

Senate Bill No. 600

(By Senator Yost, Snyder, Miller, Laird, Edgell and Fitzsimmons)

[Introduced February 14, 2014; referred to the
Committee on Government Organization.]

A BILL to amend and reenact §8-12-16, §8-12-16a and §8-12-16c of the Code of West Virginia, 1931, as amended, all relating to the registration, maintenance and regulation of dwellings unfit for human habitation and vacant buildings and properties by municipal governments; and clarifying the parties responsible for compliance with municipal ordinances regarding these buildings and properties.

Be it enacted by the Legislature of West Virginia:

That §8-12-16, §8-12-16a and §8-12-16c of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 12. GENERAL AND SPECIFIC POWERS, DUTIES AND ALLIED RELATIONS OF MUNICIPALITIES, GOVERNING BODIES AND MUNICIPAL OFFICERS AND EMPLOYEES; SUITS AGAINST

1 **MUNICIPALITIES.**

2 **§8-12-16. Ordinances regulating the repair, closing, demolition,**
3 **etc., of dwellings or buildings unfit for human**
4 **habitation; procedures.**

5 (a) Plenary power and authority are hereby conferred upon
6 every municipality to adopt ordinances regulating the repair,
7 alteration or improvement, or the vacating and closing or removal
8 or demolition, or any combination thereof, of any dwellings or
9 other buildings unfit for human habitation due to dilapidation,
10 defects increasing the hazard of fire, accidents or other
11 calamities, lack of ventilation, light or sanitary facilities or
12 any other conditions prevailing in any dwelling or building,
13 whether used for human habitation or not, which would cause such
14 dwellings or other buildings to be unsafe, unsanitary, dangerous or
15 detrimental to the public safety or welfare.

16 (b) The governing body in formally adopting the ordinances
17 shall designate the enforcement agency, which shall consist of the
18 mayor, the municipal engineer or building inspector and one member
19 at large, to be selected by and to serve at the will and pleasure
20 of the mayor. The ranking health officer and fire chief shall serve
21 as ex officio members of the enforcement agency.

22 (c) Any ordinance adopted pursuant to the provisions of this
23 section must provide fair and equitable rules of procedure and any

1 other standards deemed necessary to guide the enforcement agency,
2 or its agents, in the investigation of dwelling or building
3 conditions, and in conducting hearings: *Provided*, That any entrance
4 upon premises for the purpose of making examinations is made in a
5 manner as to cause the least possible inconvenience to the persons
6 in possession.

7 (d) The governing body of every municipality has plenary power
8 and authority to adopt an ordinance requiring the owner or owners
9 of any dwelling or building under determination of the state Fire
10 Marshal, as provided in section twelve, article three, chapter
11 twenty-nine of this code, or under order of the enforcement agency
12 of the municipality, to pay for the costs of repairing, altering or
13 improving, or of vacating and closing, removing or demolishing any
14 dwelling or building. For purposes of this section, "owner" or
15 "landowner" means any person who alone, jointly or severally with
16 others:

17 (1) Has legal title to the property, with or without
18 accompanying actual possession of the property;

19 (2) Has charge, care or control of the property as owner or
20 agent of the owner, or an executor, administrator, trustee or
21 guardian of the estate of the owner; or

22 (3) Is the agent of the owner for the purpose of managing,
23 controlling or collecting rents, or is any other person managing or
24 controlling the property or is any person entitled to the control

1 or direction of the management or disposition of the property.

2 (e) Every municipality:

3 (1) May file a lien against the real property in question for
4 an amount that reflects all costs incurred by the municipality for
5 repairing, altering or improving, or of vacating and closing,
6 removing or demolishing any dwelling or building; and

7 (2) May institute a civil action in a court of competent
8 jurisdiction against the landowner or other responsible party for
9 all costs incurred by the municipality with respect to the property
10 and for reasonable attorney fees and court costs incurred in the
11 prosecution of the action.

12 (f) Not less than ten days prior to instituting a civil action
13 as provided ~~for~~ in this section, the governing body of the
14 municipality shall send notice to the landowner by certified mail,
15 return receipt requested, advising the landowner of the governing
16 body's intention to institute such action.

17 (g) The notice shall be sent to the most recent address of the
18 landowner of record in the office of the assessor of the county
19 where the subject property is located. If, for any reason, such
20 certified mail is returned without evidence of proper receipt
21 thereof, then in such event, the governing body shall cause a Class
22 III-0 legal advertisement to be published in a newspaper of general
23 circulation in the county wherein the subject property is located
24 and post notice on the front door or other conspicuous location on

1 the subject property.

2 (h) If any landowner desires to contest any demand brought
3 forth pursuant to this section, the landowner may seek relief in a
4 court of competent jurisdiction.

