

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

Senate Bill 522

By Senators Woelfel and Plymale

[Introduced January 23, 2024; 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, relating to
2 the procedure for citations issued by the county litter control officer.

Be it enacted by the Legislature of West Virginia:

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 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.

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

15 (c) The county commission, in formally adopting ordinances, shall designate an
16 enforcement agency which shall consist of the county engineer (or other technically qualified
17 county employee or consulting engineer), county health officer or his or her designee, a fire chief

18 from a county fire company, the county litter control officer, if the commission chooses to hire one,
19 and two members-at-large selected by the county commission to serve two-year terms. The
20 county sheriff shall serve as an ex officio member of the enforcement agency and the county
21 officer charged with enforcing the orders of the county commission under this section.

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

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

40 (f) (1) Complaints authorized by this section shall be brought before the county
41 commission. Complaints shall be initiated by citation issued by the county litter control officer or
42 petition of the county engineer (or other technically qualified county employee or consulting
43 engineer) on behalf of and at the direction of the enforcement agency, but only after that agency

44 has investigated and determined that any dwelling, building, accumulation of refuse or debris,
45 overgrown vegetation, or toxic spillage or toxic seepage is unsafe, unsanitary, dangerous, or
46 detrimental to the public safety or welfare and should be repaired, altered, improved, vacated,
47 removed, closed, cleaned, or demolished.

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

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

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

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

63 (6) At the conclusion of the hearing, the ~~county commission~~ magistrate court shall make
64 findings of fact, determinations, and conclusions of law as to whether the dwelling or building: Is
65 unfit for human habitation due to dilapidation; has defects that increase the hazard of fire,
66 accidents, or other calamities; lacks ventilation, light, or sanitary facilities; or any other conditions
67 prevailing in the dwelling or building, whether used for human habitation or not and whether the
68 result of natural or manmade force or effect, which would cause the dwelling or other building to be
69 unsafe, unsanitary, dangerous, or detrimental to the public safety or welfare; or whether there is an

70 accumulation of refuse or debris, overgrown vegetation, toxic spillage or toxic seepage on private
71 lands which is determined to be unsafe, unsanitary, dangerous, or detrimental to the public safety
72 or welfare, whether the result of natural or manmade force or effect.

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

78 (8) Appeals from the ~~county commission~~ magistrate court to the circuit court shall be in
79 accordance with the provisions of ~~§58-3-4~~ §50-5-12 *et seq.* of this code.

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

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

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

NOTE: The purpose of this bill is to change the procedure for citations issued by the county litter control officer.

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