

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

Senate Bill 631

BY SENATORS PALUMBO, JEFFRIES AND TAKUBO

[Introduced March 17, 2017; Referred
to the Committee on Government Organization]

1 A BILL to amend and reenact §8-12-13 and §8-12-16 of the Code of West Virginia, 1931, as
 2 amended, all relating to the process for prosecution of violations of municipal building
 3 code; clarifying the process by which municipal governments may abate unsafe,
 4 unsanitary or dangerous dilapidated structures that are detrimental to the public safety or
 5 welfare; permitting complaints to be filed; establishing a procedure; requiring notice;
 6 granting hearings; permitting the recovery for costs for instituting an action; and defining
 7 terms.

Be it enacted by the Legislature of West Virginia:

1 That §8-12-13 and §8-12-16 of the Code of West Virginia, 1931, as amended, be amended
 2 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 MUNICIPALITIES.**

§8-12-13. Building regulation; general and special codes; state building code.

1 (a) The governing body of every municipality shall have plenary power and authority by
 2 ordinance or a code of ordinances to:

3 (1) Regulate the erection, construction, repair or alteration of structures of every kind
 4 within the corporate limits of the municipality, prohibit, within specified territorial limits, the
 5 erection, construction, repair or alteration of structures of wood or other combustible material, and
 6 regulate excavations upon private property;

7 (2) Regulate electric wiring by prescribing minimum specifications to be followed in the
 8 installation, alteration or repair thereof; and

9 (3) Regulate plumbing by prescribing the minimum specifications to be followed in the
 10 installation, alteration or repair of plumbing, including equipment, water and sewer pipe, traps,
 11 drains, cesspools and septic tanks.

12 (b) Notwithstanding the provisions of subsection (a), all existing municipal building codes
13 are void one year after the promulgation of a state building code by the State Fire Commission
14 as provided in chapter twenty-nine, article three, section five-b of this code.

15 Upon the voidance of the municipality's existing building code, if the municipality votes to
16 adopt a building code, it must be the state building code promulgated pursuant to chapter twenty-
17 nine, article three, section five-b of this code.

18 (c) The governing body of every municipality shall have plenary power and authority by
19 ordinance or a code of ordinances to adopt such state building code promulgated by the State
20 Fire Commission

21 (d) Unless otherwise authorized by state law, any misdemeanor prosecution of a violation
22 of an ordinance adopted pursuant to this section before a municipal judge or other municipal
23 official lawfully authorized to hear and determine violations of municipal code shall be initiated by
24 a complaint presented to and sworn or affirmed before a municipal judge or other municipal official
25 with lawful authority to hear and determine violations of municipal code in the municipality where
26 the offense is alleged to have occurred. Unless otherwise provided by statute, the presentation
27 and oath or affirmation shall be made by a code enforcement department official or municipal
28 attorney showing reason to have reliable information and belief. If from the facts stated in the
29 complaint the municipal judge or other municipal official with lawful authority to hear and
30 determine violations of municipal code finds probable cause, the complaint becomes the charging
31 instrument initiating a criminal proceeding.

32 A complaint lawfully authorized by this subsection together with a summons setting forth
33 the date, time and place of appearance before a municipal judge or other municipal official with
34 lawful authority to hear and determine violations of municipal code, shall be served in accordance
35 with the law of the State of West Virginia concerning the service of process in civil actions, except
36 that personal service of a summons and complaint may be made by a code enforcement
37 department official and the method of service effectuated by mailing by the clerk of a court in

38 accordance with Rule 4(d)(1)(D) of the West Virginia Rules of Civil Procedure shall be deemed to
 39 be effectuated by mailing of the summons and complaint by a code enforcement department
 40 official. If service is made by certified mail pursuant to that rule in the manner permitted herein
 41 and delivery of the summons and complaint is refused, the code enforcement department official,
 42 promptly upon the receipt of the notice of such refusal, shall mail to the person or entity being
 43 noticed, by first class mail, postage prepaid, a copy of the summons and complaint. So long as
 44 such first-class mailing is not returned as undeliverable by the U.S. Postal Service, service of the
 45 summons and complaint will be presumed to have been effectuated. Upon service of the
 46 summons and complaint consistent with this subsection, the violation may be prosecuted
 47 consistent with state and local law.

