

1 **H. B. 4461**

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3 (By Delegates Morgan, Lawrence, L. Phillips,  
4 D. Poling, Smith and Stephens)  
5 [Introduced February 8, 2012; referred to the  
6 Committee on Political Subdivisions then the Judiciary.]  
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10 A BILL to amend the Code of West Virginia, 1931, as amended, by  
11 adding thereto a new section, designated §8-12-14a, relating  
12 to certain specific powers of municipalities; permitting an  
13 enforcement officer to issue a citation for external  
14 sanitation and common nuisance violations; providing a  
15 citation process; providing for fines; and providing an appeal  
16 process.

17 *Be it enacted by the Legislature of West Virginia:*

18 That the Code of West Virginia, 1931, as amended, be amended  
19 by adding thereto a new section, designated §8-12-14a, to read as  
20 follows:

21 **ARTICLE 12. GENERAL AND SPECIFIC POWERS, DUTIES AND ALLIED**  
22 **RELATIONS OF MUNICIPALITIES, GOVERNING BODIES AND**  
23 **MUNICIPAL OFFICERS AND EMPLOYEES; SUITS AGAINST**  
24 **MUNICIPALITIES.**

1 §8-12-14a. Enforcement of External Sanitation and Common Nuisance

2 Violations.

3 (a) The purpose of this section is to provide additional and  
4 alternative methods and processes to enforce the municipal code  
5 provisions regarding exterior sanitation and common nuisances  
6 related to property located within a municipality in a fair, speedy  
7 and inexpensive manner and to improve compliance with these  
8 provisions.

9 (b) This section is in addition to those methods and processes  
10 otherwise contained in a municipal code and shall be applied at the  
11 discretion of the enforcement officer enforcing the provisions of  
12 this section.

13 (c) This section applies to the following exterior sanitation  
14 and common nuisance violations contained in a Building Code and  
15 Zoning Ordinance including:

16 (1) Sanitation;

17 (2) Drainage;

18 (3) Sidewalks in disrepair;

19 (4) High weeds, grass or both;

20 (5) Graffiti;

21 (6) Exterior garbage accumulation;

22 (7) Open storage in residential districts;

23 (8) Nonresident recreational vehicles.

24 (d) All planning, zoning, building and law-enforcement

1 officers may enforce the provisions of this section and shall be  
2 referred to herein collectively as enforcement officials.

3 (e) Upon receipt of information indicating the likelihood of  
4 a violation of an ordinance regarding external sanitation or common  
5 nuisance, the enforcement official shall investigate the facts and  
6 may, to the extent permitted by law, make an inspection of the  
7 premises.

8 (f) If an investigation reveals that a code violation exists,  
9 the enforcement official shall provide written notice of the  
10 violation to the person having either ownership or control of any  
11 land, building, structure, sign, property, licensed or permitted  
12 business or operation which is in violation, and shall order that  
13 the violation be corrected. Notice of the violation shall be given  
14 by personal or substituted service in accordance with the West  
15 Virginia Rules of Civil Procedure, by either delivering the notice  
16 to the person in violation personally or by delivering the notice  
17 to a member of that person's family who is above the age of sixteen  
18 years and by advising that person of the purpose of the notice.  
19 Proof of personal service shall be made at the time of service by  
20 a written declaration executed by the enforcement official  
21 effecting service and shall declare the time, date and manner by  
22 which service was made. If personal service cannot be effectuated,  
23 the enforcement official may send the notice to the person via  
24 certified mail, return receipt requested, to the person's last

1 known address. If the return receipt is not returned, a notice  
2 shall be conclusively presumed to have been served if it is also  
3 sent by regular mail, postage prepaid, which is not returned as  
4 undeliverable by the postal service.

5 (g) Any notice of violation under this section shall be in  
6 writing and shall contain the following:

7 (1) The date the notice of violation is given;

8 (2) The name and address of the person(s) charged with the  
9 violation;

10 (3) The section of the ordinance being violated;

11 (4) The nature of the violation;

12 (5) A statement of the action required to be taken in order to  
13 correct the violation;

14 (6) The time period allowed for the violation to be corrected.

15 The time period allowed shall take into consideration the threat  
16 posed by the violation to the health, safety and welfare of the  
17 public and the nature of the work required to correct the  
18 violation: *Provided*, That no such time period for correction shall  
19 be less than five days;

20 (7) The maximum fines that may be assessed if the violation is  
21 not corrected; and

22 (8) The name, address and telephone number of the enforcement  
23 official.

24 (h) If the violation has not been corrected within the period

1 established in the notice of violation, the enforcement official  
2 may issue a citation to the violator. The citation shall be in  
3 writing and shall contain the following:

4 (1) The date the citation is issued;

5 (2) The name and address of the person(s) charged with the  
6 violation;

7 (3) The section of the ordinance that has been violated;

8 (4) The nature of the violation;

9 (5) The place and time the violation occurred;

10 (6) The date the notice of violation was given;

11 (7) The amount of the fine imposed for the violation;

12 (8) The name, address, and telephone number of the enforcement  
13 official issuing the citation; and

14 (9) The name, address and telephone number of the office of  
15 the city collector, where fines are to be paid, and of the  
16 municipal court, where citations may be appealed.