5 (i) All orders issued by the enforcement agency shall be
6 served in accordance with the law of this state concerning the
7 service of process in civil actions, and, be posted in a
8 conspicuous place on the premises affected by the complaint or
9 order: *Provided*, That no ordinance may be adopted without providing
10 for the right to apply to the circuit court for a temporary
11 injunction restraining the enforcement agency pending final
12 disposition of the cause.

13 (j) In the event such application is made, a hearing thereon
14 shall be had within twenty days, or as soon thereafter as possible,
15 and the court shall enter such final order or decree as the law and
16 justice may require.

17 **§8-12-16a. Registration of uninhabitable property.**

18 (a) The governing body of a municipality may, by ordinance,
19 establish a property registration for any real property improved by
20 a structure that is uninhabitable and violates the applicable
21 building code adopted by the municipality. An owner of real
22 property subject to the registration shall be assessed a fee as
23 provided by the ordinance.

24 (b) The mayor of the municipality shall appoint a code

1 enforcement officer to investigate and determine whether real
2 property violates provisions of the applicable building code of the
3 municipality.

4 (c) After inspecting the property, if the officer determines
5 the property is uninhabitable and violates the applicable building
6 code, then:

7 (1) The officer shall post a written notice on the property
8 which shall include:

9 (A) An explanation of the violation(s);

10 (B) A description of the registration;

11 (C) The date the fee will be assessed;

12 (D) An explanation of how to be removed from the registration;

13 (E) An explanation of the appeals process; and

14 (F) A statement that if the fee is not paid, then the property
15 is subject to forfeiture; and

16 (2) Within five business days of the inspection and the
17 posting of the property, the officer shall, by certified mail, send
18 a copy of the notice that was posted to the owner(s) of the
19 property at the last known address according to the county property
20 tax records.

21 (3) For purposes of this section, "owner" means any person who
22 alone, jointly or severally with others:

23 (i) Has legal title to the property, with or without
24 accompanying actual possession of the property;

1 (ii) Has charge, care or control of the property as owner or
2 agent of the owner, or an executor, administrator, trustee or
3 guardian of the estate of the owner; or

4 (iii) Is the agent of the owner for the purpose of managing,
5 controlling or collecting rents, or is any other person managing or
6 controlling the property or is any person entitled to the control
7 or direction of the management or disposition of the property.

8 (d) Within forty-five days of receipt of the notification by
9 the owner(s), the property owner may:

10 (1) Make and complete any repairs to the property that violate
11 the applicable building code; or

12 (2) Provide written information to the officer showing that
13 repairs are forthcoming in a reasonable period of time.

14 (e) After the repairs are made, the owner may request a
15 reinspection of the property to ensure compliance with the
16 applicable building code. If the officer finds the violations are
17 fixed, the owner is not subject to the registration and no fee will
18 be incurred.

19 (f) The officer may reinspect the property at any time to
20 determine where in the process the repairs fall.

21 (g) Within ninety days of receipt of the notification by the
22 owner(s), the property owner has the right to appeal the decision
23 of the officer to the enforcement agency, created in section
24 sixteen, article twelve of this chapter.

1 (h) If an appeal is not filed within ninety days, the property
2 is registered and the fee is assessed to the owner(s) on the date
3 specified in the notice. The notice of the fee shall be recorded in
4 the office of the clerk of the county commission of the county
5 where the property is located and if different, in the office of
6 the clerk of the county commission of the county where the property
7 is assessed for real property taxes.

8 (i) If the enforcement agency affirms the registration and
9 assessment of the registration fee, the property owner has the
10 right to appeal the decision of the enforcement agency to the
11 circuit court within thirty days of the decision. If the decision
12 is not appealed in a timely manner to the circuit court, then the
13 property is registered and the fee is assessed on the date
14 specified in the notice. The notice of the fee shall be recorded in
15 the office of the clerk of the county commission of the county
16 where the property is located and if different, in the office of
17 the clerk of the county commission of the county where the property
18 is assessed for real property taxes.

19 (j) A fee assessed under this section shall be recorded in the
20 same manner as a lien is recorded in the office of the clerk of the
21 county commission of the county.

22 (k) If the fee is paid, then the municipality shall record a
23 release of the fee in the office of the clerk of the county
24 commission of the county where the property is located and if

1 different, in the office of the clerk of the county commission of
2 the county where the property is assessed for real property taxes.

3 (l) If an owner fails to pay the fee, then the officer shall
4 annually post the written notice on the property and send the
5 written notice to the owner(s) by certified mail.

