

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

Senate Bill 171

BY SENATORS HAMILTON, SMITH, TAYLOR, OLIVERIO,

DEEDS, SWOPE, RUCKER, WOODRUM, TRUMP, AND

JEFFRIES

[Introduced January 10, 2024]

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.

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

32 (b) County commissions may not adopt or enact an ordinance, rule, license requirement,
33 or other authorization that contravenes or is stricter than any state law, rule, or regulation relating
34 to 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
37 is 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
9 be unsafe, unsanitary, dangerous, or detrimental to the public safety or welfare, whether the result
10 of 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
23 and the county officer charged with enforcing the orders of the county commission under this
24 section.

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

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

43 (f) (1) Complaints authorized by this section shall be brought before the county
44 commission. Complaints shall be initiated by citation issued by the county litter control officer or

45 petition of the county engineer (or other technically qualified county employee or consulting
46 engineer) on behalf of, and at the direction of, the enforcement agency, but only after that agency
47 has investigated and determined that any dwelling, building, accumulation of refuse or debris,
48 overgrown vegetation, or toxic spillage or toxic seepage is unsafe, unsanitary, dangerous, or
49 detrimental to the public safety or welfare and should be repaired, altered, improved, vacated,
50 removed, closed, cleaned, or demolished.

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

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

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

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

66 (6) At the conclusion of the hearing, the county commission shall make findings of fact,
67 determinations, and conclusions of law as to whether the dwelling or building: Is unfit for human
68 habitation due to dilapidation; has defects that increase the hazard of fire, accidents, or other
69 calamities; lacks ventilation, light, or sanitary facilities; or any other conditions prevailing in the
70 dwelling or building, whether used for human habitation or not and whether the result of natural

71 or manmade force or effect, which would cause the dwelling or other building to be unsafe,
72 unsanitary, dangerous, or detrimental to the public safety or welfare; or whether there is an
73 accumulation of refuse or debris, overgrown vegetation, toxic spillage or toxic seepage on private
74 lands which is determined to be unsafe, unsanitary, dangerous, or detrimental to the public safety
75 or welfare, whether the result of natural or manmade force or effect.

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

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

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

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

97 and (4) to order the payment of all costs incurred by the county with respect to the property and
98 for reasonable attorney fees and court costs incurred in the prosecution of the action.

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

NOTE: The purpose of this bill is to prohibit county commissions from adopting any ordinance, rule, license requirement, or other authorization that exceeds state law, rule, or regulation regarding agricultural operations. The bill revokes any ordinance, rule, or regulation previously adopted by county commissions regarding agricultural operations. The bill prohibits county commissions from adopting any ordinance, rule, regulation, or other authorization that applies to use of federal or state pesticides, herbicides, or insecticides. The bill prohibits county commissions from adopting ordinances that regulate dwellings or other buildings on agricultural land or operations; requiring appointment of at-large member on county enforcement agency to have background or knowledge of agricultural operations.

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