17 (i) A citation may be served by personal or substituted  
18 service in accordance with the West Virginia Rules of Civil  
19 Procedure, by either delivering the citation to the person in  
20 violation personally or by delivering the citation to a member of  
21 that person's family who is above the age of sixteen years and by  
22 advising that person of the purpose of the citation. Proof of  
23 personal service shall be made at the time of service by a written  
24 declaration executed by the enforcement official effecting service

1 and shall declare the time, date and manner by which service was  
2 made. If personal service cannot be effectuated, the enforcement  
3 official may send the citation to the person via certified mail,  
4 return receipt requested, to the person's last known address. If  
5 the return receipt is not returned, a citation shall be  
6 conclusively presumed to have been served if it is also sent by  
7 regular mail, postage prepaid, which is not returned as  
8 undeliverable by the postal service.

9 (j) Any person issued a citation pursuant to section, shall be  
10 punished by a fine as follows: Within any 12-month period, \$100 for  
11 the first citation, \$200 for the second citation, \$300 for the  
12 third citation, and \$500 for each citation thereafter.

13 (k) All fines imposed by citations under this section shall be  
14 due within ten days of service of the citation. The failure to pay  
15 when due any fine imposed under this section shall result in the  
16 issuance of a warrant and notification of the Division of Motor  
17 Vehicles.

18 (l) If a person has been previously served with a notice of  
19 violation with regard to a specific violation, the person is not  
20 entitled to receive any additional notice of violation for the same  
21 violation if it is repeated within a six-month period and the  
22 enforcement official may proceed in accordance with subsection (h)  
23 of this section without further notice to the violator.

24 (m) Issuance of a citation under the provisions of this

1 section shall be deemed to be prima facie evidence of the violation  
2 indicated on the face of the citation. As such, any person who is  
3 issued a citation shall pay the fine indicated for the violation,  
4 as set forth in subsection (j) of this section, in full to the  
5 office of the city collector within ten days of service of the  
6 citation. Any person alleging he or she was improperly issued the  
7 citation may, within ten days of service of the citation, file a  
8 petition for appeal of the citation or payment thereof, along with  
9 the required bond, with the municipal court clerk in accordance  
10 with the following:

11       (1) In order to properly and timely appeal his or her  
12 citation, within ten days of service of the citation, the alleged  
13 violator shall pay the required amount of the applicable fine in  
14 full to the municipal court clerk, which amount will be held by the  
15 municipal court as bond pending evidentiary hearing before and  
16 resolution of the case by the municipal court; the municipal court  
17 clerk shall issue a receipt to the alleged violator showing the  
18 amount of the bond paid. In addition to the bond, the alleged  
19 violator shall file with the municipal court clerk a petition for  
20 appeal of the citation. If any petition for appeal filed in  
21 accordance with this section is not timely filed or is not  
22 accompanied with the required bond, the alleged violator shall be  
23 determined to have waived his or her right to appeal the citation,  
24 and the petition shall be summarily denied as untimely filed:

1 Provided, That nothing set forth in this subdivision may prevent  
2 the municipal court judge from finding, upon a proper showing, that  
3 an alleged violator suffers from financial hardship and, as a  
4 result, waiving the requirement that the bond be posted as a  
5 prerequisite to filing a petition for appeal.

6 (2) Any petition for appeal filed with the municipal court  
7 clerk must be in writing, on the form to be provided by the  
8 municipal court clerk, and must be signed by the alleged violator  
9 affirming that the contents of the petition are true and accurate  
10 to the best of the alleged violator's knowledge at that time. The  
11 petition for appeal shall state the facts and reasons in support of  
12 the petition. Upon filing any petition for appeal with the  
13 municipal court clerk, the alleged violator shall serve a copy of  
14 the petition and receipt showing proof of bond or waiver thereof  
15 upon the city attorney.

16 (n) Upon filing of a petition for appeal with the municipal  
17 court clerk, the clerk or his or her designee shall place the case  
18 on the municipal court docket, set the case for evidentiary hearing  
19 within thirty days from the date of the filing of the petition for  
20 appeal, provide a notice of hearing to the alleged violator and  
21 forward a copy of the petition to the enforcement officer. Upon  
22 receipt of the petition, the enforcement officer shall cause a copy  
23 of the citation at issue to be forwarded to the municipal court  
24 clerk who shall file it as the original complaint alleging the



1 violation indicated therein.

2       (o) The municipal court shall treat the citation itself as the  
3 original complaint before the court and shall treat it as prima  
4 facie evidence of the violation alleged therein. At the close of  
5 all of the evidence, if the municipal judge finds against the  
6 alleged violator, the bond posted by the alleged violator shall be  
7 applied as payment for the fine imposed for the violation. If the  
8 municipal court judge finds that a violator suffers from financial  
9 hardship, the municipal court judge may permit alternative  
10 sentencing. If the court finds in favor of the alleged violator,  
11 the bond shall be refunded to the alleged violator by the municipal  
12 court clerk.

NOTE: The purpose of this bill is to permit a municipality to issue a citation for violation of external sanitation and common nuisance violations. The bill also provides a citation process, provides for fines and provides an appeal process.

This section is new; therefore, it has been completely underscored.