

H. B. 4436

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(By Delegates Hall, Stowers, R. Phillips, Reynolds,
Barker, L. Phillips, Craig and D. Poling)
[Introduced February 6, 2012; referred to the
Committee on Political Subdivisions then the
Judiciary.]

A BILL to amend and reenact §7-1-3ff of the Code of West Virginia,
1931, as amended, relating to providing county litter control
officers the authority to issue citations for the misdemeanor
offense of unauthorized use of dumpsters; and making stylistic
changes.

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~~
~~every~~ A county commission ~~to~~ may adopt ordinances regulating the
repair, alteration or improvement, or the vacating and closing or

1 removal or demolition, or any combination thereof, of any dwellings
2 or other buildings ~~except for buildings utilized for farm purposes~~
3 ~~on land actually being used for farming,~~ unfit for human habitation
4 due to dilapidation, defects increasing the hazard of fire,
5 accidents or other calamities, lack of ventilation, light or
6 sanitary facilities or any other conditions prevailing in any
7 dwelling or building, whether used for human habitation or not,
8 which would cause the dwellings or other buildings to be unsafe,
9 unsanitary, dangerous or detrimental to the public safety or
10 welfare, whether the result of natural or manmade force or effect.
11 The authority granted under this subsection does not extend to
12 buildings used for farm purposes on land actively used for farming.

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

20 (c) The county commission, in formally adopting ordinances,
21 shall designate an enforcement agency ~~which shall consist~~
22 consisting of the county engineer, or other technically qualified
23 county employee or consulting engineer, county health officer or
24 his or her designee, a fire chief from a county fire ~~company,~~
25 department, the county litter control officer, ~~if the commission~~
26 ~~chooses to hire one,~~ if any, and two members at large selected by

1 the county commission to serve two-year terms. The county sheriff
2 shall serve as an ex officio member of the enforcement agency and
3 the county officer charged with enforcing the orders of the county
4 commission under this section.

5 (d) In addition to the powers and duties imposed by this
6 section, county litter control officers ~~shall~~ have authority to
7 issue citations for the following:

8 (1) The misdemeanor offense of unauthorized use of dumpsters,
9 as prohibited by section fifty-three, article three, chapter sixty-
10 one of this code;

11 (2) Open dumps, as prohibited by subsection (a), section ten,
12 article fifteen, chapter twenty-two of this code;

13 (3) Unlawful disposal of litter, as prohibited by section
14 four, article fifteen-a, chapter twenty-two of this code; and

15 (4) Failure to provide proof of proper disposal of solid
16 waste, as prohibited by subsection (a), section ten, article four,
17 chapter twenty-two-c of this code, after completing a training
18 course offered by the West Virginia Department of Environmental
19 Protection.

20 Nothing in this subsection supercedes the authority or duty
21 of the Department of Environmental Protection or other law-
22 enforcement officers to preserve law and order and enforce the
23 litter control program.

24 (e) Any ordinance adopted pursuant to the provisions of this
25 section shall provide fair and equitable rules of procedure and any
26 other standards considered necessary to guide the enforcement

1 agency, or its agents, in the investigation of dwelling or building
2 conditions, accumulation of refuse or debris, overgrown vegetation
3 or toxic spillage or toxic seepage and shall provide for fair and
4 equitable rules of procedure for instituting and conducting
5 hearings in the matters before the county commission. Any entrance
6 upon premises for the purpose of making examinations shall be made
7 in a manner ~~as to cause~~ causing the least possible inconvenience to
8 the persons in possession.

9 (f) ~~(1)~~ Complaints authorized by this section shall be brought
10 before the county commission as follows:

11 (1) Complaints shall be initiated by citation issued by the
12 county litter control officer or petition of the county engineer,
13 or other technically qualified county employee or consulting
14 engineer, on behalf of and at the direction of the enforcement
15 agency but only after that agency has investigated and determined
16 that ~~any~~ a dwelling, building, accumulation of refuse or debris,
17 overgrown vegetation or toxic spillage or toxic seepage is unsafe,
18 unsanitary, dangerous or detrimental to the public safety or
19 welfare and should be repaired, altered, improved, vacated,
20 removed, closed, cleaned or demolished.

