

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 600**

4 (By Senators Yost, Snyder, Miller, Laird, Edgell and Fitzsimmons)

5 _____
6 [Originating in the Committee on Government Organization;
7 reported February 18, 2014.]

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9
10 A BILL to amend and reenact §8-12-16, §8-12-16a and §8-12-16c of
11 the Code of West Virginia, 1931, as amended, all relating to
12 the registration, maintenance and regulation of dwellings
13 unfit for human habitation and vacant buildings and properties
14 by municipal governments; defining terms; clarifying the
15 parties responsible for compliance with municipal ordinances
16 regarding these dwellings, buildings and properties; and
17 authorizing municipalities to enact maintenance of vacant
18 buildings and properties ordinances.

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

20 That §8-12-16, §8-12-16a and §8-12-16c of the Code of West
21 Virginia, 1931, as amended, be amended and reenacted, all to read
22 as follows:

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

1 conditions, and in conducting hearings: *Provided*, That any entrance
2 upon premises for the purpose of making examinations is made in a
3 manner as to cause the least possible inconvenience to the persons
4 in possession.

5 (d) The governing body of every municipality has plenary power
6 and authority to adopt an ordinance requiring the owner or owners
7 of any dwelling or building under determination of the State Fire
8 Marshal, as provided in section twelve, article three, chapter
9 twenty-nine of this code, or under order of the enforcement agency
10 of the municipality, to pay for the costs of repairing, altering or
11 improving, or of vacating and closing, removing or demolishing any
12 dwelling or building.

13 (e) Every municipality:

14 (1) May file a lien against the real property in question for
15 an amount that reflects all costs incurred by the municipality for
16 repairing, altering or improving, or of vacating and closing,
17 removing or demolishing any dwelling or building; and

18 (2) May institute a civil action in a court of competent
19 jurisdiction against the landowner or other responsible party for
20 all costs incurred by the municipality with respect to the property
21 and for reasonable attorney fees and court costs incurred in the
22 prosecution of the action.

23 (f) Not less than ten days prior to instituting a civil action
24 as provided ~~for~~ in this section, the governing body of the
25 municipality shall send notice to the landowner by certified mail,
26 return receipt requested, advising the landowner of the governing

1 body's intention to institute such action.

2 (g) The notice shall be sent to the most recent address of the
3 landowner of record in the office of the assessor of the county
4 where the subject property is located. If, for any reason, such
5 certified mail is returned without evidence of proper receipt
6 thereof, then in such event, the governing body shall cause a Class
7 III-0 legal advertisement to be published in a newspaper of general
8 circulation in the county wherein the subject property is located
9 and post notice on the front door or other conspicuous location on
10 the subject property.

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

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

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

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

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

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

24 (5) Is entitled to control or direct the management or
25 disposition of the property.

26 ~~(i)~~ (j) All orders issued by the enforcement agency shall be

1 served in accordance with the law of this state concerning the
2 service of process in civil actions, and be posted in a conspicuous
3 place on the premises affected by the complaint or order: *Provided,*
4 That no ordinance may be adopted without providing for the right to
5 apply to the circuit court for a temporary injunction restraining
6 the enforcement agency pending final disposition of the cause.

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

11 **§8-12-16a. Registration of uninhabitable property.**

12 (a) The governing body of a municipality may, by ordinance,
13 establish a property registration for any real property improved by
14 a structure that is uninhabitable and violates the applicable
15 building code adopted by the municipality. An owner of real
16 property subject to the registration shall be assessed a fee as
17 provided by the ordinance.

18 (b) The mayor of the municipality shall appoint a code
19 enforcement officer to investigate and determine whether real
20 property violates provisions of the applicable building code of the
21 municipality.

22 (c) After inspecting the property, if the officer determines
23 the property is uninhabitable and violates the applicable building
24 code, then:

25 (1) The officer shall post a written notice on the property
26 which shall include:

- 1 (A) An explanation of the violation(s);
- 2 (B) A description of the registration;
- 3 (C) The date the fee will be assessed;
- 4 (D) An explanation of how to be removed from the registration;
- 5 (E) An explanation of the appeals process; and
- 6 (F) A statement that if the fee is not paid, then the property
- 7 is subject to forfeiture; and

8 (2) Within five business days of the inspection and the
9 posting of the property, the officer shall, by certified mail, send
10 a copy of the notice that was posted to the owner(s) of the
11 property at the last known address according to the county property
12 tax records.

13 (d) Within forty-five days of receipt of the notification by
14 the owner(s), the property owner may:

- 15 (1) Make and complete any repairs to the property that violate
- 16 the applicable building code; or
- 17 (2) Provide written information to the officer showing that
- 18 repairs are forthcoming in a reasonable period of time.

19 (e) For purposes of this section, "owner" or "property owner"
20 means a person who individually or jointly with others:

- 21 (1) Has legal title to the property, with or without actual
- 22 possession of the property;
- 23 (2) Has charge, care or control of the property as owner or
- 24 agent of the owner;
- 25 (3) Is an executor, administrator, trustee or guardian of the
- 26 estate of the owner;

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

3 (5) Is entitled to control or direct the management or
4 disposition of the property.

5 ~~(e)~~ (f) After the repairs are made, the owner may request a
6 reinspection of the property to ensure compliance with the
7 applicable building code. If the officer finds the violations are
8 fixed, the owner is not subject to the registration and no fee will
9 be incurred.

10 ~~(f)~~ (g) The officer may reinspect the property at any time to
11 determine where in the process the repairs fall.

12 ~~(g)~~ (h) Within ninety days of receipt of the notification by
13 the owner(s), the property owner has the right to appeal the
14 decision of the officer to the enforcement agency, created in
15 section sixteen, article twelve of this chapter.

