WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Introduced

Senate Bill 673

By Senator Rucker

[Introduced March 4, 2025; referred
to the Committee on Government Organization]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding a new article, designated §8A-13-1, §8A-13-2, §8A-13-3, §8A-13-4, §8A-13-5, §8A-13-6, §8A-13-7, §8A-13-8, and §8A-13-9, relating to defining third-party challenges to development permits; setting forth definitions; providing that properly issued development permits shall be presumed valid and enforceable unless proven otherwise through a legal challenge; defining what constitutes standing and for purposes of challenging a development permit; limiting third-party challenges to development permits; defining the burden of proof to challenge development permits; providing an expedited review process for resolving legal challenges to development permits; requiring transparency and accountability for authorities that issue development permits; providing a right to appeal for denials of development permits due to a third-party challenge; and providing that third parties that are unsuccessful in challenging a development permit shall pay the applicant's attorney's fees and expenses.

Be it enacted by the Legislature of West Virginia:

Article 13. Freedom to Develop Act.

§8A-13-1. Definitions.

For the purposes of this Act:

(a) "Development Permit" means any authorization, license, or approval issued by the relevant authority for the construction, alteration, or use of a commercial or residential property, including but not limited to building permits, zoning permits, land use permits, plat approvals, lot splits, infrastructure approvals, and environmental permits..

(b) "Relevant Authority" refers to the governmental entity or department responsible for issuing development permits within the jurisdiction.

(c) "Third-Party" refers to any individual, organization, or entity other than the permit applicant or relevant authority.

(d) "Common Law Nuisance" means a substantial and unreasonable interference with the use and enjoyment of neighboring property, as defined by applicable common law principles.

(e) "Expedited Review Process" refers to a streamlined procedure established by the governing body to resolve disputes related to development permits in a timely and efficient manner, which may include accelerated court proceedings, mediation, or alternative dispute resolution mechanisms.

§8A-13-2. Presumption of Validity.

Development permits issued by the relevant authority shall be presumed valid and enforceable unless proven otherwise through a legal challenge.

§8A-13-3. Standing of Adjacent Property Owners.

Only property owners: (a) with property physically adjacent to the property that is the subject of the development permit; and (b) that can demonstrate a concrete and particularized harm to their physically adjacent property shall have standing to challenge development permits.

§8A-13-4. Limitation on Third-Party Challenges.

Notwithstanding any other provision of law, third-party challenges by those with standing pursuant to §8A-13-3 to development permits shall be limited to instances where the proposed development presents a clear and immediate threat to health, safety, or welfare, or otherwise constitutes a common law nuisance.

§8A-13-5. Burden of Proof.

Parties challenging development permits pursuant to this Act bear the burden of proof by clear and convincing evidence. Evidence may include expert testimony, scientific data, or other relevant information substantiating the alleged harms, but may not include anecdotal evidence.

§8A-13-6. Expedited Review Process.

To minimize delays and uncertainty associated with legal challenges to development permits, the relevant authority shall establish an expedited review process for resolving disputes within 60 days.

§8A-13-7. Transparency and Accountability.

Relevant authorities responsible for issuing building permits shall maintain transparency and accountability in their decision-making processes, providing clear rationale for permit decisions.

§8A-13-8. Right to Appeal.

A property owner whose permit is denied because of a third-party challenge pursuant to this Act may immediately appeal the decision to the relevant court of appeal.

§8A-13-9. Attorney's Fees.

If a third-party challenger to a permit loses the challenge, then the challenger shall pay the permit-holder for all attorney's fees and expenses that the permit-holder incurs because of the challenge. A permit holder shall not be liable for attorneys' fees or costs in favor of a third-party challenger if the third-party challenger wins a challenge pursuant to this statute.

NOTE: The purpose of this bill is to define third-party challenges to development permits.

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