
11 agency, but only after that agency has investigated and determined
12 that any dwelling, building, accumulation of refuse or debris,
13 overgrown vegetation or toxic spillage or toxic seepage is unsafe,
14 unsanitary, dangerous or detrimental to the public safety or
15 welfare and should be repaired, altered, improved, vacated,
16 removed, closed, cleaned or demolished. The county commission
17 shall cause the owner or owners of the private land in question to
18 be served with a copy of the complaint. Service shall be
19 accomplished in the manner provided in Rule 4 of the West Virginia
20 Rules of Civil Procedure. The complaint shall state the findings
21 and recommendations of the enforcement agency and that unless the
22 owner or owners of the property file with the clerk of the county
23 commission a written request for a hearing within ten days of
24 receipt of the complaint, an order will be issued by the county
25 commission implementing the recommendations of the enforcement
26 agency. If the owner or owners of the property file a request for
27 a hearing, the county commission shall issue an order setting this

1 matter down for hearing within twenty days. Hearings shall be
2 recorded by electronic device or by court reporter. The West
3 Virginia Rules of Evidence do not apply to the proceedings, but
4 each party has the right to present evidence and examine and cross-
5 examine all witnesses. The enforcement agency has the burden of
6 proving its allegation by a preponderance of the evidence and has
7 the duty to go forward with the evidence. At the conclusion of the
8 hearing the county commission shall make findings of fact,
9 determinations and conclusions of law as to whether the dwelling or
10 building: Is unfit for human habitation due to dilapidation; has
11 defects that increase the hazard of fire, accidents or other
12 calamities, lacks ventilation, light or sanitary facilities; or any
13 other conditions prevailing in the dwelling or building, whether
14 used for human habitation or not and whether the result of natural
15 or manmade force or effect, which would cause such dwelling or
16 other building to be unsafe, unsanitary, dangerous or detrimental
17 to the public safety or welfare; or whether there is an
18 accumulation of refuse or debris, overgrown vegetation, toxic
19 spillage or toxic seepage on private lands which is determined to
20 be unsafe, unsanitary, dangerous or detrimental to the public
21 safety or welfare, whether the result of natural or manmade force
22 or effect. The county commission has authority to order the owner
23 or 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

1 owners who fail to obey an order. Appeals from the county
2 commission to the circuit court shall be in accordance with the
3 provisions of article three, 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 which is the subject matter of the order of the county commission
15 to subject the private land in question to a lien for the amount of
16 the contractor's costs in making these ordered repairs, alterations
17 or improvements or ordered demolition, removal or clean up,
18 together with any daily civil monetary penalty imposed and
19 reasonable attorney fees and court costs and to order and decree
20 the sale of the private land in question to satisfy the lien and to
21 order and decree that the contractor may enter upon the private
22 land in question at any and all times necessary to make
23 improvements or ordered repairs, alterations or improvements, or
24 ordered demolition, removal or clean up. In addition, the county
25 commission shall have the authority to institute a civil action in
26 a court of competent jurisdiction against the landowner or other
27 responsible party for all costs incurred by the county with respect

1 to the property and for reasonable attorney fees and court costs
2 incurred in the prosecution of the action.

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

NOTE: The purpose of this bill is to allow 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.

Strike-throughs indicate language that would be stricken from
the present law, and underscoring indicates new language that would
be added.