

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

**Introduced**

### **Senate Bill 28**

BY SENATORS KIRKENDOLL, STOLLINGS AND BOSO

[Introduced January 13, 2016;

Referred to the Committee on Government

Organization; and then to the Committee on the

Judiciary.]

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 removing or demolishing  
 4 dwellings or buildings unfit for human habitation.

*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. Every county commission may  
 10 cooperate with municipalities and enter into agreements with municipalities to effect the purposes  
 11 of this section: Provided: That each county commission and municipality shall use its own

12 employees and equipment when removing or demolishing dwellings or buildings subject to this  
13 section.

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

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

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

35 (e) Any ordinance adopted pursuant to the provisions of this section shall provide fair and  
36 equitable rules of procedure and any other standards considered necessary to guide the  
37 enforcement agency, or its agents, in the investigation of dwelling or building conditions,  
38 accumulation of refuse or debris, overgrown vegetation or toxic spillage or toxic seepage and  
39 shall provide for fair and equitable rules of procedure for instituting and conducting hearings in  
40 the matters before the county commission. Any entrance upon premises for the purpose of  
41 making examinations shall be made in a manner as to cause the least possible inconvenience to  
42 the persons in possession.

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

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

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

59 (4) If the owner or owners of the property file a request for a hearing, the county  
60 commission shall issue an order setting this matter down for hearing within twenty days. Hearings  
61 shall be recorded by electronic device or by court reporter. The West Virginia rules of evidence  
62 do not apply to the proceedings, but each party has the right to present evidence and examine  
63 and cross-examine all witnesses.

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

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

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

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

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

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

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

## **CHAPTER 8. MUNICIPAL CORPORATIONS.**

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