**§8-12-16. Ordinances regulating the repair, alteration, improvement, closing, demolition,
 etc., of structures, dwellings or buildings unfit for human habitation that are unsafe,
unsanitary, dangerous, or detrimental to the public safety or welfare; procedures.**

1 (a) For the purposes of this section:

2 (1) "Code Enforcement Agency" means either a code enforcement department as defined
 3 by 87 C.S.R §7-2, as may be amended, or an enforcement agency as permitted by subsection
 4 (c) of this section.

5 (2) "Code Enforcement Agency official" means any lawful agent of a Code Enforcement
 6 Agency. building or portion thereof as an attractive nuisance or hazard to the public.

7 (3) "Owner" or "landowner" means a person who individually or jointly with others:

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

9 (B) Has charge, care or control of the property as owner or agent of the owner;

10 (C) Is an executor, administrator, trustee or guardian of the estate of the owner;

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

12 or

13 (E) Is entitled to control or direct the management or disposition of the property.

14 (4) “Unsafe, unsanitary, dangerous, or detrimental to the public safety or welfare” means:

15 (A) Any door, aisle, passageway, stairway, exit or other means of egress that does not
16 conform to the approved building or fire code of the jurisdiction as related to the requirements for
17 existing buildings;

18 (B) The walking surface of any aisle, passageway, stairway, exit or other means of egress
19 is so warped, worn loose, torn or otherwise unsafe as to not provide safe and adequate means of
20 egress;

21 (C) Any portion of a dwelling, building, structure or appurtenance that has been damaged
22 by fire, earthquake, wind, flood, deterioration, neglect, abandonment, vandalism or by any other
23 cause to such an extent that it is likely to partially or completely collapse, or to become detached
24 or dislodged;

25 (D) Any portion of a structure or building, or any member, appurtenance or ornamentation
26 on the exterior thereof that is not of sufficient strength or stability, or is not so anchored, attached
27 or fastened in place so as to be capable of resisting natural or artificial loads of one and one-half
28 the original designed value;

29 (E) The dwelling, building, or structure, or part of the building or structure, because of
30 dilapidation, deterioration, decay, faulty construction, the removal or movement of some portion
31 of the ground necessary for the support, or for any other reason, is likely to partially or completely
32 collapse, or some portion of the foundation or underpinning of the building or structure is likely to
33 fail or give way;

34 (F) The dwelling, building, or structure, or any portion thereof, is clearly unsafe for its use;

35 (G) The dwelling, building, or structure is neglected, damaged, dilapidated, unsecured or
36 abandoned so as to become an attractive nuisance to children, becomes a harbor for vagrants,
37 criminals, criminal activity, or enables persons to resort to the dwelling, building, or structure for
38 committing a nuisance or an unlawful act;

39 (H) Any dwelling, building, or structure has been constructed, exists or is maintained in

40 violation of any specific requirement or prohibition applicable to such dwelling, building, or
41 structure provided by the approved building or fire code of the jurisdiction, or of any law or
42 ordinance to such an extent as to present either a substantial risk of fire, building collapse or any
43 other threat to life and safety;

44 (I) A dwelling, building, or structure, used or intended to be used for dwelling purposes,
45 because of inadequate maintenance, dilapidation, decay, contamination by any hazardous
46 substance or material including, but not limited to, substance resulting from the illegal
47 manufacture of drugs, damage, faulty construction or arrangement, inadequate light, ventilation,
48 mechanical or plumbing system, or otherwise, is determined by the code enforcement agency to
49 be unsanitary, unfit for human habitation or in such a condition that is likely to cause sickness or
50 disease;

51 (J) Any dwelling, building, or structure, because of a lack of sufficient or proper
52 fireresistance-rated construction, fire protection systems, electrical system, fuel connections,
53 mechanical system, plumbing system or other cause, is determined by the code official to be a
54 threat to life or health; or

55 (K) Any portion of a building that remains on a site after the demolition or destruction of
56 the building or structure or whenever any building or structure is abandoned so as to constitute
57 such.

