

COMMITTEE SUBSTITUTE

FOR

## **Senate Bill No. 388**

(By Senators Unger, Snyder, D. Facemire,  
Yost and Kessler (Acting President))

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[Originating in the Committee on Government Organization;  
reported February 17, 2011.]

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A BILL to amend and reenact §7-1-3ff of the Code of West Virginia, 1931, as amended, relating to allowing a fire chief from a county fire company to appoint a member of the chief's fire company to serve as the chief's designee on a property safety enforcement agency.

*Be it enacted by the Legislature of West Virginia:*

That §7-1-3ff of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**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  
2 every county commission to adopt ordinances regulating the  
3 repair, alteration or improvement, or the vacating and  
4 closing or removal or demolition, or any combination  
5 thereof, of any dwellings or other buildings, except for  
6 buildings utilized for farm purposes on land actually being  
7 used for farming, unfit for human habitation due to dilapida-  
8 tion, defects increasing the hazard of fire, accidents or other  
9 calamities, lack of ventilation, light or sanitary facilities or  
10 any other conditions prevailing in any dwelling or building,  
11 whether used for human habitation or not, which would  
12 cause the dwellings or other buildings to be unsafe, unsani-  
13 tary, dangerous or detrimental to the public safety or  
14 welfare, whether the result of natural or manmade force or  
15 effect.

16 (b) Plenary power and authority are hereby conferred upon  
17 every county commission to adopt ordinances regulating the

18 removal and clean up of any accumulation of refuse or  
19 debris, overgrown vegetation or toxic spillage or toxic  
20 seepage located on private lands which is determined to be  
21 unsafe, unsanitary, dangerous or detrimental to the public  
22 safety or welfare, whether the result of natural or manmade  
23 force or effect.

24 (c) The county commission, in formally adopting ordi-  
25 nances, shall designate an enforcement agency which shall  
26 consist of:

27 (1) The county engineer or other technically qualified  
28 county employee or consulting engineer;

29 (2) The county health officer or his or her designee;

30 (3) A fire chief from a county fire company or a designee  
31 selected from the members of the chief's fire company;

32 (4) The county litter control officer, if the commission  
33 chooses to hire one; ~~and~~

34 (5) Two members at large selected by the county commis-  
35 sion to serve two-year terms;

36 (6) The county sheriff ~~shall serve~~ who serves as an ex  
37 officio member ~~of the enforcement agency;~~ and

38 (7) The county officer charged with enforcing the orders of  
39 the county commission under this section who serves as an  
40 ex officio member.

41 (d) In addition to the powers and duties imposed by this  
42 section, county litter control officers shall have authority to  
43 issue citations for open dumps, as prohibited by subsection  
44 (a), section ten, article fifteen, chapter twenty-two of this  
45 code, unlawful disposal of litter, as prohibited by section  
46 four, article fifteen-a, chapter twenty-two of this code, and  
47 failure to provide proof of proper disposal of solid waste, as  
48 prohibited by subsection (a), section ten, article four, chapter  
49 twenty-two-c of this code, after completing a training course  
50 offered by the West Virginia Department of Environmental  
51 Protection. Nothing in this subsection supercedes the  
52 authority or duty of the Department of Environmental  
53 Protection or other law-enforcement officers to preserve law  
54 and order and enforce the litter control program.

55 (e) Any ordinance adopted pursuant to the provisions of  
56 this section shall provide fair and equitable rules of proce-  
57 dure and any other standards considered necessary to guide  
58 the enforcement agency, or its agents, in the investigation of  
59 dwelling or building conditions, accumulation of refuse or  
60 debris, overgrown vegetation or toxic spillage or toxic  
61 seepage and shall provide for fair and equitable rules of  
62 procedure for instituting and conducting hearings in the

63 matters before the county commission. Any entrance upon  
64 premises for the purpose of making examinations shall be  
65 made in a manner as to cause the least possible inconve-  
66 nience to the persons in possession.

67 (f)(1) Complaints authorized by this section shall be  
68 brought before the county commission. Complaints shall be  
69 initiated by citation issued by the county litter control  
70 officer or petition of the county engineer (or other techni-  
71 cally qualified county employee or consulting engineer) on  
72 behalf of and at the direction of the enforcement agency, but  
73 only after that agency has investigated and determined that  
74 any dwelling, building, accumulation of refuse or debris,  
75 overgrown vegetation or toxic spillage or toxic seepage is  
76 unsafe, unsanitary, dangerous or detrimental to the public  
77 safety or welfare and should be repaired, altered, improved,  
78 vacated, removed, closed, cleaned or demolished.

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

84 (3) The complaint shall state the findings and recommen-  
85 dations of the enforcement agency and that unless the owner

86 or owners of the property file with the clerk of the county  
87 commission a written request for a hearing within ten days  
88 of receipt of the complaint, an order will be issued by the  
89 county commission implementing the recommendations of  
90 the enforcement agency.

91 (4) If the owner or owners of the property file a request for  
92 a hearing, the county commission shall issue an order setting  
93 this matter down for hearing within twenty days. Hearings  
94 shall be recorded by electronic device or by court reporter.  
95 The West Virginia rules of evidence do not apply to the  
96 proceedings, but each party has the right to present evidence  
97 and examine and cross-examine all witnesses.

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

101 (6) At the conclusion of the hearing the county commission  
102 shall make findings of fact, determinations and conclusions  
103 of law as to whether the dwelling or building: Is unfit for  
104 human habitation due to dilapidation; has defects that  
105 increase the hazard of fire, accidents or other calamities,  
106 lacks ventilation, light or sanitary facilities; or any other  
107 conditions prevailing in the dwelling or building, whether

108 used for human habitation or not and whether the result of  
109 natural or manmade force or effect, which would cause such  
110 dwelling or other building to be unsafe, unsanitary, danger-  
111 ous or detrimental to the public safety or welfare; or whether  
112 there is an accumulation of refuse or debris, overgrown  
113 vegetation, toxic spillage or toxic seepage on private lands  
114 which is determined to be unsafe, unsanitary, dangerous or  
115 detrimental to the public safety or welfare, whether the  
116 result of natural or manmade force or effect.

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

125 (8) Appeals from the county commission to the circuit court  
126 shall be in accordance with the provisions of article three,  
127 chapter fifty-eight of this code.

128 (g) Upon the failure of the owner or owners of the private  
129 land to perform the ordered duties and obligations as set

130 forth in the order of the county commission, the county  
131 commission may advertise for and seek contractors to make  
132 the ordered repairs, alterations or improvements or the  
133 ordered demolition, removal or clean up. The county com-  
134 mission may enter into any contract with any contractor to  
135 accomplish the ordered repairs, alterations or improvements  
136 or the ordered demolition, removal or clean up.

137 (h) A civil proceeding may be brought in circuit court by  
138 the county commission against the owner or owners of the  
139 private land or other responsible party that the subject  
140 matter of the order of the county commission to subject the  
141 private land in question:

142 (1) To a lien for the amount of the contractor's costs in  
143 making these ordered repairs, alterations or improvements  
144 or ordered demolition, removal or clean up, together with  
145 any daily civil monetary penalty imposed;

146 (2) To order and decree the sale of the private land in  
147 question to satisfy the lien;

148 (3) To order and decree that the contractor may enter upon  
149 the private land in question at any and all times necessary to  
150 make ordered repairs, alterations or improvements, or  
151 ordered demolition, removal or clean up; and



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

155 (i) County commissions have the power and authority to  
156 receive and accept grants, subsidies, donations and services  
157 in kind consistent with the objectives of this section.