16 ~~(h)~~ (i) If an appeal is not filed within ninety days, the
17 property is registered and the fee is assessed to the owner(s) on
18 the date specified in the notice. The notice of the fee shall be
19 recorded in the office of the clerk of the county commission of the
20 county where the property is located and if different, in the
21 office of the clerk of the county commission of the county where
22 the property is assessed for real property taxes.

23 ~~(i)~~ (j) If the enforcement agency affirms the registration and
24 assessment of the registration fee, the property owner has the
25 right to appeal the decision of the enforcement agency to the
26 circuit court within thirty days of the decision. If the decision

1 is not appealed in a timely manner to the circuit court, then the
2 property is registered and the fee is assessed on the date
3 specified in the notice. The notice of the fee shall be recorded in
4 the office of the clerk of the county commission of the county
5 where the property is located and if different, in the office of
6 the clerk of the county commission of the county where the property
7 is assessed for real property taxes.

8 ~~(j)~~ (k) A fee assessed under this section shall be recorded in
9 the same manner as a lien is recorded in the office of the clerk of
10 the county commission of the county.

11 ~~(k)~~ (l) If the fee is paid, then the municipality shall record
12 a release of the fee in the office of the clerk of the county
13 commission of the county where the property is located and if
14 different, in the office of the clerk of the county commission of
15 the county where the property is assessed for real property taxes.

16 ~~(l)~~ (m) If an owner fails to pay the fee, then the officer
17 shall annually post the written notice on the property and send the
18 written notice to the owner(s) by certified mail.

19 ~~(m)~~ (n) If a registration fee remains delinquent for two years
20 from the date it was placed on record in the clerk of the county
21 commission in which the property is located and assessed, the
22 municipality may take action to receive the subject property by
23 means of forfeiture. Should the municipality take the steps
24 necessary to receive the subject property, the municipality then
25 becomes the owner of record and takes the property subject to all
26 liens and real and personal property taxes.

1 **§8-12-16c. Registration of vacant buildings; registration fees;**
2 **procedures for administration and enforcement.**

3 (a) The governing body of a municipality shall have plenary
4 power and authority to establish by ordinance a vacant building and
5 property registration and maintenance program.

6 (b) For purposes of this section:

7 (1) "Owner" or "property owner" means a person who
8 individually or jointly with others:

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

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

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

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

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

19 ~~The term~~ (2) "Vacant building" means a building or other
20 structure that is unoccupied, or unsecured and occupied by one or
21 more unauthorized persons for an amount of time as determined by
22 the ordinance. ~~Provided, That~~ A new building under construction or
23 a building that by definition is exempted by ordinance of the
24 municipality, is not deemed a vacant building. ~~Provided, however,~~
25 ~~That~~ The governing body of a municipality, shall on a case-by-case

1 basis, upon request by the property owner, shall exempt a vacant
2 building from registration upon a finding for good cause shown that
3 the person will be unable to occupy the building for a determinant
4 period of time.

5 (3) "Vacant property" means a property on which no building is
6 erected and no routine activity occurs.

7 ~~(b)~~ (c) An owner of real property subject to registration and
8 maintenance requirements may be charged a fee or fees as provided
9 by ordinance. The ordinance shall provide administrative procedures
10 for the administration and enforcement of registration and payment
11 and collection of registration fees.

12 ~~(c)~~ (d) The ordinance may require that when the owner of the
13 vacant building or property resides outside of the state that the
14 owner provide the name and address of a person who resides within
15 the state who is authorized to accept service of process and
16 notices of fees due under this section on behalf of the owner and
17 who is designated as a responsible, local party or agent for the
18 purposes of notification in the event of an emergency affecting the
19 public health, safety or welfare.

20 ~~(d)~~ (e) The ordinance may authorize the municipality to
21 institute a civil action against the property owner and/or file a
22 lien on real property for unpaid and delinquent vacant building
23 registration fees. Before any lien is filed, the municipality shall
24 give notice to the property owner or owner's agent, by certified
25 mail, return receipt requested, that the municipality will file the
26 lien unless the delinquent fees are paid by a date stated in the

1 notice, which must be no less than thirty days from the date the
2 notice is received by the owner or the owner's agent, which shall
3 be the date of delivery shown on the signed certified mail return
4 receipt card. The ordinance may provide for alternative means of
5 service when service cannot be obtained by certified mail.

6 (f) The ordinance may require that the owner maintain the
7 vacant building or property to a standard deemed reasonable by the
8 governing body. The ordinance may include authority for the
9 municipality, following notice to the owner, to act to bring the
10 vacant building or property into compliance with the standard, or
11 otherwise eliminate the public nuisance caused by any noncomplaint
12 conditions: Provided, That nothing in this section is to be
13 interpreted to impose a duty, obligation or requirement that a
14 municipality must undertake such repairs, demolition or maintenance
15 measures which remain as obligations and responsibilities of the
16 owner. Cost of the repairs, demolition and maintenance and related
17 legal and administrative costs incurred by the municipality are to
18 be paid by the owner. Collection of these costs may be enforced in
19 civil proceedings against the owner.

20 ~~(e)~~ (g) The ordinance shall permit a property owner to
21 challenge any determination made pursuant to the ordinance. The
22 administrative procedures adopted pursuant to the ordinance shall
23 include the right to appeal to the circuit court of the county in
24 which the property is located.

25 ~~(f)~~ (h) The governing body of a municipality shall deposit the
26 fee into a separate account, which shall be used to:

1 (1) Improve public safety efforts, especially for police and
2 fire personnel, who most often contend with the dangerous
3 situations manifested in vacant properties;

4 (2) Monitor and administer this section; and

5 (3) Repair, close or demolish a vacant structure as authorized
6 by section sixteen of this article. ~~twelve, chapter eight~~