

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Committee Substitute

for

Senate Bill 631

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[Originating in the Committee on Government

Organization; reported on March 24, 2017]

1 A BILL to amend and reenact §8-12-13 and §8-12-16 of the Code of West Virginia, 1931, as
2 amended, all relating to the process for prosecution of violations of municipal building
3 code; clarifying the process by which municipal governments may abate unsafe,
4 unsanitary or dangerous dilapidated structures that are detrimental to the public safety or
5 welfare; creating a method of issuing misdemeanor citations for violation of the building
6 code with proper due process; permitting complaints to be filed; establishing a procedure;
7 requiring notice; granting hearings; permitting the recovery for costs for instituting an
8 action; and defining terms.

Be it enacted by the Legislature of West Virginia:

1 That §8-12-13 and §8-12-16 of the Code of West Virginia, 1931, as amended, be amended
2 and reenacted, all to read as follows:

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

§8-12-13. Building regulation; general and special codes; state building code.

1 (a) The governing body of every municipality shall have plenary power and authority by
2 ordinance or a code of ordinances to:

3 (1) Regulate the erection, construction, repair or alteration of structures of every kind
4 within the corporate limits of the municipality, prohibit, within specified territorial limits, the
5 erection, construction, repair or alteration of structures of wood or other combustible material, and
6 regulate excavations upon private property;

7 (2) Regulate electric wiring by prescribing minimum specifications to be followed in the
8 installation, alteration or repair ~~thereof~~; and

9 (3) Regulate plumbing by prescribing the minimum specifications to be followed in the
10 installation, alteration or repair of plumbing, including equipment, water and sewer pipe, traps,

11 drains, cesspools and septic tanks.

12 (b) Notwithstanding the provisions of subsection (a) of this section, all existing municipal
13 building codes are void one year after the promulgation of a state building code by the State Fire
14 Commission as provided in under chapter twenty-nine, article three, section five-b section five-b,
15 article three, chapter twenty-nine of this code.

16 Upon the voidance of the municipality's existing building code, if the municipality votes to
17 adopt a building code, it must be the state building code promulgated pursuant to under chapter
18 twenty-nine, article three, section five-b section five-b, article three, chapter twenty-nine of this
19 code.

20 (c) The governing body of every municipality shall have plenary power and authority by
21 ordinance or a code of ordinances to adopt such state building code promulgated by the State
22 Fire Commission.

23 (d) Unless otherwise authorized by state law, any misdemeanor prosecution of a violation
24 of an ordinance adopted under this section before a municipal judge or other municipal official
25 lawfully authorized to hear and determine violations of municipal code shall be initiated by a
26 complaint presented to and sworn or affirmed before a municipal judge or other municipal official
27 with lawful authority to hear and determine violations of municipal code in the municipality where
28 the offense is alleged to have occurred. Unless otherwise provided by statute, the presentation
29 and oath or affirmation shall be made by a code enforcement department official or municipal
30 attorney showing reason to have reliable information and belief. If the municipal judge or other
31 municipal official with lawful authority to hear and determine violations of municipal code finds
32 probable cause, the complaint becomes the charging instrument initiating a criminal proceeding.

33 A complaint lawfully authorized by this subsection together with a summons setting forth
34 the date, time and place of appearance before a municipal judge or other municipal official with
35 lawful authority to hear and determine violations of municipal code, shall be served in accordance
36 with the law of the State of West Virginia concerning the service of process in civil actions, except

37 that personal service of a summons and complaint may be made by a code enforcement
38 department official. If service is made by certified mail under Rule 4(d)(1)(D) of the West Virginia
39 Rules of Civil Procedure and delivery of the summons and complaint is refused, the code
40 enforcement department official, promptly upon the receipt of the notice of the refusal, shall mail
41 to the person or entity being noticed, by first class mail, postage prepaid, a copy of the summons
42 and complaint. If the first class mailing is not returned as undeliverable by the U. S. Postal
43 Service, service of the summons and complaint is presumed to have been effectuated. Upon
44 service of the summons and complaint consistent with this subsection, the violation may be
45 prosecuted consistent with state and local law.

**§8-12-16. Ordinances regulating the repair, alteration, improvement, closing, demolition,
etc., of structures, dwellings or buildings unfit for human habitation that are unsafe,
unsanitary, dangerous or detrimental to the public safety or welfare; procedures.**

1 (a) For the purposes of this section:

2 (1) "Code enforcement agency" means either a code enforcement department as defined
3 by 87 CSR 7-2, as may be amended, or an enforcement agency as permitted by subsection (c)
4 of this section.

