

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Committee Substitute

for

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for

Senate Bill 585

By Senators Hamilton and Jeffries

[Originating in the Committee on Government

Organization; reported on February 22, 2023]

1 A BILL to amend and reenact §7-1-3 and §7-1-3ff of the Code of West Virginia, 1931, as amended,
2 all relating to prohibiting county commissions from adopting any ordinance, rule, license
3 requirement, or other authorization that exceeds state law, rule, or regulation regarding
4 agricultural operations; revoking any ordinance, rule, or regulation previously adopted by
5 county commissions that exceeds state law, rule, or regulation regarding agricultural
6 operations; prohibiting county commissions from adopting any ordinance, rule, regulation,
7 or other authorization that prohibits or alters permissible use of federal or state pesticides,
8 herbicides, or insecticides; prohibiting county commissions from adopting ordinances that
9 regulate dwellings or other buildings on agricultural land or operations; and requiring
10 appointment of at-large member on county enforcement agency to have background or
11 knowledge of agricultural operations.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-3. Jurisdiction, powers, and duties.

1 (a) The county commissions, through their clerks, shall have the custody of all deeds and
2 other papers presented for record in their counties and the same shall be preserved therein, or
3 otherwise disposed of as now is, or may be prescribed by law. They shall have jurisdiction in all
4 matters of probate, the appointment and qualification of personal representatives, guardians,
5 committees, curators and the settlement of their accounts and in all matters relating to
6 apprentices. They shall also, under the rules as now are, or may be prescribed by law, have the
7 superintendence and administration of the internal police and fiscal affairs of their counties,
8 including the establishment and regulation of roads, ways, streets, avenues, drives and the like,
9 and the naming or renaming thereof, in cooperation with local postal authorities, the Division of
10 Highways and the directors of county emergency communications centers, to assure uniform,
11 nonduplicative conversion of all rural routes to city-type addressing on a permanent basis,
12 bridges, public landings, ferries and mills, with authority to lay and disburse the county levies. They

13 shall, in all cases of contest, judge of the election, qualification and returns of their own members,
14 and of all county and district officers, subject to appeal as prescribed by law. The tribunals as have
15 been heretofore established by the Legislature under and by virtue of section thirty-four, article VIII
16 of the Constitution of 1872, for police and fiscal purposes, shall, until otherwise provided by law,
17 remain and continue as at present constituted in the counties in which they have been respectively
18 established, and shall be and act as to police and fiscal matters in lieu of the county commission
19 herein mentioned, until otherwise provided by law. And until otherwise provided by law, the clerk
20 as is mentioned in section twenty-six of said article, as amended, shall exercise any powers and
21 discharge any duties heretofore conferred on, or required of, any court or tribunal established for
22 judicial purposes under said section, or the clerk of the court or tribunal, respectively, respecting
23 the recording and preservation of deeds and other papers presented for record, matters of
24 probate, the appointment and qualification of personal representatives, guardians, committees,
25 curators and the settlement of their accounts and in all matters relating to apprentices. The county
26 commission may not limit the right of any person to purchase, possess, transfer, own, carry,
27 transport, sell or store any revolver, pistol, rifle or shotgun or any ammunition or ammunition
28 components to be used therewith nor to so regulate the keeping of gunpowder so as to, directly or
29 indirectly, prohibit the ownership of the ammunition: *Provided*, That no provision in this section
30 may be construed to limit the authority of a county to restrict the commercial use of real estate in
31 designated areas through planning or zoning ordinance.

32 (b) County commissions may not adopt or enact an ordinance, rule, license requirement, or
33 other authorization that contravenes or is stricter than any state law, rule, or regulation relating to
34 agricultural operations, as defined in §19-19-2 of this code. Any ordinance, rule, regulation,
35 license requirement, or other authorization previously adopted by a county commission that
36 contravenes or is stricter than any state law, rule, or regulation regarding agricultural operations is
37 revoked.

38 (c) County commissions may not adopt an ordinance, rule, or regulation, or take other

39 action, that prohibits the purchase, or alters the permissible use or application, of any federally or
40 state-registered pesticide, herbicide, or insecticide product.

§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
2 adopt ordinances regulating the repair, alteration, or improvement, or the vacating and closing or
3 removal or demolition, or any combination thereof, of any dwellings or other buildings, except for
4 ~~buildings used for farm purposes on land actually being used for farming~~ or dwellings on
5 agricultural lands or operations as defined in §19-19-2 of this code, unfit for human habitation due
6 to dilapidation, defects increasing the hazard of fire, accidents, or other calamities, lack of
7 ventilation, light or sanitary facilities, or any other conditions prevailing in any dwelling or building,
8 whether used for human habitation or not, which would cause the dwellings or other buildings to be
9 unsafe, unsanitary, dangerous, or detrimental to the public safety or welfare, whether the result of
10 natural or manmade force or effect.

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

16 (c) The county commission, in formally adopting ordinances, shall designate an
17 enforcement agency which shall consist of the county engineer (or other technically qualified
18 county employee or consulting engineer), county health officer or his or her designee, a fire chief
19 from a county fire company, the county litter control officer, if the commission chooses to hire one,

20 and two members-at-large, one of whom has a background in or knowledge of agricultural
21 operations as defined in §19-19-2 of this code, selected by the county commission to serve two-
22 year terms. The county sheriff shall serve as an ex officio member of the enforcement agency and
23 the county officer charged with enforcing the orders of the county commission under this section.

