

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Committee Substitute

for

Senate Bill 28

BY SENATORS KIRKENDOLL, STOLLINGS AND BOSO

[Originating in the Committee on Government

Organization; reported on January 22, 2016.]

1 A BILL to amend and reenact §7-1-3ff of the Code of West Virginia, 1931, as amended; and to
2 amend and reenact §8-12-16 of said code, all relating to authorizing county commissions
3 and municipalities to cooperate and enter into agreements regarding the removal or
4 demolishing of dwellings or buildings unfit for human habitation; and allowing commissions
5 and municipalities use their own resources for the removal or demolishing of such
6 buildings.

Be it enacted by the Legislature of West Virginia:

1 That §7-1-3ff of the Code of West Virginia, 1931, as amended, be amended and
2 reenacted; and that §8-12-16 of said code be amended and reenacted, all to read as follows:

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

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.**

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

10 with municipalities and enter into agreements with municipalities to effect the purposes of this
11 section: *Provided*, That each county commission and municipality may use its own employees
12 and equipment when removing or demolishing dwellings or buildings subject to this section.

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

18 (c) The county commission, in formally adopting ordinances, shall designate an
19 enforcement agency which shall consist of the county engineer (or other technically qualified
20 county employee or consulting engineer), county health officer or his or her designee, a fire chief
21 from a county fire company, the county litter control officer, if the commission chooses to hire one,
22 and two members at large selected by the county commission to serve two-year terms. The
23 county sheriff shall serve as an ex officio member of the enforcement agency and the county
24 officer charged with enforcing the orders of the county commission under this section.

25 (d) In addition to the powers and duties imposed by this section, county litter control
26 officers ~~shall have authority to~~ may issue citations for open dumps, as prohibited by subsection
27 (a), section ten, article fifteen, chapter twenty-two of this code, unlawful disposal of litter, as
28 prohibited by section four, article fifteen-a, chapter twenty-two of this code, and failure to provide
29 proof of proper disposal of solid waste, as prohibited by subsection (a), section ten, article four,
30 chapter twenty-two-c of this code, after completing a training course offered by the West Virginia
31 Department of Environmental Protection. Nothing in this subsection supersedes the authority or
32 duty of the Department of Environmental Protection or other law-enforcement officers to preserve
33 law and order and enforce the litter control program.

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

36 enforcement agency, or its agents, in the investigation of dwelling or building conditions,
37 accumulation of refuse or debris, overgrown vegetation or toxic spillage or toxic seepage and
38 shall provide for fair and equitable rules of procedure for instituting and conducting hearings in
39 the matters before the county commission. Any entrance upon premises for the purpose of
40 making examinations shall be made in a manner as to cause the least possible inconvenience to
41 the persons in possession.

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

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

53 (3) The complaint shall state the findings and recommendations of the enforcement
54 agency and that unless the owner or owners of the property file with the clerk of the county
55 commission a written request for a hearing within ten days of receipt of the complaint, an order
56 will be issued by the county commission implementing the recommendations of the enforcement
57 agency.

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

61 do not apply to the proceedings, but each party has the right to present evidence and examine
62 and cross-examine all witnesses.

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

65 (6) At the conclusion of the hearing the county commission shall make findings of fact,
66 determinations and conclusions of law as to whether the dwelling or building: Is unfit for human
67 habitation due to dilapidation; has defects that increase the hazard of fire, accidents or other
68 calamities, lacks ventilation, light or sanitary facilities; or any other conditions prevailing in the
69 dwelling or building, whether used for human habitation or not and whether the result of natural
70 or manmade force or effect, which would cause such dwelling or other building to be unsafe,
71 unsanitary, dangerous or detrimental to the public safety or welfare; or whether there is an
72 accumulation of refuse or debris, overgrown vegetation, toxic spillage or toxic seepage on private
73 lands which is determined to be unsafe, unsanitary, dangerous or detrimental to the public safety
74 or welfare, whether the result of natural or manmade force or effect.