5 (2) "Code enforcement agency official" means any lawful agent of a code enforcement
6 agency.

7 (3) "Owner" or "landowner" means a person who individually or jointly with others:

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

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

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

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

12 or

13 (E) May control or direct the management or disposition of the property.

14 (4) "Unsafe, unsanitary, dangerous or detrimental to the public safety or welfare" means:

15 (A) Any door, aisle, passageway, stairway, exit or other means of egress that does not
16 conform to the approved building or fire code of the jurisdiction as related to the requirements for
17 existing buildings;

18 (B) The walking surface of any aisle, passageway, stairway, exit or other means of egress
19 is so warped, worn loose, torn or otherwise unsafe as to not provide safe and adequate means of
20 egress;

21 (C) Any portion of a dwelling, building, structure or appurtenance that has been damaged
22 by fire, earthquake, wind, flood, deterioration, neglect, abandonment, vandalism or by any other
23 cause to an extent that it is likely to partially or completely collapse, or to become detached or
24 dislodged;

25 (D) Any portion of a structure or building, or any member, appurtenance or ornamentation
26 on the exterior that is not of sufficient strength or stability, or is not so anchored, attached or
27 fastened in place so as to be capable of resisting natural or artificial loads of one and one-half the
28 original designed value;

29 (E) The dwelling, building or structure, or part of the building or structure, because of
30 dilapidation, deterioration, decay, faulty construction, the removal or movement of some portion
31 of the ground necessary for the support, or for any other reason, is likely to partially or completely
32 collapse, or some portion of the foundation or underpinning of the building or structure is likely to
33 fail or give way;

34 (F) The dwelling, building or structure, or any portion, is clearly unsafe for its use;

35 (G) The dwelling, building or structure is neglected, damaged, dilapidated, unsecured or
36 abandoned so as to become an attractive nuisance to children, becomes a harbor for vagrants,
37 criminals, criminal activity or enables persons to resort to the dwelling, building or structure for
38 committing a nuisance or an unlawful act;

39 (H) Any dwelling, building or structure constructed, exists or maintained in violation of any
40 specific requirement or prohibition applicable to any dwelling, building or structure provided by

41 the approved building or fire code of the jurisdiction or of any law or ordinance that presents either
42 a substantial risk of fire, building collapse or any other threat to life and safety;

43 (I) A dwelling, building or structure, used or intended to be used for dwelling purposes,
44 because of inadequate maintenance, dilapidation, decay, contamination by any hazardous
45 substance or material including, but not limited to, substance resulting from the illegal
46 manufacture of drugs, damage, faulty construction or arrangement, inadequate light, ventilation,
47 mechanical or plumbing system, or otherwise, is determined by the code enforcement agency to
48 be unsanitary, unfit for human habitation or in such a condition that is likely to cause sickness or
49 disease;

50 (J) Any dwelling, building or structure, because of a lack of sufficient or proper fire
51 resistance-rated construction, fire protection systems, electrical system, fuel connections,
52 mechanical system, plumbing system or other cause, is determined by the code official to be a
53 threat to life or health; or

54 (K) Any portion of a building that remains on a site after the demolition or destruction of
55 the building or structure, or whenever any building or structure is abandoned.

56 ~~(a)~~ (b) Plenary power and authority are hereby conferred upon every municipality to adopt
57 ordinances regulating the repair, alteration or improvement, or the vacating and closing or removal
58 or demolition, or any combination thereof, of any structure, dwelling or other building, ~~unfit for~~
59 ~~human habitation due to dilapidation, defects increasing the hazard of fire, accidents or other~~
60 ~~calamities, lack of ventilation, light or sanitary facilities or any other conditions prevailing in any~~
61 ~~dwelling or building whether used for human habitation or not, which would cause such dwellings~~
62 ~~or other buildings to be~~ that is unsafe, unsanitary, dangerous or detrimental to the public safety
63 or welfare.

