

COMMITTEE SUBSTITUTE

FOR

H. B. 3124

(BY DELEGATE(S) R. PHILLIPS, FERRO, CRAIG,
ASHLEY AND HOWELL)

(Originating in the Committee on the Judiciary)

[March 29, 2013]

A BILL to amend and reenact §7-1-3v, of the Code of West Virginia, 1931, as amended; to amend and reenact §8-30-1, all relating generally to flood control projects and floodplain management by municipalities and counties, and providing for a limited fee to be charged for a floodplain permit.

Be it enacted by the Legislature of West Virginia:

That §7-1-3v of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §8-30-1 of said Code be amended and reenacted, all to read as follows:

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-3v. Floodplain and mudslide area management; legislative findings; power and authority; enforcement; fee for floodplain permit; provisions cumulative.

1 (a) The Legislature ~~hereby~~ finds and declares that it is
2 imperative that municipalities and counties in this state be fully
3 authorized and empowered to take all action necessary to comply
4 with the requirements of the National Flood Insurance Act of
5 1968 (Public Law 91-152), as amended by the Congress of the
6 United States through February 15, 1975; that municipalities
7 presently are vested with all statutory power and authority
8 necessary in this regard; and that the purpose of this section is to
9 authorize and empower the several counties of this state to
10 comply with ~~such~~ the requirements.

11 (b) As used in this section:

12 (1) "Act" means the National Flood Insurance Act of 1968
13 (Public Law 91-152), as amended ~~by the Congress of the United~~
14 ~~States through February 15, 1975~~; and

15 (2) "Specified area or areas" means the area or areas
16 specified under ~~such~~ the act as a flood plain or mudslide area or
17 areas within which control over construction and improvements
18 must be exercised in order to comply with ~~such~~ the act.

19 (c) To the extent and only to the extent necessary to comply
20 with the eligibility requirements of and otherwise fully and in all
21 respects to comply with the requirements of ~~such~~ the act, the
22 county commission of each county is ~~hereby authorized and~~
23 ~~empowered to~~ may (i) adopt, administer and enforce building
24 codes for a specified area or areas within ~~such~~ the county, which
25 building codes may establish different requirements for different
26 specified areas; (ii) require and issue building permits for all
27 proposed construction or other improvements in ~~such~~ the county:
28 *Provided*, That nothing contained in this subdivision (ii) ~~shall~~
29 ~~authorize~~ authorizes a county commission to refuse to issue a
30 building permit for any proposed construction or other improve-
31 ment outside of a specified area or areas within ~~such~~ the county;
32 (iii) conduct inspections of construction and other improvements
33 in a specified area or areas within ~~such~~ the county and (iv)
34 otherwise take ~~such~~ action and impose ~~such~~ requirements
35 regarding land use and control measures in a specified area or
36 areas within ~~such~~ the county as ~~shall be~~ necessary under ~~such~~ the
37 act: *Provided*, That ~~no such~~ a building code adopted by a county
38 commission ~~shall~~ may not apply within nor may any authority

39 hereinabove granted be exercised by a county commission within
40 the corporate limits of any municipality which has taken
41 appropriate action to comply with ~~such~~ the act, unless and until
42 ~~such~~ the municipality so provides by ordinance. ~~Any such~~ A
43 building code adopted by a county commission and any other
44 requirements imposed by a county commission under the
45 provisions of this subsection ~~(c)~~ may be enforced by injunctive
46 action in the circuit court of the county.

47 (d) If a county commission charges a fee for a floodplain
48 permit, the fee shall not exceed \$5,000.

49 ~~(d)~~ (e) The power and authority conferred upon county
50 commissions in this section is supplemental to and not in
51 derogation of any power and authority heretofore or hereafter
52 conferred by law upon county commissions.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 30. INTERGOVERNMENTAL RELATIONS—FLOOD CONTROL PROJECTS.

§8-30-1. Establishment and operation of flood control projects by municipalities and counties.

1 (a) Any municipality or county may establish, construct,
2 maintain and operate for such municipality or county a flood

3 control project, including the removal of accumulated snags and
4 other debris from and the clearing and straightening of the
5 channel of navigable streams and tributaries thereof, and any
6 ~~such~~ municipality or county may accept any and all benefits,
7 moneys, services and assistance from the federal government in
8 connection with any agreement as authorized by federal statutes
9 ~~and laws~~ relating to flood control, and any ~~such~~ municipality or
10 county under such agreements as are required by section 701c,
11 Title 33, United States Code or other federal statutes ~~is hereby~~
12 ~~empowered and authorized to~~ may give assurances satisfactory
13 to the secretary of the army or other proper federal authority that
14 ~~such~~ the municipality or county will: (a) Provide without cost to
15 the United States, all lands, easements and right-of-ways
16 necessary for the construction of the project; (b) hold and save
17 the United States free from damages due to the construction
18 works; and (c) maintain and operate all the works after comple-
19 tion in accordance with regulations prescribed by the secretary
20 of the army.

21 (b) Any ~~such~~ municipality or county ~~is hereby further~~
22 ~~empowered and authorized to~~ may levy, within all constitutional

23 and statutory limitations, for the maintenance or operation of a
24 flood control project; to purchase land situate therein for the
25 same; to institute condemnation proceedings for the acquiring of
26 any land required under the flood control project; and to
27 authorize the issuance and sale of bonds within all constitutional
28 and statutory limitations, as is provided under general law for the
29 issuance and sale of bonds by municipalities and counties for
30 public purposes generally. Any levy shall be equal and uniform
31 throughout the municipality or county, as the case may be. Real
32 or personal property or moneys may also be acquired for such
33 purpose by gifts to such municipality or county.

34 (c) Any municipality or county ~~is hereby empowered and~~
35 ~~authorized to~~ may adopt zoning ordinances restricting the use of
36 the lands and the construction of buildings and structures within
37 the flood control area and one hundred feet on each side thereof
38 and to enforce such ordinances by fine or imprisonment, or both,
39 in the circuit court of the county in which the offense occurred
40 in the case of a county ordinance, or by injunction proceedings
41 in the circuit court of the county in which the offense occurred.
42 Prosecution for violation of any such municipal ordinance shall
43 be as in any other municipal ordinance violation case.

44 (d) If a municipality charges a fee for a floodplain permit,
45 the fee shall not exceed \$5,000.

46 (e) The power and authority granted by this section may be
47 exercised by any municipality or county in cooperation with
48 each other or separately where such flood control project is
49 located, regardless of the sponsoring agency of such project.

