

Senate Bill No. 550

(By Senators Kirkendoll, Kessler,
Stollings and Unger)

[Introduced February 23, 2015;
referred to the Committee on
Government Organization.]

A BILL to amend and reenact §7-1-3ff of the Code of West Virginia, 1931, as amended; and to amend and reenact §8-12-16 of said code, all relating to authorizing county commissions and municipalities to cooperate and enter into agreements removing or demolishing dwellings or buildings unfit for human habitation.

Be it enacted by the Legislature of West Virginia:

That §7-1-3ff of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §8-12-16 of said code be amended and reenacted, all to read as follows:

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 adopt
2 ordinances regulating the repair, alteration or improvement, or the vacating and closing or removal

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1 or demolition, or any combination thereof, of any dwellings or other buildings, except for buildings
2 utilized for farm purposes on land actually being used for farming, unfit for human habitation due
3 to dilapidation, defects increasing the hazard of fire, accidents or other calamities, lack of ventilation,
4 light or sanitary facilities or any other conditions prevailing in any dwelling or building, whether
5 used for human habitation or not, which would cause the dwellings or other buildings to be unsafe,
6 unsanitary, dangerous or detrimental to the public safety or welfare, whether the result of natural or
7 manmade force or effect. Every county commission may cooperate with municipalities and enter
8 into agreements with municipalities to effect the purposes of this section: *Provided*, That each
9 county commission and municipality shall use its own employees and equipment when removing
10 or demolishing dwellings or buildings subject to this section.

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

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

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1 (d) In addition to the powers and duties imposed by this section, county litter control officers
2 ~~shall have authority to~~ may issue citations for open dumps, as prohibited by subsection (a), section
3 ten, article fifteen, chapter twenty-two of this code, unlawful disposal of litter, as prohibited by
4 section four, article fifteen-a, chapter twenty-two of this code, and failure to provide proof of proper
5 disposal of solid waste, as prohibited by subsection (a), section ten, article four, chapter twenty-two-c
6 of this code, after completing a training course offered by the West Virginia Department of
7 Environmental Protection. Nothing in this subsection supercedes the authority or duty of the
8 Department of Environmental Protection or other law-enforcement officers to preserve law and order
9 and enforce the litter control program.

10 (e) Any ordinance adopted pursuant to the provisions of this section shall provide fair and
11 equitable rules of procedure and any other standards considered necessary to guide the enforcement
12 agency, or its agents, in the investigation of dwelling or building conditions, accumulation of refuse
13 or debris, overgrown vegetation or toxic spillage or toxic seepage and shall provide for fair and
14 equitable rules of procedure for instituting and conducting hearings in the matters before the county
15 commission. Any entrance upon premises for the purpose of making examinations shall be made
16 in a manner as to cause the least possible inconvenience to the persons in possession.

17 (f) (1) Complaints authorized by this section shall be brought before the county commission.
18 Complaints shall be initiated by citation issued by the county litter control officer or petition of the
19 county engineer, or other technically qualified county employee or consulting engineer, on behalf
20 of and at the direction of the enforcement agency, but only after that agency has investigated and
21 determined that any dwelling, building, accumulation of refuse or debris, overgrown vegetation or
22 toxic spillage or toxic seepage is unsafe, unsanitary, dangerous or detrimental to the public safety

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1 or welfare and should be repaired, altered, improved, vacated, removed, closed, cleaned or
2 demolished.

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

6 (3) The complaint shall state the findings and recommendations of the enforcement agency
7 and that unless the owner or owners of the property file with the clerk of the county commission a
8 written request for a hearing within ten days of receipt of the complaint, an order will be issued by
9 the county commission implementing the recommendations of the enforcement agency.

10 (4) If the owner or owners of the property file a request for a hearing, the county commission
11 shall issue an order setting this matter down for hearing within twenty days. Hearings shall be
12 recorded by electronic device or by court reporter. The West Virginia rules of evidence do not apply
13 to the proceedings, but each party has the right to present evidence and examine and cross-examine
14 all witnesses.