64 ~~(b)~~ (c) The governing body in formally adopting ~~the ordinances~~ any ordinance under this
65 section shall designate the enforcement agency, which shall consist of the ~~mayor, the municipal~~
66 ~~engineer or building inspector and one member at large, to be selected by and to serve at the will~~

67 ~~and pleasure of the mayor. The ranking health officer and fire chief shall serve as ex officio~~
68 ~~members of the enforcement agency~~ code enforcement agency as provided by the state building
69 code and authorized by section five-b, article three, chapter twenty-nine of this code and section
70 thirteen, article twelve, chapter eight of this code; or municipal officials as may otherwise be
71 authorized by this code; or municipal officials or agents as authorized by rules promulgated by
72 the State Fire Commission and approved by the Legislature; or municipal officials or agents as
73 may otherwise be authorized by the State Fire Commission. Notwithstanding any provision of
74 this code to the contrary, for the purposes of this section any municipality that has not adopted
75 the state building code may designate an enforcement agency consisting of the mayor, the
76 municipal engineer or building inspector and one member at large, to be selected by and to serve
77 at the will and pleasure of the mayor, and the ranking health officer and fire chief who shall serve
78 as ex officio members of the enforcement agency.

79 (e) ~~(d)~~ Any ordinance adopted pursuant to under the provisions of this section must provide
80 fair and equitable rules of procedure and any other ~~standards deemed~~ procedures required by
81 law or necessary and appropriate to guide the code enforcement agency, or its ~~agents~~ officials,
82 in the investigation of any structure, dwelling or building conditions, and in ~~conducting hearings~~:
83 *Provided*, That any entrance upon premises for the purpose of making examinations is made in
84 a manner as to cause the least possible inconvenience to the persons in possession. corrective
85 action taken by the code enforcement agency.

86 (e) When a code enforcement agency official enters the premises of the property for
87 investigating or inspecting any structure, dwelling or building, the investigation shall be performed
88 to minimize the inconvenience to the owner or persons in possession and shall be consistent with
89 the following:

90 (1) Except in exigent circumstances and as permitted by law, the enforcement agency
91 shall provide reasonable advance notice to the owner and request permission from the owner to
92 enter the property.

93 (2) If the owner cannot be located after reasonable inquiry by the code enforcement
94 agency as required by this section, or if the owner refuses entry, the code enforcement agency
95 may obtain an administrative search warrant from either the municipal court or the magistrate
96 court located in the jurisdiction of the municipality or county where the structure, dwelling or
97 building is located. Before obtaining an administrative search warrant, a code enforcement
98 agency official is required to make a sworn statement and prima facie case showing that the code
99 enforcement agency was unable to gain access to the structure, dwelling or building after
100 reasonable and good faith efforts, and that there is a legitimate and substantial safety concern
101 involving the structure, dwelling or building that supports the requested entry.

102 (3) If granted by the court, and if the owner can be located, the code enforcement agency
103 shall provide the owner a copy of the administrative search warrant five days before entering the
104 property. If applicable, the code enforcement agency shall also provide the same notice to any
105 tenant or other person in possession of the structure, dwelling or building.

106 (4) Entry is for the sole purpose of inspection of the structure, dwelling or building for
107 unsafe or unsanitary conditions and not for the purpose of criminal prosecution or gathering
108 evidence for use in any criminal charge or proceeding unrelated to the unsafe or unsanitary
109 condition of the structure, dwelling or building.

110 (f) The governing body of every municipality has plenary power and authority to adopt an
111 ordinance providing for the vacating, closing, removal or demolition of any dwelling, structure or
112 building by the municipality in the absence of owner agreement or court order: *Provided*, That the
113 ordinance requires the code enforcement agency to provide lawful notice to and undertake
114 reasonable efforts to seek agreement from the owner before taking any action permitted by this
115 section and shall comply with the requirements set forth in this subsection:

116 (1) Any ordinance adopted under this subsection applies only to dwellings, structures or
117 buildings which meet the definition of unsafe, unsanitary, dangerous or detrimental to the public
118 safety or welfare as set forth in:

119 (A) Paragraph (C), (E) or (H), subdivision (4), subsection (a) of this section; or

120 (B) Paragraph (F), (G), (I) or (K), subdivision (4), subsection (a) of this section: *Provided,*

121 That the dwelling, building or structure is vacant, abandoned or has been lawfully declared unfit

122 for human habitation; and the reasonable estimated cost of repair, rehabilitation or corrective

123 action exceeds the fair market value of the dwelling, building or structure.

