

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Introduced

House Bill 3296

By Delegates Stephens, McGeehan, Kyle, Sheedy,

Marple, and Flanigan

[Introduced March 11, 2025; referred to the

Committee on Government Organization]

1 A BILL to amend and reenact §8-12-16 of the Code of West Virginia, 1931, as amended, relating to
2 strengthening the power of municipalities to locate owners of dilapidated structures and
3 abandoned property within this state; allowing for a credit reporting mechanism for
4 municipalities against all companies or organizations who own dilapidated structures and
5 abandoned properties; and allowing for municipalities to make these entities bear the costs
6 associated with demolishing abandoned properties or dilapidated structures.

Be it enacted by the Legislature of West Virginia:

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

**§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; credit reporting mechanism.**

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) of
4 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, as
8 otherwise set forth in subsection (k) of this section:

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

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

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

12 (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 or welfare.

(c) In formally adopting any ordinance under this section, the governing body shall designate the enforcement agency, which shall consist of the code enforcement agency as provided by the state building code and authorized by §29-3-5b and §8-12-13 of this code; or municipal officials as may otherwise be authorized by this code; or municipal officials or agents as

65 authorized by rules promulgated by the State Fire Commission and approved by the Legislature;
66 or municipal officials or agents as may otherwise be authorized by the State Fire Commission.
67 Notwithstanding any provision of this code to the contrary, for the purposes of this section any
68 municipality that has not adopted the state building code may designate an enforcement agency
69 consisting of the mayor, the municipal engineer or building inspector, and one member at large, to
70 be selected by and to serve at the will and pleasure of the mayor, and the ranking health officer and
71 fire chief or their designees, who shall serve as ex officio members of the enforcement agency.

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

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

81 (1) Except in exigent circumstances and as permitted by law, the enforcement agency shall
82 provide reasonable advance notice to the owner and request permission from the owner, or
83 another organization who owns the property as otherwise set forth in subsection (k) of this section
84 to enter the property;

85 (2) If the owner, or another organization who owns the property as otherwise set forth in
86 subsection (k) of this section cannot be located after reasonable inquiry by the code enforcement
87 agency as required by this section, or if the owner, or another organization who owns the property
88 as otherwise set forth in subsection (k) of this section refuses entry, the code enforcement agency
89 may obtain an administrative search warrant from either the municipal court or the magistrate
90 court located in the jurisdiction of the municipality or county where the structure, dwelling, or

91 building is located. Before obtaining an administrative search warrant, a code enforcement agency
92 official is required to make a sworn statement and prima facie case showing that the code
93 enforcement agency was unable to gain access to the structure, dwelling, or building after
94 reasonable and good faith efforts, and that there is a legitimate and substantial safety concern
95 involving the structure, dwelling, or building that supports the requested entry;

96 (3) If granted by the court, and if the owner, or another organization who owns the property
97 as otherwise set forth in subsection (k) of this section can be located, the code enforcement
98 agency shall provide the owner, or another organization who owns the property as otherwise set
99 forth in subsection (k) of this section a copy of the administrative search warrant five days before
100 entering the property. If applicable, the code enforcement agency shall also provide the same
101 notice to any tenant or other person in possession of the structure, dwelling, or building; and

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

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

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

116 (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, or another organization who owns the property as otherwise set forth in subsection (k) of this section 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, or another organization who owns the property as otherwise set forth in subsection (k) of this section 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, or another organization who owns the property as otherwise set forth in subsection (k) of this section, 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, or another organization who owns the property as otherwise set forth in subsection (k) of this section; 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, or another organization who owns the property as otherwise set forth in subsection (k) of this section 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, or another organization who owns the property as otherwise set forth in subsection (k) of this section, 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, or another organization who owns the property as otherwise set forth in subsection (k) of this section 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, or another organization who owns the property as otherwise set forth in subsection (k) of this section 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, or under subsection (k) of this section. 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, or another organization who owns the property as otherwise set forth in subsection (k) of this section cannot be located after reasonable inquiry by the code enforcement agency as required by this section or if the owner, or another organization who owns the property as otherwise set forth in subsection (k) of this section 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, or another organization who owns the property as otherwise set forth in subsection (k) of this section of the structure, dwelling, or building may petition the municipal court to terminate the receivership at any time and, upon showing that the owner, or another organization who owns the property as otherwise set forth in subsection (k) of this section 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 set forth under subsection (k) 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, or another organization who owns the property as otherwise set forth in subsection (k) of this section by certified mail, return receipt requested, advising the landowner, or another organization who owns the property as otherwise set forth in subsection (k) of this section of the governing body's intention to institute such action.

(2) The notice shall be sent to the most recent address of the landowner, or another organization who owns the property as otherwise set forth in subsection (k) of this section 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, or another organization who owns the property as otherwise set forth in subsection (k) of this section 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

247 municipal official with lawful authority to hear and determine violations of municipal code finds
248 probable cause, the complaint becomes the charging instrument initiating a criminal proceeding. A
249 complaint lawfully authorized by this subsection along with a summons setting forth the date, time,
250 and place of appearance before a municipal judge or other municipal official with lawful authority to
251 hear and determine violations of municipal code shall be served in accordance with the law of the
252 State of West Virginia concerning the service of process in civil actions, except that personal
253 service of a summons and complaint may be made by a code enforcement agency official. If
254 service is made by certified mail under Rule 4(d)(1)(D) of the West Virginia Rules of Civil
255 Procedure and delivery of the summons and complaint is refused, the code enforcement agency
256 official, promptly upon the receipt of the notice of the refusal, shall mail to the person or entity being
257 noticed, by first class mail, postage prepaid, a copy of the summons and complaint. If the first class
258 mailing is not returned as undeliverable by the U. S. Postal Service, service of the summons and
259 complaint is presumed to have been effectuated. Upon service of the summons and complaint
260 consistent with this subsection, the violation may be prosecuted consistent with state and local
261 law.

262 (k) A municipality may create a credit reporting mechanism to be used toward individuals,
263 corporations, LLCs, trusts, and other entities that have ownership of a house or structure that has
264 been abandoned or otherwise deemed to be a dilapidated structure by the municipality.
265 Additionally, municipalities may research and cite whoever maintains a house or structure deemed
266 to be abandoned or dilapidated, whether the owner is an individual, corporation, LLC, trust, or
267 other entity. These entities shall have the sole liability for the property and shall pay any associated
268 demolition fee when the abandoned property, house, or dilapidated structure is torn down by the
269 municipality.

NOTE: The purpose of this bill is to strengthen the power of municipalities to locate owners of dilapidated structures and abandoned property within this state. The bill allows for a credit reporting mechanism for municipalities against all companies or organizations who

own dilapidated structures and abandoned properties. The bill allows for municipalities to make these entities bear the costs associated with demolishing abandoned properties or 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.