75 (7) The county commission ~~has authority to~~ may order the owner or owners thereof to
76 repair, alter, improve, vacate, remove, close, clean up or demolish the dwelling or building in
77 question or to remove or clean up any accumulation of refuse or debris, overgrown vegetation or
78 toxic spillage or toxic seepage within a reasonable time and to impose daily civil monetary
79 penalties on the owner or owners who fail to obey an order.

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

82 (g) Upon the failure of the owner or owners of the private land to perform the ordered
83 duties and obligations as set forth in the order of the county commission, the county commission
84 may advertise for and seek contractors to make the ordered repairs, alterations or improvements
85 or the ordered demolition, removal or clean up. The county commission may enter into any

86 contract with any contractor to accomplish the ordered repairs, alterations or improvements or the
87 ordered demolition, removal or clean up.

88 (h) A civil proceeding may be brought in circuit court by the county commission against
89 the owner or owners of the private land or other responsible party that the subject matter of the
90 order of the county commission to subject the private land in question: (1) To a lien for the amount
91 of the contractor's costs in making these ordered repairs, alterations or improvements or ordered
92 demolition, removal or clean up, together with any daily civil monetary penalty imposed; (2) to
93 order and decree the sale of the private land in question to satisfy the lien; (3) to order and decree
94 that the contractor may enter upon the private land in question at any and all times necessary to
95 make ordered repairs, alterations or improvements, or ordered demolition, removal or clean up;
96 and (4) to order the payment of all costs incurred by the county with respect to the property and
97 for reasonable attorney fees and court costs incurred in the prosecution of the action.

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

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 12. GENERAL CORPORATE POWERS OF MUNICIPALITIES.

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

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

8 municipality may cooperate with county commissions and enter into agreements with county
9 commissions to effect the purposes of this section: *Provided*, That each municipality and county
10 commission may use its own employees and equipment when removing or demolishing dwellings
11 or buildings subject to this section.

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

17 (c) Any ordinance adopted pursuant to the provisions of this section must provide fair and
18 equitable rules of procedure and any other standards deemed necessary to guide the
19 enforcement agency, or its agents, in the investigation of dwelling or building conditions, and in
20 conducting hearings: *Provided*, That any entrance upon premises for the purpose of making
21 examinations is made in a manner as to cause the least possible inconvenience to the persons
22 in possession.

23 (d) The governing body of every municipality ~~has plenary power and authority to~~ may adopt
24 an ordinance requiring the owner or owners of any dwelling or building under determination of the
25 State Fire Marshal, as provided in section twelve, article three, chapter twenty-nine of this code,
26 or under order of the enforcement agency of the municipality, to pay for the costs of repairing,
27 altering or improving, or of vacating and closing, removing or demolishing any dwelling or building.

28 (e) Every municipality:

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

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

35 (f) Not less than ten days prior to instituting a civil action as provided in this section, the
36 governing body of the municipality shall send notice to the landowner by certified mail, return
37 receipt requested, advising the landowner of the governing body's intention to institute such
38 action.

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

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

47 (i) For purposes of this section, "owner" or "landowner" means a person who individually
48 or jointly with others:

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

50 (2) Has charge, care or control of the property as owner or agent of the owner;

51 (3) Is an executor, administrator, trustee or guardian of the estate of the owner;

52 (4) Is the agent of the owner for the purpose of managing, controlling or collecting rents;

53 or

54 (5) Is entitled to control or direct the management or disposition of the property.

55 (j) All orders issued by the enforcement agency shall be served in accordance with the
56 law of this state concerning the service of process in civil actions, and be posted in a conspicuous
57 place on the premises affected by the complaint or order: *Provided*, That no ordinance may be

58 adopted without providing for the right to apply to the circuit court for a temporary injunction
59 restraining the enforcement agency pending final disposition of the cause.

60 (k) ~~In the event~~ If such application is made, a hearing thereon shall be had within twenty
61 days, or as soon thereafter as possible, and the court shall enter such final order or decree as the
62 law and justice may require.

NOTE: The purpose of this bill is to authorize county commissions and municipalities to cooperate and enter into agreements removing or demolishing dwellings or buildings unfit for human habitation.

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