58 ~~(a)~~ (b) Plenary power and authority are hereby conferred upon every municipality to adopt
59 ordinances regulating the repair, alteration or improvement, or the vacating and closing or removal
60 or demolition, or any combination thereof, of any structure, dwellings or ~~other~~ buildings, ~~unfit for~~
61 ~~human habitation due to dilapidation, defects increasing the hazard of fire, accidents or other~~
62 ~~calamities, lack of ventilation, light or sanitary facilities or any other conditions prevailing in any~~
63 ~~dwelling or building whether used for human habitation or not, which would cause such dwellings~~
64 ~~or other buildings to be~~ that is unsafe, unsanitary, dangerous or detrimental to the public safety
65 or welfare.

66 ~~(b)~~ (c) The governing body in formally adopting ~~the ordinances~~ any ordinance pursuant to
67 this section shall designate the enforcement agency, which shall consist of the ~~mayor, the~~
68 ~~municipal engineer or building inspector and one member at large, to be selected by and to serve~~
69 ~~at the will and pleasure of the mayor. The ranking health officer and fire chief shall serve as ex~~
70 ~~officio members of the enforcement agency~~ Code Enforcement Agency as provided by the state
71 building code and authorized by section five-b, article three, chapter twenty-nine of this code and
72 section thirteen, article twelve, chapter eight of this code; or municipal officials as may otherwise
73 be authorized by this code; or municipal officials or agents as authorized by rules promulgated by
74 the State Fire Commission and approved by the Legislature; or municipal officials or agents as
75 may otherwise be authorized by the State Fire Commission. Notwithstanding any provision of this
76 code to the contrary, for the purposes of this section any municipality that has not adopted the
77 state building code may designate an enforcement agency consisting of the mayor, the municipal
78 engineer or building inspector and one member at large, to be selected by and to serve at the will
79 and pleasure of the mayor, and the ranking health officer and fire chief who shall serve as ex
80 officio members of the enforcement agency.

81 ~~(e)~~ (d) Any ordinance adopted pursuant to the provisions of this section must provide fair
82 and equitable rules of procedure and any other ~~standards deemed~~ procedures required by law or
83 necessary and appropriate to guide the Code Enforcement Agency, or its ~~agents~~ officials, in the
84 investigation of any structure, dwelling or building conditions, and in ~~conducting hearings:~~
85 Provided, That any corrective action taken by the Code Enforcement Agency.

86 (e) Any entrance by a Code Enforcement Agency official upon premises property for the
87 purpose of making examinations is investigation or inspection of any structure, dwelling, or
88 building shall be made in a manner as to cause the least possible intended to minimize
89 inconvenience to the owner or persons in possession and, at a minimum, shall also be consistent
90 with the following:

91 (1) Except in exigent circumstances and as permitted by law, the enforcement agency

92 shall provide reasonable advance notice to the owner prior to entry upon the property and shall
93 request permission from the owner for entry upon the property.

94 (2) In the event the owner cannot be located after reasonable inquiry by the Code
95 enforcement agency as required by this section, or if the owner refuses entry, the code
96 Enforcement Agency may obtain an administrative search warrant from either the municipal court
97 or the magistrate court located in the jurisdiction of the municipality or county in which the
98 structure, dwelling, or building is located. Prior to obtaining an administrative search warrant, a
99 Code Enforcement Agency official shall be required to make a sworn and prima facie showing
100 that the Code Enforcement Agency has been unable to gain access to the structure, dwelling,
101 or building after reasonable and good faith efforts, and that there is a legitimate and substantial
102 safety concern involving the structure, dwelling, or building that supports the requested entry.

