

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Committee Substitute

for

House Bill 3133

By Delegates Shamblin, Akers, T. Howell, Petitto, J.

Cannon, Ferrell, Jeffries, and Hall

[Originating in the Committee on Government

Organization; Reported March 25, 2025]

1 A BILL to amend and reenact §7-1-3ff and §8-12-16 of the Code of West Virginia, 1931, as
2 amended, relating to permitting counties and municipalities to enter into memoranda of
3 understanding for demolition of dilapidated structures.

Be it enacted by the Legislature of West Virginia:

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
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.

(c) The county commission, in formally adopting ordinances, shall designate an enforcement agency which shall consist of the county engineer (or other technically qualified county employee or consulting engineer), county health officer or his or her designee, a fire chief from a county fire company, the county litter control officer, if the commission chooses to hire one, and two members-at-large, one of whom has a background in, or knowledge of, agricultural operations as defined in §19-19-2 of this code, selected by the county commission to serve two-year terms. The county sheriff shall serve as an ex officio member of the enforcement agency and the county officer charged with enforcing the orders of the county commission under this section.

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

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

calamities; lacks ventilation, light, or sanitary facilities; or any other conditions prevailing in the dwelling or building, whether used for human habitation or not and whether the result of natural or manmade force or effect, which would cause the dwelling or other building to be unsafe, unsanitary, dangerous, or detrimental to the public safety or welfare; or whether there is an accumulation of refuse or debris, overgrown vegetation, toxic spillage or toxic seepage on private lands which is determined to be unsafe, unsanitary, dangerous, or detrimental to the public safety or welfare, whether the result of natural or manmade force or effect.

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

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

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

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

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

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

(j) In addition to the authority granted by this section, a county commission may demolish dilapidated structures within municipalities where a memorandum of understanding exists in which the municipality seeks the aid of the county commission to remove or destroy or demolish certain dilapidated properties. In those agreements, the parties may use the procedures outlined in this section of code or §8-12-16.

CHAPTER 8. MUNICIPAL CORPORATIONS.

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

Part IV. Certain Specific Powers of Municipalities and Governing Bodies.

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

(a) For the purposes of this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(H) Any dwelling, building, or structure constructed, exists or is maintained in violation of any specific requirement or prohibition applicable to any dwelling, building, or structure provided by the approved building or fire code of the jurisdiction or of any law or ordinance that presents either a substantial risk of fire, building collapse, or any other threat to life and safety;

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

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

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

(b) Plenary power and authority are hereby conferred upon every municipality adopt ordinances regulating the repair, alteration, or improvement, or the vacating and closing or removal or demolition, or any combination, of any structure, dwelling, or building, whether used for human habitation or not, that is unsafe, unsanitary, dangerous, or detrimental to the public safety

59 or welfare.

60 (c) In formally adopting any ordinance under this section, the governing body shall
61 designate the enforcement agency, which shall consist of the code enforcement agency as
62 provided by the state building code and authorized by §29-3-5b and §8-12-13 of this code; or
63 municipal officials as may otherwise be authorized by this code; or municipal officials or agents as
64 authorized by rules promulgated by the State Fire Commission and approved by the Legislature;
65 or municipal officials or agents as may otherwise be authorized by the State Fire Commission.
66 Notwithstanding any provision of this code to the contrary, for the purposes of this section any
67 municipality that has not adopted the state building code may designate an enforcement agency
68 consisting of the mayor, the municipal engineer or building inspector, and one member at large, to
69 be selected by and to serve at the will and pleasure of the mayor, and the ranking health officer and
70 fire chief or their designees, who shall serve as ex officio members of the enforcement agency.

71 (d) Any ordinance adopted under the provisions of this section must provide fair and
72 equitable rules of procedure and any other procedures required by law or necessary and
73 appropriate to guide the code enforcement agency, or its officials, in the investigation of any
74 structure, dwelling, or building conditions, and in any corrective action taken by the code
75 enforcement agency.

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

80 (1) Except in exigent circumstances and as permitted by law, the enforcement agency shall
81 provide reasonable advance notice to the owner and request permission from the owner to enter
82 the property;

83 (2) If the owner cannot be located after reasonable inquiry by the code enforcement
84 agency as required by this section, or if the owner refuses entry, the code enforcement agency

may obtain an administrative search warrant from either the municipal court or the magistrate court located in the jurisdiction of the municipality or county where the structure, dwelling, or building is located. Before obtaining an administrative search warrant, a code enforcement agency official is required to make a sworn statement and prima facie case showing that the code enforcement agency was unable to gain access to the structure, dwelling, or building after reasonable and good faith efforts, and that there is a legitimate and substantial safety concern involving the structure, dwelling, or building that supports the requested entry;

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

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

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

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

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

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

That the dwelling, building, or structure is vacant, abandoned, or has been lawfully declared unfit for human habitation; and the reasonable estimated cost of repair, rehabilitation, or corrective action exceeds the fair market value of the dwelling, building, or structure.

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

(A) The code enforcement agency shall produce a written notice containing the date of the last inspection, the name of the inspector, a reasonable description of the unsafe, unsanitary, dangerous, or detrimental conditions, the corrective measures required, the allotted time to correct the substandard conditions and the allotted time the owner has to apply to the circuit court for a temporary injunction or other similar relief restraining action by the enforcement agency.

(B) The notice shall be served upon the owner or landowner by conspicuously posting and attaching a copy of the notice to the subject property, and by serving the notice on the owner or landowner in the same manner as service of a complaint as set forth in subsection (j) of this section.

