

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 3124**

4
5 (By Delegates R. Phillips, Ferro, Craig,
6 Ashley and Howell)

7 (Originating in the Committee on the Judiciary)

8 [March 29, 2013]

9
10 A BILL to amend and reenact §7-1-3v, of the Code of West Virginia,
11 1931, as amended; to amend and reenact §8-30-1, all relating
12 generally to flood control projects and floodplain management
13 by municipalities and counties, and providing for a limited
14 fee to be charged for a floodplain permit.

15 *Be it enacted by the Legislature of West Virginia:*

16 That §7-1-3v of the Code of West Virginia, 1931, as amended,
17 be amended and reenacted; and that §8-30-1 of said Code be amended
18 and reenacted, all to read as follows:

19 **ARTICLE 1. COUNTY COMMISSIONS GENERALLY.**

20 **§7-1-3v. Floodplain and mudslide area management; legislative**
21 **findings; power and authority; enforcement; fee for**
22 **floodplain permit; provisions cumulative.**

23 (a) The Legislature hereby finds and declares that it is
24 imperative that municipalities and counties in this state be fully
25 authorized and empowered to take all action necessary to comply
26 with the requirements of the National Flood Insurance Act of 1968

1 (Public Law 91-152), as amended by the Congress of the United
2 States through February 15, 1975; that municipalities presently are
3 vested with all statutory power and authority necessary in this
4 regard; and that the purpose of this section is to authorize and
5 empower the several counties of this state to comply with ~~such~~ the
6 requirements.

7 (b) As used in this section:

8 (1) "Act" means the National Flood Insurance Act of 1968
9 (Public Law 91-152), as amended ~~by the Congress of the United~~
10 ~~States through February 15, 1975;~~ and

11 (2) "Specified area or areas" means the area or areas
12 specified under ~~such~~ the act as a flood plain or mudslide area or
13 areas within which control over construction and improvements must
14 be exercised in order to comply with ~~such~~ the act.

15 (c) To the extent and only to the extent necessary to comply
16 with the eligibility requirements of and otherwise fully and in all
17 respects to comply with the requirements of ~~such~~ the act, the
18 county commission of each county ~~is hereby authorized and empowered~~
19 ~~to~~ may (i) adopt, administer and enforce building codes for a
20 specified area or areas within ~~such~~ the county, which building
21 codes may establish different requirements for different specified
22 areas; (ii) require and issue building permits for all proposed
23 construction or other improvements in ~~such~~ the county: *Provided,*
24 That nothing contained in this subdivision (ii) ~~shall authorize~~
25 authorizes a county commission to refuse to issue a building permit
26 for any proposed construction or other improvement outside of a

1 specified area or areas within ~~such~~ the county; (iii) conduct
2 inspections of construction and other improvements in a specified
3 area or areas within ~~such~~ the county and (iv) otherwise take ~~such~~
4 action and impose ~~such~~ requirements regarding land use and control
5 measures in a specified area or areas within ~~such~~ the county as
6 ~~shall be~~ necessary under ~~such~~ the act: *Provided*, That ~~no such a~~
7 building code adopted by a county commission ~~shall~~ may not apply
8 within nor may any authority hereinabove granted be exercised by a
9 county commission within the corporate limits of any municipality
10 which has taken appropriate action to comply with ~~such~~ the act,
11 unless and until ~~such~~ the municipality so provides by ordinance.
12 ~~Any such~~ A building code adopted by a county commission and any
13 other requirements imposed by a county commission under the
14 provisions of this subsection ~~(c)~~ may be enforced by injunctive
15 action in the circuit court of the county.

16 (d) If a county commission charges a fee for a floodplain
17 permit, the fee shall not exceed \$5,000.

18 ~~(d)~~ (e) The power and authority conferred upon county
19 commissions in this section is supplemental to and not in
20 derogation of any power and authority heretofore or hereafter
21 conferred by law upon county commissions.

22 **CHAPTER 8. MUNICIPAL CORPORATIONS.**

23 **ARTICLE 30. INTERGOVERNMENTAL RELATIONS -- FLOOD CONTROL PROJECTS.**

24 **§8-30-1. Establishment and operation of flood control projects by**
25 **municipalities and counties.**

1 (a) Any municipality or county may establish, construct,
2 maintain and operate for such municipality or county a flood
3 control project, including the removal of accumulated snags and
4 other debris from and the clearing and straightening of the channel
5 of navigable streams and tributaries thereof, and any ~~such~~
6 municipality or county may accept any and all benefits, moneys,
7 services and assistance from the federal government in connection
8 with any agreement as authorized by federal statutes ~~and laws~~
9 relating to flood control, and any ~~such~~ municipality or county
10 under such agreements as are required by section 701c, Title 33,
11 United States Code or other federal statutes ~~is hereby empowered~~
12 ~~and authorized to~~ may give assurances satisfactory to the secretary
13 of the army or other proper federal authority that ~~such~~ the
14 municipality or county will: (a) Provide without cost to the United
15 States, all lands, easements and right-of-ways necessary for the
16 construction of the project; (b) hold and save the United States
17 free from damages due to the construction works; and (c) maintain
18 and operate all the works after completion in accordance with
19 regulations prescribed by the secretary of the army.

20 (b) Any ~~such~~ municipality or county ~~is hereby further~~
21 ~~empowered and authorized to~~ may levy, within all constitutional and
22 statutory limitations, for the maintenance or operation of a flood
23 control project; to purchase land situate therein for the same; to
24 institute condemnation proceedings for the acquiring of any land
25 required under the flood control project; and to authorize the
26 issuance and sale of bonds within all constitutional and statutory

1 limitations, as is provided under general law for the issuance and
2 sale of bonds by municipalities and counties for public purposes
3 generally. Any levy shall be equal and uniform throughout the
4 municipality or county, as the case may be. Real or personal
5 property or moneys may also be acquired for such purpose by gifts
6 to such municipality or county.

7 (c) Any municipality or county ~~is hereby empowered and~~
8 ~~authorized to~~ may adopt zoning ordinances restricting the use of
9 the lands and the construction of buildings and structures within
10 the flood control area and one hundred feet on each side thereof
11 and to enforce such ordinances by fine or imprisonment, or both, in
12 the circuit court of the county in which the offense occurred in
13 the case of a county ordinance, or by injunction proceedings in the
14 circuit court of the county in which the offense occurred.
15 Prosecution for violation of any such municipal ordinance shall be
16 as in any other municipal ordinance violation case.

17 (d) If a municipality charges a fee for a floodplain permit,
18 the fee shall not exceed \$5,000.

19 (e) The power and authority granted by this section may be
20 exercised by any municipality or county in cooperation with each
21 other or separately where such flood control project is located,
22 regardless of the sponsoring agency of such project.