103 (3) If granted by the court, and provided the owner can be located, the Code Enforcement
104 Agency will provide owner a copy of the administrative search warrant with at least five days'
105 notice prior to entry upon the property. If applicable, the Code Enforcement Agency shall also
106 provide the same notice to any tenant or other person in possession of the structure, dwelling, or
107 building.

108 (4) Entry shall be for the sole purpose of inspection of the structure, dwelling, or building
109 for unsafe or unsanitary conditions and shall not be for the purpose of criminal prosecution or
110 gathering evidence for use in any criminal charge or proceeding unrelated to the unsafe or
111 unsanitary condition of the structure, dwelling, or building.

112 (f) The governing body of every municipality has plenary power and authority to adopt an
113 ordinance providing for the vacating, closing, removal, or demolition of any dwelling, structure, or
114 building by the municipality in the absence of owner agreement or court order: *Provided*, That any
115 such ordinance shall require the Code Enforcement Agency to provide lawful notice to and
116 undertake reasonable efforts to seek agreement from the owner prior to taking any action
117 permitted by this section and shall comply with the requirements set forth in this subsection.

118 (1) Any ordinance adopted pursuant to this subsection is applicable only to dwellings,
119 structures, or buildings which meet the definition of unsafe, unsanitary, dangerous, or detrimental
120 to the public safety or welfare as set forth in:

121 (A) Paragraph (C), (E) or (H), subdivision (4), subsection (a) of this section; or

122 (B) Paragraph (F), (G), (I) or (K), subdivision (4), subsection (a) of this section: *Provided,*
123 That the dwelling, building, or structure is vacant, abandoned, or has been lawfully declared unfit
124 for human habitation; and the reasonable estimated cost of repair, rehabilitation, or corrective
125 action exceeds the fair market value of the dwelling, building, or structure.

126 (2) At a minimum, any ordinance adopted pursuant to this subsection must also provide
127 for the following:

128 (A) The Code Enforcement Agency shall produce a written notice containing the date of
129 the last inspection, the name of the inspector, a reasonable description of the unsafe, unsanitary,
130 dangerous, or detrimental condition(s), the corrective measures required, the allotted time to
131 correct the substandard condition(s), and the allotted time the owner has to apply to the circuit
132 court for a temporary injunction or other similar relief restraining action by the enforcement
133 agency.

134 (B) The notice shall be served upon the owner or landowner by conspicuously posting and
135 attaching a copy of the notice to the subject property, and by serving the notice on the owner or
136 landowner in the same manner as service of a complaint as set forth in subdivision (2), subsection
137 (j) of this section.

138 (C) If the Code Enforcement Agency is unable to effect personal service on the owner: a
139 Code Enforcement Agency official shall subscribe a written affidavit, to be maintained for a
140 minimum of two years, that demonstrates the structure, dwelling, or building falls within one of the
141 categories set forth in paragraph (A) or (B), subdivision (4) of this subsection sets forth the basis
142 therefore in reasonable detail including documentation of same, and memorializes the Code
143 Enforcement Agency official's efforts to contact and/or get permission for entry and corrective

144 action from the owner; and the Code Enforcement Agency shall publish notice of its intent to enter
145 the property for the purpose of demolition or correction, along with the address of the property,
146 the name of the owner(s) and the date of the proposed action, as a Class II legal advertisement
147 consistent with the requirements of section two, article three, chapter fifty-nine of this code, the
148 first of which shall run at least thirty days prior to the date of the proposed action by the
149 enforcement agency, and the last being no later than twenty days prior to the date of the proposed
150 action by the enforcement agency.