24 (d) In addition to the powers and duties imposed by this section, county litter control
25 officers shall have authority to issue citations for open dumps, as prohibited by §22-15-10(a) of this
26 code, unlawful disposal of litter, as prohibited by §22-15A-4 of this code, and failure to provide
27 proof of proper disposal of solid waste, as prohibited by §22C-4-10(a) of this code, after
28 completing a training course offered by the West Virginia Department of Environmental Protection:
29 *Provided*, That any litter control officer who is trained and certified as a law-enforcement officer
30 and whose certification is active has the same authority as any other law-enforcement officer to
31 enforce all litter laws in this code. Nothing in this subsection supersedes the authority or duty of the
32 Department of Environmental Protection or other law-enforcement officers to preserve law and
33 order and enforce the litter control program.

34 (e) Any ordinance adopted pursuant to the provisions of this section shall provide fair and
35 equitable rules of procedure and any other standards considered necessary to guide the
36 enforcement agency, or its agents, in the investigation of dwelling or building conditions,
37 accumulation of refuse or debris, overgrown vegetation, or toxic spillage or toxic seepage and
38 shall provide for fair and equitable rules of procedure for instituting and conducting hearings in the
39 matters before the county commission. Any entrance upon premises for the purpose of making
40 examinations shall be made in a manner that causes the least possible inconvenience to the
41 persons in possession.

42 (f) (1) Complaints authorized by this section shall be brought before the county
43 commission. Complaints shall be initiated by citation issued by the county litter control officer or
44 petition of the county engineer (or other technically qualified county employee or consulting
45 engineer) on behalf of and at the direction of the enforcement agency, but only after that agency

46 has investigated and determined that any dwelling, building, accumulation of refuse or debris,
47 overgrown vegetation, or toxic spillage or toxic seepage is unsafe, unsanitary, dangerous, or
48 detrimental to the public safety or welfare and should be repaired, altered, improved, vacated,
49 removed, closed, cleaned, or demolished.

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

53 (3) The complaint shall state the findings and recommendations of the enforcement
54 agency and that unless the owner or owners of the property file with the clerk of the county
55 commission a written request for a hearing within 10 days of receipt of the complaint, an order will
56 be issued by the county commission implementing the recommendations of the enforcement
57 agency.

58 (4) If the owner or owners of the property file a request for a hearing, the county
59 commission shall issue an order setting this matter down for hearing within 20 days. Hearings shall
60 be recorded by electronic device or by court reporter. The West Virginia Rules of Evidence do not
61 apply to the proceedings, but each party has the right to present evidence and examine and cross-
62 examine all witnesses.

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

65 (6) At the conclusion of the hearing, the county commission shall make findings of fact,
66 determinations, and conclusions of law as to whether the dwelling or building: Is unfit for human
67 habitation due to dilapidation; has defects that increase the hazard of fire, accidents, or other
68 calamities; lacks ventilation, light, or sanitary facilities; or any other conditions prevailing in the
69 dwelling or building, whether used for human habitation or not and whether the result of natural or
70 manmade force or effect, which would cause the dwelling or other building to be unsafe,
71 unsanitary, dangerous, or detrimental to the public safety or welfare; or whether there is an

72 accumulation of refuse or debris, overgrown vegetation, toxic spillage or toxic seepage on private
73 lands which is determined to be unsafe, unsanitary, dangerous, or detrimental to the public safety
74 or welfare, whether the result of natural or manmade force or effect.

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

80 (8) Appeals from the county commission to the circuit court shall be in accordance with the
81 provisions of §58-3-1 *et seq.* of this code.

82 (g) Upon the failure of the owner or owners of the private land to perform the ordered duties
83 and obligations as set forth in the order of the county commission, the county commission may
84 advertise for and seek contractors to make the ordered repairs, alterations, or improvements or
85 the ordered demolition, removal, or clean up. The county commission may enter any contract with
86 any contractor to accomplish the ordered repairs, alterations, or improvements or the ordered
87 demolition, removal, or clean up.

88 (h) A civil proceeding may be brought in circuit court by the county commission against the
89 owner or owners of the private land or other responsible party that the subject matter of the order
90 of the county commission to subject the private land in question: (1) To a lien for the amount of the
91 contractor's costs in making these ordered repairs, alterations, or improvements or ordered
92 demolition, removal, or clean up, together with any daily civil monetary penalty imposed; (2) to
93 order and decree the sale of the private land in question to satisfy the lien; (3) to order and decree
94 that the contractor may enter upon the private land in question at any and all times necessary to
95 make ordered repairs, alterations, or improvements, or ordered demolition, removal, or clean up;
96 and (4) to order the payment of all costs incurred by the county with respect to the property and for
97 reasonable attorney fees and court costs incurred in the prosecution of the action.

- 98 (i) County commissions may receive and accept grants, subsidies, donations, and services
99 in kind consistent with the objectives of this section.