

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 388

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

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

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.