151 (D) If there is no response to the notice by the owner or landowner in the time specified in
152 the notice, then the municipality shall have the authority to proceed in correction or demolition of
153 the subject dwelling, building or structure.

154 (3) It shall be an absolute defense to any civil action by an owner, landowner, or tenant
155 for damages resulting from the closure, demolition, or other corrective action taken by a
156 municipality pursuant to this section: *Provided*, That the municipality: acted in good faith, can
157 demonstrate that the structure, dwelling, or building falls within one of the categories set forth in
158 paragraph (A) or (B), subdivision (4) of this subsection, the municipality followed the procedures
159 set forth in this subsection, and the municipality had adopted the state building code at the time
160 of the closure, demolition, or other corrective action occurred.

161 (4) Any ordinance adopted pursuant to this subsection must also provide for notice to the
162 owner of the right of the owner to apply to the circuit court for a temporary injunction or other
163 similar relief restraining correction or demolition by the enforcement agency. In the event the
164 application is made by the owner, a hearing thereon shall be had within twenty days of the
165 application, or as soon thereafter as reasonably possible.

166 (A) Continuances of the hearing provided for in this subdivision may be for cause only. If
167 a continuance is granted upon request by the owner, the owner shall be required to pay into court
168 in the form of a bond, any reasonable and necessary costs related to the property likely to be
169 incurred by the municipality during the period of such continuance.

170 (B) At the conclusion of a hearing held under this subdivision, if the court finds that the
171 property is unsafe, unsanitary, dangerous, or detrimental to the public safety or welfare, the court
172 shall make and enter an order granting the relief as requested by the municipality. The court may
173 disburse any moneys paid into court by the owner in accordance with this section.

174 ~~(d)~~ (g) The governing body of every municipality has plenary power and authority to adopt
175 an ordinance requiring the owner ~~or owners~~ of any dwelling or building under determination of the
176 State Fire Marshal, as provided in section twelve, article three, chapter twenty-nine of this code,
177 or under order of the Code Enforcement Agency of the municipality, to pay for the costs of
178 repairing, altering or improving, or of vacating and closing, removing or demolishing any dwelling
179 or building ~~(e) Every municipality: (1) May and may~~ file a lien against the real property in question
180 for an amount that reflects all costs incurred by the municipality for repairing, altering or improving,
181 or of vacating and closing, removing or demolishing any dwelling or building. ~~and~~

182 (h) In addition to the authority provided and process set forth in subsection (f) of this
183 section, every municipality may also institute a civil action in circuit court against the landowner
184 or other responsible party to obtain an order to take corrective action up to and including
185 demolition of any structure, dwelling, or building that is unsafe, unsanitary, dangerous, or
186 detrimental to the public safety or welfare; and/or (2) May institute a civil action in a court of
187 competent jurisdiction against the landowner or other responsible party to recover any and all
188 reasonable costs and expenses incurred by the municipality with respect to the property and for
189 reasonable attorney fees and court costs incurred in the prosecution of the action.

190 ~~(f) Not less (1) No fewer~~ than ten days prior to instituting a civil action as provided in this
191 ~~section subsection,~~ the governing body of the municipality shall send notice to the landowner by
192 certified mail, return receipt requested, advising the landowner of the governing body's intention
193 to institute such action.

194 ~~(g) (2)~~ The notice shall be sent to the most recent address of the landowner of record in
195 the office of the assessor of the county where the subject property is located and to such other

196 address for the landowner as may exist on record with the municipality. If, for any reason, such
197 certified mail is returned without evidence of proper receipt thereof, ~~then in such event, the~~
198 ~~governing body~~ municipality shall resend the notice(s) by First-class Mail, postage prepaid, cause
199 ~~a Class III-0 legal advertisement to be published in a newspaper of general circulation in the~~
200 ~~county wherein the subject property is located and~~ shall also post notice on the front door or other
201 conspicuous location on the subject property.