124 (2) Any ordinance adopted under this subsection must provide for the following:

125 (A) The code enforcement agency shall produce a written notice containing the date of

126 the last inspection, the name of the inspector, a reasonable description of the unsafe, unsanitary,

127 dangerous, or detrimental condition(s), the corrective measures required, the allotted time to

128 correct the substandard condition(s) and the allotted time the owner has to apply to the circuit

129 court for a temporary injunction or other similar relief restraining action by the enforcement

130 agency.

131 (B) The notice shall be served upon the owner or landowner by conspicuously posting and

132 attaching a copy of the notice to the subject property, and by serving the notice on the owner or

133 landowner in the same manner as service of a complaint as set forth in subsection (j) of this

134 section.

135 (C) If the code enforcement agency cannot effect personal service on the owner, a code

136 enforcement agency official shall subscribe a written affidavit, to be maintained for a minimum of

137 two years, that demonstrates the structure, dwelling or building falls within one of the categories

138 set forth in paragraph (A) or (B), subdivision (1), subsection (f) of this section sets forth the basis

139 in reasonable detail including documentation of same, and memorializes the code enforcement

140 agency official's efforts to contact or get permission for entry and corrective action from the owner;

141 and the code enforcement agency shall publish notice of its intent to enter the property for the

142 purpose of demolition or correction, along with the address of the property, the name of the

143 owner(s) and the date of the proposed action, as a Class II legal advertisement consistent with

144 the requirements of section two, article three, chapter fifty-nine of this code, the first of which shall

145 run at least thirty days before the date of the proposed action by the enforcement agency, and
146 the last being no later than twenty days before the date of the proposed action by the enforcement
147 agency.

148 (D) If there is no response to the notice by the owner or landowner in the time specified in
149 the notice, then the municipality shall have the authority to proceed in correction or demolition of
150 the subject dwelling, building or structure.

151 (3) It shall be an absolute defense to any civil action by an owner, landowner or tenant for
152 damages resulting from the closure, demolition or other corrective action taken by a municipality
153 under this section: *Provided*, That the municipality acted in good faith, can demonstrate that the
154 structure, dwelling or building falls within one of the categories set forth in paragraph (A) or (B),
155 subdivision (1), subsection (f) of this section, the municipality followed the procedures set forth in
156 this subsection and the municipality had adopted the state building code at the time of the closure,
157 demolition or other corrective action occurred.

158 (4) Any ordinance adopted under this subsection must also provide for notice to the owner
159 of the right of the owner to apply to the circuit court for a temporary injunction or other similar relief
160 restraining correction or demolition by the enforcement agency. If the application is made by the
161 owner, a hearing shall be had within twenty days of the application, or as soon as reasonably
162 possible.

163 (A) Continuances of the hearing provided for in this subdivision may be made for cause
164 only. If a continuance is granted upon request by the owner, the owner is required to pay into
165 court, in the form of a bond, any reasonable and necessary costs related to the property likely to
166 be incurred by the municipality during the continuance.

167 (B) At the conclusion of a hearing held under this subdivision, if the court finds that the
168 property is unsafe, unsanitary, dangerous, or detrimental to the public safety or welfare, the court
169 shall make and enter an order granting the relief as requested by the municipality. The court may
170 disburse any moneys paid into court by the owner in accordance with this section.

171 ~~(d)~~ (g) The governing body of every municipality has plenary power and authority to adopt
172 an ordinance requiring the owner ~~or owners~~ of any dwelling or building under determination of the
173 State Fire Marshal, as provided in section twelve, article three, chapter twenty-nine of this code,
174 or under order of the code enforcement agency of the municipality, to pay for the costs of
175 repairing, altering or improving, or of vacating and closing, removing or demolishing any dwelling
176 or building and may file a lien against the real property in question for an amount that reflects all
177 costs incurred by the municipality for repairing, altering or improving, or of vacating and closing,
178 removing or demolishing any dwelling or building.

179 ~~(e)~~ Every municipality:

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

183 ~~(2) May institute a civil action in a court of competent jurisdiction against the landowner or~~
184 ~~other responsible party to recover all reasonable costs and expenses incurred by the municipality~~
185 ~~with respect to the property and for reasonable attorney fees and court costs incurred in the~~
186 ~~prosecution of the action.~~

187 (h) Every municipality may also institute a civil action in circuit court against the landowner
188 or other responsible party to get an order to take corrective action up to and including demolition
189 of any structure, dwelling or building that is unsafe, unsanitary, dangerous or detrimental to the
190 public safety or welfare; and to recover all reasonable costs and expenses incurred by the
191 municipality with respect to the property and for reasonable attorney fees and court costs incurred
192 in the prosecution of the action;

193 ~~(f)~~ Not less (1) No fewer than ten days ~~prior to~~ before instituting a civil action as provided
194 in this ~~section~~ subsection, the ~~governing body of the~~ municipality shall send notice to the
195 landowner by certified mail, return receipt requested, advising the landowner of the governing
196 body's intention to institute such action.

