

# **WEST VIRGINIA LEGISLATURE**

## **2024 REGULAR SESSION**

**Enrolled**

### **Senate Bill 171**

By Senators Hamilton, Smith, Taylor, Oliverio, Deeds,

Swope, Rucker, and Woodrum

[Passed February 13, 2024; in effect 90 days from  
passage]

1 AN ACT to amend and reenact §7-1-3 and §7-1-3ff of the Code of West Virginia, 1931, as  
2 amended, all relating to prohibiting county commissions from adopting any ordinance, rule,  
3 license requirement, or other authorization that exceeds state law, rule, or regulation  
4 regarding agricultural operations; revoking any ordinance, rule, or regulation previously  
5 adopted by county commissions that exceeds state law, rule, or regulation regarding  
6 agricultural operations; prohibiting county commissions from adopting any ordinance, rule,  
7 regulation, or other authorization that prohibits or alters permissible use of federal or state  
8 pesticides, herbicides, or insecticides; prohibiting county commissions from adopting  
9 ordinances that regulate dwellings or other buildings on agricultural land or operations; and  
10 requiring appointment of at-large member on county enforcement agency to have  
11 background or 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 or dwellings on agricultural lands or operations as defined in §19-19-2 of this code, unfit  
5 for human habitation due to dilapidation, defects increasing the hazard of fire, accidents, or other  
6 calamities, lack of ventilation, light or sanitary facilities, or any other conditions prevailing in any  
7 dwelling or building, whether used for human habitation or not, which would cause the dwellings or  
8 other buildings to be unsafe, unsanitary, dangerous, or detrimental to the public safety or welfare,  
9 whether the result of natural or manmade force or effect.

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

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

20 operations as defined in §19-19-2 of this code, selected by the county commission to serve two-  
21 year terms. The county sheriff shall serve as an ex officio member of the enforcement agency and  
22 the county officer charged with enforcing the orders of the county commission under this section.

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

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

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

46 overgrown vegetation, or toxic spillage or toxic seepage is unsafe, unsanitary, dangerous, or  
47 detrimental to the public safety or welfare and should be repaired, altered, improved, vacated,  
48 removed, closed, cleaned, or demolished.

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

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

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

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

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

72 lands which is determined to be unsafe, unsanitary, dangerous, or detrimental to the public safety  
73 or welfare, whether the result of natural or manmade force or effect.

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

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

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

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

97 (i) County commissions may receive and accept grants, subsidies, donations, and services

Enr SB 171

98 in kind consistent with the objectives of this section.