

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 3313

By Delegates Phillips, Martin, Fast, Nestor, Hornby,

Barnhart, Longanacre, Thorne and C. Pritt

[Introduced February 07, 2023; Referred to the
Committee on Agriculture and Natural Resources

then the Judiciary]

1 A BILL to amend and reenact §7-1-3ff and §7-1-3kk of the Code of West Virginia,1931, as
 2 amended; to amend said code by adding thereto a new section, designated §7-1-3zz; to
 3 amend and reenact §7-1-14 of said code; and to amend and reenact §19-19-2 of said
 4 code, all relating generally to clarifying the limit of authority of county commissions as it
 5 relates to regulation of agricultural production operations.

Be it enacted by the Legislature of West Virginia:

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 used for ~~farm~~ agricultural production operations purposes on land ~~actually being~~ used for
 5 ~~farming~~ agricultural production as defined in §19-19-2(a-c) of this code, unfit for human habitation
 6 due to dilapidation, defects increasing the hazard of fire, accidents, or other calamities, lack of
 7 ventilation, light or sanitary facilities, or any other conditions prevailing in any dwelling or building,
 8 whether used for human habitation or not, which would cause the dwellings or other buildings to be
 9 unsafe, unsanitary, dangerous, or detrimental to the public safety or welfare, whether the result of
 10 natural or manmade force or effect.

11 (b) Plenary power and authority are hereby conferred upon every county commission to
 12 adopt ordinances regulating the removal and clean up of any accumulation of refuse or debris,

13 overgrown vegetation or toxic spillage or toxic seepage located on private lands which is
14 determined to be unsafe, unsanitary, dangerous, or detrimental to the public safety or welfare,
15 whether the result of natural or manmade force or effect.

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

23 (d) In addition to the powers and duties imposed by this section, county litter control
24 officers shall have authority to issue citations for open dumps, as prohibited by §22-15-10(a) of this
25 code, unlawful disposal of litter, as prohibited by §22-15A-4 of this code, and failure to provide
26 proof of proper disposal of solid waste, as prohibited by §22C-4-10(a) of this code, after
27 completing a training course offered by the West Virginia Department of Environmental Protection:
28 *Provided*, That any litter control officer who is trained and certified as a law-enforcement officer
29 and whose certification is active has the same authority as any other law-enforcement officer to
30 enforce all litter laws in this code. Nothing in this subsection supersedes the authority or duty of the
31 Department of Environmental Protection or other law-enforcement officers to preserve law and
32 order and enforce the litter control program.

33 (e) Any ordinance adopted pursuant to the provisions of this section shall provide fair and
34 equitable rules of procedure and any other standards considered necessary to guide the
35 enforcement agency, or its agents, in the investigation of dwelling or building conditions,
36 accumulation of refuse or debris, overgrown vegetation, or toxic spillage or toxic seepage and
37 shall provide for fair and equitable rules of procedure for instituting and conducting hearings in the
38 matters before the county commission. Any entrance upon premises for the purpose of making

39 examinations shall be made in a manner that causes the least possible inconvenience to the
40 persons in possession.

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

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

52 (3) The complaint shall state the findings and recommendations of the enforcement
53 agency and that unless the owner or owners of the property file with the clerk of the county
54 commission a written request for a hearing within 10 days of receipt of the complaint, an order will
55 be issued by the county commission implementing the recommendations of the enforcement
56 agency.

57 (4) If the owner or owners of the property file a request for a hearing, the county
58 commission shall issue an order setting this matter down for hearing within 20 days. Hearings shall
59 be recorded by electronic device or by court reporter. The West Virginia Rules of Evidence do not
60 apply to the proceedings, but each party has the right to present evidence and examine and cross-
61 examine all witnesses.

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

64 (6) At the conclusion of the hearing, the county commission shall make findings of fact,

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

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

79 (8) Appeals from the county commission to the circuit court shall be in accordance with the
80 provisions of §58-3-1 *et seq.* of this code.

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

87 (h) A civil proceeding may be brought in circuit court by the county commission against the
88 owner or owners of the private land or other responsible party that the subject matter of the order
89 of the county commission to subject the private land in question: (1) To a lien for the amount of the
90 contractor's costs in making these ordered repairs, alterations, or improvements or ordered

91 demolition, removal, or clean up, together with any daily civil monetary penalty imposed; (2) to
92 order and decree the sale of the private land in question to satisfy the lien; (3) to order and decree
93 that the contractor may enter upon the private land in question at any and all times necessary to
94 make ordered repairs, alterations, or improvements, or ordered demolition, removal, or clean up;
95 and (4) to order the payment of all costs incurred by the county with respect to the property and for
96 reasonable attorney fees and court costs incurred in the prosecution of the action.