(C) If the code enforcement agency cannot effect personal service on the owner, a code enforcement agency official shall subscribe a written affidavit, to be maintained for a minimum of two years, that demonstrates the structure, dwelling, or building falls within one of the categories set forth in paragraph (A) or (B), subdivision (1), subsection (f) of this section and sets forth the basis in reasonable detail, including documentation of same, and memorializes the code enforcement agency official's efforts to contact or get permission for entry and any corrective action from the owner; and the code enforcement agency shall publish notice of its intent to enter the property for the purpose of demolition or correction, along with the address of the property, the name of the owners and the date of the proposed action, as a Class II legal advertisement consistent with the requirements of §59-3-2 of this code, the first of which shall run at least 30 days before the date of the proposed action by the enforcement agency, and the last being no later than 20 days before the date of the proposed action by the enforcement agency.

(D) If there is no response to the notice by the owner or landowner in the time specified in

the notice, then the municipality may proceed in correction or demolition of the subject dwelling, building, or structure.

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

(4) Any ordinance adopted under this subsection must also provide for notice to the owner of the owner's right to apply to the circuit court for a temporary injunction or other similar relief restraining correction or demolition by the enforcement agency. If the application is made by the owner, a hearing shall be had within 20 days of the application, or as soon as reasonably possible.

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

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

(g)(1) The governing body of every municipality has plenary power and authority to adopt an ordinance requiring the owner of any dwelling or building under determination of the State Fire Marshal, as provided in §29-3-12 of this code, or under order of the code enforcement agency of the municipality, to pay for the costs of repairing, altering, or improving, or of vacating and closing, removing or demolishing any dwelling or building, and may file a lien against the real property in

question for an amount that reflects all costs incurred by the municipality for repairing, altering, or improving, or of vacating and closing, removing, or demolishing any dwelling or building, or structure. Any municipality that adopts an ordinance under this section may authorize the municipal court to place a structure, dwelling, or building into receivership when the following circumstances are present:

(A) The owner cannot be located after reasonable inquiry by the code enforcement agency as required by this section or if the owner refuses entry,

(B) The code enforcement agency has obtained an administrative search warrant from either the municipal court or the magistrate court located in the jurisdiction of the municipality or county where the structure, dwelling, or building is located;

(C) Upon entry, the code enforcement agency has determined that the structure, dwelling, or building is salvageable and does not require immediate demolition; and

(D) The code enforcement agency has proffered to the court that the structure, dwelling or building will require demolition or presents a substantial threat to nearby structures, property, or residents due to risk of fire, structural instability, or attractive nuisance if it is not repaired, altered, or improved in the near future.

(2) If all of these circumstances are present, the municipal court may place the structure, dwelling, or building into receivership with the municipality or another entity that is capable of making the necessary repairs, alterations, and improvements to the structure, dwelling or building. Any owner of the structure, dwelling, or building may petition the municipal court to terminate the receivership at any time and, upon showing that the owner will either demolish the structure, dwelling, or building or make the necessary repairs, alterations, and improvements to the satisfaction of the code enforcement agency, the municipal court may terminate the receivership.

(h) Every municipality may also institute a civil action in circuit court against the landowner or other responsible party to obtain an order allowing the municipality to take corrective action up to and including demolition of any structure, dwelling or building that is unsafe, unsanitary,

dangerous, or detrimental to the public safety or welfare; and to recover all reasonable costs and expenses incurred by the municipality with respect to the property and for reasonable attorney fees and court costs incurred in the prosecution of the action:

(1) No fewer than 10 days before instituting a civil action as provided in this subsection, the municipality shall send notice to the landowner by certified mail, return receipt requested, advising the landowner of the governing body's intention to institute such action.

(2) The notice shall be sent to the most recent address of the landowner of record in the office of the assessor of the county where the subject property is located and to any other address for the landowner as may exist on record with the municipality. If, for any reason, the certified mail is returned without evidence of proper receipt, the municipality shall resend the notices by first class mail, postage prepaid, and shall also post notice on the front door or other conspicuous location on the subject property.

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

(j) Any violation of an ordinance adopted under this section, may be prosecuted by the

municipality consistent with state and local laws. Unless otherwise authorized by state law, prosecution of a violation shall be initiated by a complaint presented to and sworn or affirmed before a municipal judge or other municipal official with lawful authority to hear and determine violations of municipal code in the municipality where the offense is alleged to have occurred. Unless otherwise provided by statute, the presentation and oath or affirmation shall be made by a code enforcement agency official or municipal attorney showing reason to have reliable information and belief. If from the facts stated in the complaint the municipal judge or other municipal official with lawful authority to hear and determine violations of municipal code finds probable cause, the complaint becomes the charging instrument initiating a criminal proceeding. A complaint lawfully authorized by this subsection along with a summons setting forth the date, time, and place of appearance before a municipal judge or other municipal official with lawful authority to hear and determine violations of municipal code shall be served in accordance with the law of the State of West Virginia concerning the service of process in civil actions, except that personal service of a summons and complaint may be made by a code enforcement agency official. If service is made by certified mail under Rule 4(d)(1)(D) of the West Virginia Rules of Civil Procedure and delivery of the summons and complaint is refused, the code enforcement agency official, promptly upon the receipt of the notice of the refusal, shall mail to the person or entity being noticed, by first class mail, postage prepaid, a copy of the summons and complaint. If the first class mailing is not returned as undeliverable by the U. S. Postal Service, service of the summons and complaint is presumed to have been effectuated. Upon service of the summons and complaint consistent with this subsection, the violation may be prosecuted consistent with state and local law.

(k) In addition to the authority granted by this section, a municipality may seek the aid of a county commission by entering into a memorandum of understanding with the county commission to destroy or demolish certain dilapidated structures within the municipality. In those agreements, the parties may use the procedures outlined this code section or § 7-1-3ff.

NOTE: The purpose of this bill is to permit counties and municipalities to enter into memoranda of understanding for demolition of dilapidated structures.

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