6 (m) If a registration fee remains delinquent for two years
7 from the date it was placed on record in the clerk of the county
8 commission in which the property is located and assessed, the
9 municipality may take action to receive the subject property by
10 means of forfeiture. Should the municipality take the steps
11 necessary to receive the subject property, the municipality then
12 becomes the owner of record and takes the property subject to all
13 liens and real and personal property taxes.

14 **§8-12-16c. Registration of vacant buildings; registration fees;**
15 **procedures for administration and enforcement.**

16 (a) The governing body of a municipality shall have plenary
17 power and authority to establish by ordinance a vacant building and
18 property registration and maintenance program.

19 (b) For purposes of this section:

20 ~~The term~~ "Vacant building" means a building or other structure
21 that is unoccupied, or unsecured and occupied by one or more
22 unauthorized persons for an amount of time as determined by the
23 ordinance.

24 "Vacant property" means a property on which no building is

1 erected and no routine activity occurs.

2 "Owner" means any person who alone, jointly or severally with
3 others:

4 (1) Has legal title to the property, with or without
5 accompanying actual possession of the property;

6 (2) Has charge, care or control of the property as owner or
7 agent of the owner, or an executor, administrator, trustee or
8 guardian of the estate of the owner; or

9 (3) Is the agent of the owner for the purpose of managing,
10 controlling or collecting rents, or is any other person managing or
11 controlling the property or is any person entitled to the control
12 or direction of the management or disposition of the property.

13 ~~Provided, That~~ A new building under construction or a building
14 that by definition is exempted by ordinance of the municipality, is
15 not deemed a vacant building. ~~Provided, however, That~~ The governing
16 body of a municipality, ~~shall~~ on a case by case basis, upon request
17 by the property owner, shall exempt a vacant building from
18 registration upon a finding for good cause shown that the person
19 will be unable to occupy the building for a determinate period of
20 time.

21 (b) An owner of real property subject to registration and
22 maintenance requirements may be charged a fee or fees as provided
23 by ordinance. The ordinance shall provide administrative procedures
24 for the administration and enforcement of registration and payment

1 and collection of registration fees.

2 (c) The ordinance may require that when the owner of the
3 vacant building or property resides outside of the state that the
4 owner provide the name and address of a person who resides within
5 the state who is authorized to accept service of process and
6 notices of fees due under this section on behalf of the owner and
7 who is designated as a responsible, local party or agent for the
8 purposes of notification in the event of an emergency affecting the
9 public health, safety or welfare.

10 (d) The ordinance may authorize the municipality to institute
11 a civil action against the property owner and/or file a lien on
12 real property for unpaid and delinquent vacant building
13 registration fees. Before any lien is filed, the municipality shall
14 give notice to the property owner or owner's agent, by certified
15 mail, return receipt requested, that the municipality will file the
16 lien unless the delinquent fees are paid by a date stated in the
17 notice, which must be no less than thirty days from the date the
18 notice is received by the owner or the owner's agent, which shall
19 be the date of delivery shown on the signed certified mail return
20 receipt card. The ordinance may provide for alternative means of
21 service when service cannot be obtained by certified mail.

22 (e) The ordinance may require that the owner maintain the
23 vacant building or property to a standard deemed reasonable by the
24 governing body. The ordinance may include authority for the

1 municipality, following notice to the owner, to act to bring the
2 building or property into compliance with these standards, or
3 otherwise eliminate public nuisance caused by any noncomplaint
4 conditions: *Provided*, That nothing in this section is to be
5 interpreted to impose a duty, obligation or requirement that a
6 municipality must undertake such repairs, demolition or maintenance
7 measures which remain as obligations and responsibilities of the
8 owners as herein defined. Cost of the repairs, demolition and
9 maintenance and related legal and administrative costs incurred by
10 the municipality are to be paid by the owner. Collection of these
11 costs may be enforced in civil proceedings against the owner.

12 ~~(e)~~ (f) The ordinance shall permit a property owner to
13 challenge any determination made pursuant to the ordinance. The
14 administrative procedures adopted pursuant to the ordinance shall
15 include the right to appeal to the circuit court of the county in
16 which the property is located.

17 ~~(f)~~ (g) The governing body of a municipality shall deposit the
18 fee into a separate account, which shall be used to:

19 (1) Improve public safety efforts, especially for police and
20 fire personnel, who most often contend with the dangerous
21 situations manifested in vacant properties;

22 (2) Monitor and administer this section; and

23 (3) Repair, close or demolish a vacant structure as authorized
24 by section sixteen, article twelve, chapter eight.

NOTE: The purpose of this bill is to clarify responsible parties for compliance with municipal ordinances regarding the registration, maintenance and regulation of dwellings unfit for human habitation, vacant buildings and vacant properties.

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