

1 **H. B. 4583**

2  
3 (By Delegates Stephens, Morgan, Storch and Fragale)  
4 [Introduced February 17, 2014; referred to the  
5 Committee on Political Subdivisions then the Judiciary.]  
6  
7  
8  
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 regulation of dilapidated buildings; defining the terms  
13 "owner" and "landowner" for the purposes of financial  
14 responsibility for the maintenance and registration of  
15 uninhabitable and vacant property; authorizing ordinances  
16 requiring reasonable maintenance standards; and authorizing  
17 municipalities to enforce collection of costs in civil  
18 proceedings against an owner.

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**

1                   **AND MUNICIPAL OFFICERS AND EMPLOYEES; SUITS**  
2                   **AGAINST MUNICIPALITIES.**

3 **§8-12-16. Ordinances regulating the repair, closing, demolition,**  
4                   **etc., of dwellings or buildings unfit for human**  
5                   **habitation; procedures.**

6           (a) Plenary power and authority are hereby conferred upon  
7 every municipality to adopt ordinances regulating the repair,  
8 alteration or improvement, or the vacating and closing or removal  
9 or demolition, or any combination thereof, of any dwellings or  
10 other buildings unfit for human habitation due to dilapidation,  
11 defects increasing the hazard of fire, accidents or other  
12 calamities, lack of ventilation, light or sanitary facilities or  
13 any other conditions prevailing in any dwelling or building,  
14 whether used for human habitation or not, which would cause such  
15 dwellings or other buildings to be unsafe, unsanitary, dangerous or  
16 detrimental to the public safety or welfare.

17           (b) The governing body in formally adopting the ordinances  
18 shall designate the enforcement agency, which shall consist of the  
19 mayor, the municipal engineer or building inspector and one member  
20 at large, to be selected by and to serve at the will and pleasure  
21 of the mayor. The ranking health officer and fire chief shall  
22 serve as ex officio members of the enforcement agency.

23           (c) Any ordinance adopted pursuant to the provisions of this

1 section must provide fair and equitable rules of procedure and any  
2 other standards deemed necessary to guide the enforcement agency,  
3 or its agents, in the investigation of dwelling or building  
4 conditions, and in conducting hearings: *Provided*, That any  
5 entrance upon premises for the purpose of making examinations is  
6 made in a manner as to cause the least possible inconvenience to  
7 the persons in possession.

8 (d) The governing body of every municipality has plenary power  
9 and authority to adopt an ordinance requiring the owner or owners  
10 of any dwelling or building under determination of the State Fire  
11 Marshal, as provided in section twelve, article three, chapter  
12 twenty-nine of this code, or under order of the enforcement agency  
13 of the municipality, to pay for the costs of repairing, altering or  
14 improving, or of vacating and closing, removing or demolishing any  
15 dwelling or building. For the purposes of this section, "owner" or  
16 "landowner" means any person who alone or jointly with others:

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

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

21 (3) Is an Executor, Administrator, Trustee or Guardian of the  
22 estate of the owner; or

23 (4) Is the agent of the owner for the purpose of managing,  
24 controlling or collecting rents, or is any person entitled to the

1 control or direction of the management or disposition of the  
2 property.

3 (e) Every municipality:

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

8 (2) May institute a civil action in a court of competent  
9 jurisdiction against the landowner or other responsible party for  
10 all costs incurred by the municipality with respect to the property  
11 and for reasonable attorney fees and court costs incurred in the  
12 prosecution of the action.

13 (f) Not less than ten days prior to instituting a civil action  
14 as provided for in this section, the governing body of the  
15 municipality shall send notice to the landowner by certified mail,  
16 return receipt requested, advising the landowner of the governing  
17 body's intention to institute such action.

18 (g) The notice shall be sent to the most recent address of the  
19 landowner of record in the office of the assessor of the county  
20 where the subject property is located. If, for any reason, such  
21 certified mail is returned without evidence of proper receipt  
22 thereof, then in such event, the governing body shall cause a Class  
23 III-0 legal advertisement to be published in a newspaper of general  
24 circulation in the county wherein the subject property is located

1 and post notice on the front door or other conspicuous location on  
2 the subject property.

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

6 (i) All orders issued by the enforcement agency shall be  
7 served in accordance with the law of this state concerning the  
8 service of process in civil actions, and, be posted in a  
9 conspicuous place on the premises affected by the complaint or  
10 order: *Provided*, That no ordinance may be adopted without  
11 providing for the right to apply to the circuit court for a  
12 temporary injunction restraining the enforcement agency pending  
13 final disposition of the cause.