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

17 (6) At the conclusion of the hearing the county commission shall make findings of fact,
18 determinations and conclusions of law as to whether the dwelling or building: Is unfit for human
19 habitation due to dilapidation; has defects that increase the hazard of fire, accidents or other
20 calamities, lacks ventilation, light or sanitary facilities; or any other conditions prevailing in the
21 dwelling or building, whether used for human habitation or not and whether the result of natural or
22 manmade force or effect, which would cause such dwelling or other building to be unsafe,

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1 unsanitary, dangerous or detrimental to the public safety or welfare; or whether there is an
2 accumulation of refuse or debris, overgrown vegetation, toxic spillage or toxic seepage on private
3 lands which is determined to be unsafe, unsanitary, dangerous or detrimental to the public safety or
4 welfare, whether the result of natural or manmade force or effect.

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

10 (8) Appeals from the county commission to the circuit court shall be in accordance with the
11 provisions of article three, chapter fifty-eight of this code.

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

18 (h) A civil proceeding may be brought in circuit court by the county commission against the
19 owner or owners of the private land or other responsible party that the subject matter of the order of
20 the county commission to subject the private land in question: (1) To a lien for the amount of the
21 contractor's costs in making these ordered repairs, alterations or improvements or ordered
22 demolition, removal or clean up, together with any daily civil monetary penalty imposed; (2) to order

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

6 (i) County commissions ~~have the power and authority to~~ may receive and accept grants,
7 subsidies, donations and services in kind consistent with the objectives of this section.

8 **CHAPTER 8. MUNICIPAL CORPORATIONS.**

9 **ARTICLE 12. GENERAL AND SPECIFIC POWERS, DUTIES AND ALLIED**
10 **RELATIONS OF MUNICIPALITIES, GOVERNING BODIES AND**
11 **MUNICIPAL OFFICERS AND EMPLOYEES; SUITS AGAINST**
12 **MUNICIPALITIES.**

13 **§8-12-16. Ordinances regulating the repair, closing, demolition, etc., of dwellings or buildings**
14 **unfit for human habitation; procedures.**

15 (a) Plenary power and authority are hereby conferred upon every municipality to adopt
16 ordinances regulating the repair, alteration or improvement, or the vacating and closing or removal
17 or demolition, or any combination thereof, of any dwellings or other buildings unfit for human
18 habitation due to dilapidation, defects increasing the hazard of fire, accidents or other calamities,
19 lack of ventilation, light or sanitary facilities or any other conditions prevailing in any dwelling or
20 building, whether used for human habitation or not, which would cause such dwellings or other
21 buildings to be unsafe, unsanitary, dangerous or detrimental to the public safety or welfare. Every
22 municipality may cooperate with county commissions and enter into agreements with county

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1 commissions to effect the purposes of this section: *Provided*, That each municipality and county
2 commission shall use its own employees and equipment when removing or demolishing dwellings
3 or buildings subject to this section.

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

8 (c) Any ordinance adopted pursuant to the provisions of this section must provide fair and
9 equitable rules of procedure and any other standards deemed necessary to guide the enforcement
10 agency, or its agents, in the investigation of dwelling or building conditions, and in conducting
11 hearings: *Provided*, That any entrance upon premises for the purpose of making examinations is
12 made in a manner as to cause the least possible inconvenience to the persons in possession.

13 (d) The governing body of every municipality ~~has plenary power and authority to~~ may adopt
14 an ordinance requiring the owner or owners of any dwelling or building under determination of the
15 State Fire Marshal, as provided in section twelve, article three, chapter twenty-nine of this code, or
16 under order of the enforcement agency of the municipality, to pay for the costs of repairing, altering
17 or improving, or of vacating and closing, removing or demolishing any dwelling or building.

18 (e) Every municipality:

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

22 (2) May institute a civil action in a court of competent jurisdiction against the landowner or

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1 other responsible party for all costs incurred by the municipality with respect to the property and for
2 reasonable attorney fees and court costs incurred in the prosecution of the action.

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

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

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

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

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

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

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

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

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

21 (j) All orders issued by the enforcement agency shall be served in accordance with the law
22 of this state concerning the service of process in civil actions, and be posted in a conspicuous place

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1 on the premises affected by the complaint or order: *Provided*, That no ordinance may be adopted
2 without providing for the right to apply to the circuit court for a temporary injunction restraining the
3 enforcement agency pending final disposition of the cause.

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

NOTE: The purpose of this bill is to authorize county commissions and municipalities to cooperate and enter into agreements removing or demolishing dwellings or buildings unfit for human habitation.

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