97 (i) County commissions may receive and accept grants, subsidies, donations, and services
98 in kind consistent with the objectives of this section.

**§7-1-3kk. Authority to provide for the elimination of hazards to public health and safety;
penalty.**

1 In addition to all other powers and duties now conferred by law upon county commissions,
2 commissions are hereby authorized to enact ordinances, issue orders and take other appropriate
3 and necessary actions for the elimination of hazards to public health and safety and to abate or
4 cause to be abated anything which the commission determines to be a public nuisance. The
5 ordinances may provide for a misdemeanor penalty for its violation. The ordinances may further be
6 applicable to the county in its entirety or to any portion of the county as considered appropriate by
7 the county commission: Provided, That county commissions may not establish or approve
8 ordinances, rules, regulations, or take other actions that cancel or alter the purchase, use or
9 application of any federal or state registered pesticides, herbicides, or insecticide products.

§7-1-3zz. Limit of authority for county commission to regulate agricultural production.

1 Notwithstanding §7-1-3 of this code, the county commission may not establish or approve
2 ordinances, rules, regulations, license requirements or any other authorization of agricultural
3 production operations as defined in §19-19-2 of this code that duplicate or exceed any state law or
4 regulations for the purpose of the establishment, expansion, or continuation of agricultural
5 businesses. Furthermore, all existing ordinances, rules, regulations, licensing, or any other
6 county authority enacted by county commissions regarding agricultural production operations as

7 defined in §19-19-2 of this code are hereby declared invalid and unenforceable.

§7-1-14. Custody and care of animals abandoned, neglected or cruelly treated; animals causing public nuisance, health risk or safety hazard; authority of county commission.

1 (a) Notwithstanding any provision of this code to the contrary, any county commission may
2 adopt ordinances, rules and regulations providing for the custody and care of animals that have
3 been abandoned, neglected or cruelly treated for the protection of any such animal and to prevent
4 it from becoming a public nuisance or risk to public health or safety or the environment: *Provided,*
5 That the county commission may not establish or approve ordinances, rules, regulations that
6 duplicate or exceed Chapter 19 of this code.

7 (b) Any such ordinance, rule or regulation may require each owner to provide for each of
8 his or her animals:

9 (1) Adequate food which provides sufficient quantity and nutritive value to maintain each
10 animal in good health;

11 (2) Adequate water which provides easy access to clean, fresh, potable water of a
12 drinkable temperature in sufficient volume and suitable intervals to maintain normal hydration for
13 each animal;

14 (3) Adequate shelter to protect the animal from the elements and other animals;

15 (4) Adequate space in the primary enclosure for the particular animal depending upon its
16 age, size, species and weight which is regularly cleaned to prevent an unsanitary accumulation of
17 urine and feces;

18 (5) Adequate exercise to assure that the animal maintains normal muscle tone and mass
19 for the age, species, size and condition of the animal; and

20 (6) Veterinary care when needed or to prevent suffering or disease transmission.

21 (c) Any such ordinance, rule or regulation may limit the number of animals owned, kept or
22 maintained by an individual, group or organization, whether public or private based on the

23 person's ability to provide for the animals as set forth in subsection (b) of this section.

24 (d) Any such ordinance, rule or regulation shall provide appropriate penalties for violations
25 and shall authorize humane officers to take possession of any animal that is not properly cared for
26 as required by such ordinance, rule or regulation.

CHAPTER 19. AGRICULTURE.

ARTICLE 1. DEPARTMENT OF AGRICULTURE.

§19-19-2. Definitions.

1 For the purposes of this article:

2 (a) "Agriculture" shall mean the production of food, fiber, and woodland products, by
3 means of cultivation, tillage of the soil and by the conduct of animal, livestock, dairy, apiary, equine
4 or poultry husbandry, and the practice of forestry, silviculture, horticulture, harvesting of silviculture
5 products, packing, shipping, milling, and marketing, which for purposes of this definition would
6 include storage, preparation, presentation, auctioning, and transport of agricultural products
7 conducted by the proprietor of the agricultural operation of agricultural products, or any other legal
8 plant or animal production and all farm practices.

9 (b) "Agricultural land" shall mean any amount of land and the improvements thereupon,
10 used or usable in the production of food, fiber, or woodland products of an annual value of \$1,000
11 or more, by the conduct of the business of agriculture, as defined in subsection (a) of this section.

12 (c) "Agricultural operation" shall mean any facility utilized for agriculture.

NOTE: The purpose of this bill is to restrain county commissions from imposing rules and regulations on farmers beyond what is already prescribed through state statute.

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