14 (j) In the event such application is made, a hearing thereon  
15 shall be had within twenty days, or as soon thereafter as possible,  
16 and the court shall enter such final order or decree as the law and  
17 justice may require.

18 **§8-12-16a. Registration of uninhabitable property.**

19 (a) The governing body of a municipality may, by ordinance,  
20 establish a property registration for any real property improved by  
21 a structure that is uninhabitable and violates the applicable  
22 building code adopted by the municipality. An owner of real  
23 property subject to the registration shall be assessed a fee as  
24 provided by the ordinance.

1 (b) The mayor of the municipality shall appoint a code  
2 enforcement officer to investigate and determine whether real  
3 property violates provisions of the applicable building code of the  
4 municipality.

5 (c) After inspecting the property, if the officer determines  
6 the property is uninhabitable and violates the applicable building  
7 code, then:

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

10 (A) An explanation of the violation(s);

11 (B) A description of the registration;

12 (C) The date the fee will be assessed;

13 (D) An explanation of how to be removed from the registration;

14 (E) An explanation of the appeals process; and

15 (F) A statement that if the fee is not paid, then the property  
16 is subject to forfeiture; and

17 (2) Within five business days of the inspection and the  
18 posting of the property, the officer shall, by certified mail, send  
19 a copy of the notice that was posted to the owner(s) of the  
20 property at the last known address according to the county property  
21 tax records. For the purposes of this section, "owner" or

22 "landowner" means any person who alone or jointly with others:

23 (1) Has legal title to the property, with or without actual  
24 possession;

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

3       (3) Is an Executor, Administrator, Trustee or Guardian of the  
4 estate of the owner; or

5       (4) Is the agent of the owner for the purpose of managing,  
6 controlling or collecting rents, or is any person entitled to the  
7 control or direction of the management or disposition of the  
8 property.

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

11       (1) Make and complete any repairs to the property that violate  
12 the applicable building code; or

13       (2) Provide written information to the officer showing that  
14 repairs are forthcoming in a reasonable period of time.

15       (e) After the repairs are made, the owner may request a  
16 reinspection of the property to ensure compliance with the  
17 applicable building code. If the officer finds the violations are  
18 fixed, the owner is not subject to the registration and no fee will  
19 be incurred.

20       (f) The officer may reinspect the property at any time to  
21 determine where in the process the repairs fall.

22       (g) Within ninety days of receipt of the notification by the  
23 owner(s), the property owner has the right to appeal the decision  
24 of the officer to the enforcement agency, created in section

1 sixteen, article twelve of this chapter.

2       (h) If an appeal is not filed within ninety days, the property  
3 is registered and the fee is assessed to the owner(s) on the date  
4 specified in the notice. The notice of the fee shall be recorded  
5 in the office of the clerk of the county commission of the county  
6 where the property is located and if different, in the office of  
7 the clerk of the county commission of the county where the property  
8 is assessed for real property taxes.

9       (i) If the enforcement agency affirms the registration and  
10 assessment of the registration fee, the property owner has the  
11 right to appeal the decision of the enforcement agency to the  
12 circuit court within thirty days of the decision. If the decision  
13 is not appealed in a timely manner to the circuit court, then the  
14 property is registered and the fee is assessed on the date  
15 specified in the notice. The notice of the fee shall be recorded  
16 in the office of the clerk of the county commission of the county  
17 where the property is located and if different, in the office of  
18 the clerk of the county commission of the county where the property  
19 is assessed for real property taxes.

20       (j) A fee assessed under this section shall be recorded in the  
21 same manner as a lien is recorded in the office of the clerk of the  
22 county commission of the county.

23       (k) If the fee is paid, then the municipality shall record a  
24 release of the fee in the office of the clerk of the county



1 commission of the county where the property is located and if  
2 different, in the office of the clerk of the county commission of  
3 the county where the property is assessed for real property taxes.

4 (l) If an owner fails to pay the fee, then the officer shall  
5 annually post the written notice on the property and send the  
6 written notice to the owner(s) by certified mail.

7 (m) If a registration fee remains delinquent for two years  
8 from the date it was placed on record in the clerk of the county  
9 commission in which the property is located and assessed, the  
10 municipality may take action to receive the subject property by  
11 means of forfeiture. Should the municipality take the steps  
12 necessary to receive the subject property, the municipality then  
13 becomes the owner of record and takes the property subject to all  
14 liens and real and personal property taxes.