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

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

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

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

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

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

210 ~~or~~

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

212 ~~(j) All orders issued by the enforcement agency shall be served in accordance with the~~
213 ~~law of this state concerning the service of process in civil actions, and be posted in a conspicuous~~
214 ~~place on the premises affected by the complaint or order. *Provided*, That no ordinance may be~~
215 ~~adopted without providing for the right to apply to the circuit court for a temporary injunction~~
216 ~~restraining the enforcement agency pending final disposition of the cause.~~

217 (i) To the extent not otherwise authorized by state law, all notices of violation or correction
218 for violations that do not fall within one of the categories set forth in paragraph (A) or (B),
219 subdivision (1), subsection (f) of this section issued by the enforcement agency of a municipality
220 that has adopted the state building code shall be served in accordance with the process set forth
221 in the state building code. All notices of violation or correction orders for violations that do not fall

222 within one of the categories set forth in paragraph (A) or (B), subdivision (1), subsection (f) of this
223 section issued by a Code Enforcement Agency of a municipality that has not adopted the state
224 building code shall be served in accordance with the law of this state concerning the service of
225 process in civil actions, except that personal service may be made by a Code Enforcement
226 Agency official and the method of service effectuated by mail by the clerk of a court as permitted
227 by Rule 4(d)(1)(D) of the West Virginia Rules of Civil Procedure shall be deemed to be effectuated
228 by mailing by a Code Enforcement Agency official, and shall be posted in a conspicuous place on
229 the property that is the subject of the notice of violation or correction.

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

233 (j) Any violation of an ordinance adopted pursuant to this section, may be prosecuted by
234 the municipality consistent with state and local laws.

235 (1) Unless otherwise authorized by state law, prosecution of a violation shall be initiated
236 by a complaint presented to and sworn or affirmed before a municipal judge or other municipal
237 official with lawful authority to hear and determine violations of municipal code in the municipality
238 where the offense is alleged to have occurred. Unless otherwise provided by statute, the
239 presentation and oath or affirmation shall be made by a Code Enforcement Agency official or
240 municipal attorney showing reason to have reliable information and belief. If from the facts stated
241 in the complaint the municipal judge or other municipal official with lawful authority to hear and
242 determine violations of municipal code finds probable cause, the complaint becomes the charging
243 instrument initiating a criminal proceeding.

244 (2) A complaint lawfully authorized by subdivision (1) of this subsection along with a
245 summons setting forth the date, time, and place of appearance before a municipal judge and or
246 other municipal official with lawful authority to hear and determine violations of municipal code,
247 shall be served in accordance with the law of the State of West Virginia concerning the service of

248 process in civil actions, except that personal service of a summons and complaint may be made
249 by a Code Enforcement Agency official and the method of service effectuated by mailing by the
250 clerk of a court as permitted by West Virginia Rule of Civil Procedure 4(d)(1)(D) shall be deemed
251 to be effectuated by mailing of the summons and complaint by a Code Enforcement Agency
252 official. If service is made by certified mail pursuant to Rule 4(d)(1)(D) of the West Virginia Rules
253 of Civil Procedure in the manner permitted herein and delivery of the summons and complaint is
254 refused, the Code Enforcement Agency official, promptly upon the receipt of the notice of such
255 refusal, shall mail to the person or entity being noticed, by first class mail, postage prepaid, a copy
256 of the summons and complaint. So long as such first-class mailing is not returned as undeliverable
257 by the U.S. Postal Service, service of the summons and complaint will be presumed to have been
258 effectuated. Upon service of the summons and complaint consistent with this subsection, the
259 violation may be prosecuted consistent with state and local law.

NOTE: The purpose of this bill is to clarify the process by which municipal governments may abate unsafe, unsanitary, or dangerous dilapidated structures that are detrimental to the public safety or welfare. The bill permits complaints to be filed. The bill establishes a procedure. The bill requires notice. The bill grants hearings. The bill permits the recovery for costs for instituting an action. The bill defines terms.

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