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

25 (3) The complaint shall state the findings and recommendations
26 of the enforcement agency and that unless the owner or owners of

1 the property file with the clerk of the county commission a written
2 request for a hearing within ten days of receipt of the complaint,
3 an order will be issued by the county commission implementing the
4 recommendations of the enforcement agency.

5 (4) If the owner or owners of the property file a request for
6 a hearing, the county commission shall issue an order setting ~~this~~
7 ~~matter down~~ the matter for hearing within twenty days. Hearings
8 shall be recorded by electronic device or by court reporter. The
9 West Virginia Rules of Evidence do not apply to the proceedings but
10 each party has the right to present evidence and examine and cross-
11 examine all witnesses.

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

15 (6) At the conclusion of the hearing, the county commission
16 shall make findings of fact ~~determinations~~ and conclusions of law,
17 in the appropriate case, as to whether the dwelling or building is
18 unfit for human habitation due to dilapidation; has defects that
19 increase the hazard of fire, accidents or other calamities; lacks
20 ventilation, light or sanitary facilities or ~~any~~ other conditions
21 ~~prevailing~~ in the dwelling or building ~~whether used for human~~
22 ~~habitation or not and whether the result of natural or manmade~~
23 ~~force or effect,~~ which would cause ~~such~~ the dwelling or other
24 building to be unsafe, unsanitary, dangerous or detrimental to the
25 public safety or welfare ~~or~~ whether used for human habitation or
26 not and whether the condition results from natural or manmade force

1 or effect. In the appropriate case, the county commission shall
2 make findings of fact and conclusions of law whether there is an
3 accumulation of refuse or debris, overgrown vegetation, toxic
4 spillage or toxic seepage on private lands which is determined to
5 be unsafe, unsanitary, dangerous or detrimental to the public
6 safety or welfare whether the result of natural or manmade force or
7 effect.

8 (7) The county commission has authority to order the owner or
9 owners thereof to repair, alter, improve, vacate, remove, close,
10 clean up or demolish the dwelling or building in question or to
11 remove or clean up any accumulation of refuse or debris, overgrown
12 vegetation or toxic spillage or toxic seepage within a reasonable
13 time and to impose daily civil monetary penalties on the owner or
14 owners who fail to obey an order.

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

18 (g) Upon the failure of the owner or owners of the private
19 land to perform the ordered duties and obligations as set forth in
20 the order of the county commission, the county commission may
21 advertise for and seek contractors to make the ordered repairs,
22 alterations or improvements or the ordered demolition, removal or
23 clean up. The county commission may enter into any contract with
24 any contractor to accomplish the ordered repairs, alterations or
25 improvements or the ordered demolition, removal or clean up.

26 (h) A civil proceeding may be brought in circuit court by the

1 county commission against the owner or owners ~~of the private land~~
 2 ~~or other responsible party that the subject matter of the order of~~
 3 ~~the county commission to subject the private land in question: or~~
 4 other responsible party of the private land that is the subject of
 5 an order of the county commission to obtain any or all of the
 6 following relief:

7 (1) ~~To~~ A lien for the amount of the contractor's costs in
 8 making ~~these~~ the ordered repairs, alterations or improvements or
 9 ordered demolition, removal or clean up, together with any daily
 10 civil monetary penalty imposed;

11 (2) ~~To order and decree~~ An order directing the sale of the
 12 private land in question to satisfy the lien;

13 (3) ~~to order and decree that the contractor may~~ An order
 14 authorizing the contractor to enter upon the private land in
 15 question at any ~~and all times necessary~~ time to make ordered
 16 repairs, alterations or improvements, or ordered demolition,
 17 removal or clean up; and

18 (4) ~~to order~~ An order authorizing the payment of all costs
 19 incurred by the county with respect to the property ~~and for~~
 20 including reasonable attorney fees and court costs incurred in the
 21 prosecution of the action.

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

NOTE: The purpose of this bill is to provide litter control
 officers the authority to issue citations for the misdemeanor

offense of unauthorized use of dumpsters.

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