197 ~~(g) (2)~~ The notice shall be sent to the most recent address of the landowner of record in
198 the office of the assessor of the county where the subject property is located and to any other
199 address for the landowner as may exist on record with the municipality. If, for any reason, such
200 certified mail is returned without evidence of proper receipt thereof, then ~~in such event, the~~
201 ~~governing body~~ municipality shall resend the notice(s) by first class mail, postage prepaid, ~~cause~~
202 ~~a Class III-0 legal advertisement to be published in a newspaper of general circulation in the~~
203 ~~county wherein the subject property is located and~~ shall also post notice on the front door or other
204 conspicuous location on the subject property.

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

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

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

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

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

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

213 or

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

215 ~~(j) All orders issued by the enforcement agency shall be served in accordance with the~~
216 ~~law of this state concerning the service of process in civil actions, and be posted in a conspicuous~~
217 ~~place on the premises affected by the complaint or order: *Provided,* That no ordinance may be~~
218 ~~adopted without providing for the right to apply to the circuit court for a temporary injunction~~
219 ~~restraining the enforcement agency pending final disposition of the cause.~~

220 (i) To the extent not otherwise authorized by state law, all notices of violation or correction
221 for violations that do not fall within one of the categories set forth in paragraph (A) or (B),
222 subdivision (1), subsection (f) of this section issued by the enforcement agency of a municipality

223 that has adopted the state building code shall be served in accordance with the process set forth
224 in the state building code. All notices of violation or correction orders for violations that do not fall
225 within one of the categories set forth in paragraph (A) or (B), subdivision (1), subsection (f) of this
226 section issued by a code enforcement agency of a municipality that has not adopted the state
227 building code shall be served in accordance with the law of this state concerning the service of
228 process in civil actions, except that personal service may be made by a code enforcement agency
229 official and the method of service effectuated by mail by the clerk of a court as permitted by Rule
230 4(d)(1)(D) of the West Virginia Rules of Civil Procedure is effectuated by mailing by a code
231 enforcement agency official and shall be posted in a conspicuous place on the property that is
232 the subject of the notice of violation or correction.

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

236 (j) Any violation of an ordinance adopted under this section, may be prosecuted by the
237 municipality consistent with state and local laws. Unless otherwise authorized by state law,
238 prosecution of a violation shall be initiated by a complaint presented to and sworn or affirmed
239 before a municipal judge or other municipal official with lawful authority to hear and determine
240 violations of municipal code in the municipality where the offense is alleged to have occurred.
241 Unless otherwise provided by statute, the presentation and oath or affirmation shall be made by
242 a code enforcement agency official or municipal attorney showing reason to have reliable
243 information and belief. If from the facts stated in the complaint the municipal judge or other
244 municipal official with lawful authority to hear and determine violations of municipal code finds
245 probable cause, the complaint becomes the charging instrument initiating a criminal proceeding.
246 A complaint lawfully authorized by this subsection along with a summons setting forth the date,
247 time and place of appearance before a municipal judge and or other municipal official with lawful
248 authority to hear and determine violations of municipal code shall be served in accordance with

249 the law of the State of West Virginia concerning the service of process in civil actions, except that
250 personal service of a summons and complaint may be made by a code enforcement agency
251 official. If service is made by certified mail under Rule 4(d)(1)(D) of the West Virginia Rules of
252 Civil Procedure and delivery of the summons and complaint is refused, the code enforcement
253 agency official, promptly upon the receipt of the notice of the refusal, shall mail to the person or
254 entity being noticed, by first class mail, postage prepaid, a copy of the summons and complaint.
255 If the first class mailing is not returned as undeliverable by the U. S. Postal Service, service of the
256 summons and complaint is presumed to have been effectuated. Upon service of the summons
257 and complaint consistent with this subsection, the violation may be prosecuted consistent with
258 state and local law.

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