15 **§8-12-16c. Registration and maintenance of vacant buildings and  
16 property; registration fees; procedures for  
17 administration and enforcement.**

18 (a) (1) The governing body of a municipality shall have  
19 plenary power and authority to establish by ordinance a vacant  
20 building and property registration and maintenance program. For  
21 purposes of this section, the term "vacant building" means a  
22 building or other structure that is unoccupied, or unsecured and  
23 occupied by one or more unauthorized persons for an amount of time

1 as determined by the ordinance: *Provided*, That a new building under  
2 construction or a building that by definition is exempted by  
3 ordinance of the municipality, is not deemed a vacant building:  
4 *Provided, however*, That the governing body of a municipality, shall  
5 on a case by case basis, upon request by the property owner, exempt  
6 a vacant building from registration upon a finding for good cause  
7 shown that the person will be unable to occupy the building for a  
8 determinat period of time.

9 (2) For the purposes of this section, "vacant property" means  
10 a property upon which no building is erected and with no routine  
11 activity occurring on the property.

12 (3) For the purposes of this section, "owner" or "landowner"  
13 means any person who alone or jointly with others:

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

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

18 (C) Is an Executor, Administrator, Trustee or Guardian of the  
19 estate of the owner; or

20 (D) Is the agent of the owner for the purpose of managing,  
21 controlling or collecting rents, or is any person entitled to the  
22 control or direction of the management or disposition of the  
23 property.

24 (b) An owner of real property subject to registration and

1 maintenance requirements may be charged a fee or fees as provided  
2 by ordinance. The ordinance shall provide administrative  
3 procedures for the administration and enforcement of registration  
4 and payment and collection of registration fees.

5 (c) The ordinance may require that when the owner of the  
6 vacant building resides outside of the state that the owner provide  
7 the name and address of a person who resides within the state who  
8 is authorized to accept service of process and notices of fees due  
9 under this section on behalf of the owner and who is designated as  
10 a responsible, local party or agent for the purposes of  
11 notification in the event of an emergency affecting the public  
12 health, safety or welfare.

13 (d) The ordinance may authorize the municipality to institute  
14 a civil action against the property owner and/or file a lien on  
15 real property for unpaid and delinquent vacant building  
16 registration fees. Before any lien is filed, the municipality  
17 shall give notice to the property owner or owner's agent, by  
18 certified mail, return receipt requested, that the municipality  
19 will file the lien unless the delinquent fees are paid by a date  
20 stated in the notice, which must be no less than thirty days from  
21 the date the notice is received by the owner or the owner's agent,  
22 which shall be the date of delivery shown on the signed certified  
23 mail return receipt card. The ordinance may provide for  
24 alternative means of service when service cannot be obtained by

1 certified mail.

2 (e) (1) The ordinance may require that the owner maintain the  
3 vacant building or property at a reasonable standard. The  
4 ordinance may include the authority for municipality, after giving  
5 notice to the owner, to act to bring the building or property into  
6 compliance or eliminate a public nuisance caused by the  
7 noncompliance.

8 (2) Nothing in this section may be construed to impose a duty,  
9 obligation or requirement that a municipality undertake repairs,  
10 demolition or maintenance measures.

11 (3) If a municipality chooses to undertake repairs, demolition  
12 or maintenance measures, the costs incurred by the municipality,  
13 together with related legal and administrative costs, shall be paid  
14 by the owner. The municipality may enforce the collection of costs  
15 in civil proceedings against the owner.

16 ~~(e)~~ (f) The ordinance shall permit a property owner to  
17 challenge any determination made pursuant to the ordinance. The  
18 administrative procedures adopted pursuant to the ordinance shall  
19 include the right to appeal to the circuit court of the county in  
20 which the property is located.

21 ~~(f)~~ (g) The governing body of a municipality shall deposit the  
22 fee into a separate account, which shall be used to:

23 (1) Improve public safety efforts, especially for police and  
24 fire personnel, who most often contend with the dangerous

- 1 situations manifested in vacant properties;
- 2       (2) Monitor and administer this section; and
- 3       (3) Repair, close or demolish a vacant structure as authorized
- 4 by section sixteen, article twelve, chapter eight.

NOTE: The purpose of this bill is to clarify responsible parties for compliance with municipal ordinances regarding the registration, maintenance and regulation of dwellings unfit for human habitation, vacant buildings and vacant properties.

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