

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 600**

5 (SENATORS YOST, SNYDER, MILLER, LAIRD, EDGELL AND FITZSIMMONS, *original*
6 *sponsors*)

7 _____
8 [Passed March 6, 2014; in effect ninety days from passage.]
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10
11 AN ACT to amend and reenact §8-12-16, §8-12-16a and §8-12-16c of
12 the Code of West Virginia, 1931, as amended, all relating to
13 the registration, maintenance and regulation of dwellings
14 unfit for human habitation and vacant buildings and properties
15 by municipal governments; defining terms; clarifying the
16 parties responsible for compliance with municipal ordinances
17 regarding these dwellings, buildings and properties; and
18 authorizing municipalities to enact maintenance of vacant
19 buildings and properties ordinances.

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

21 That §8-12-16, §8-12-16a and §8-12-16c of the Code of West
22 Virginia, 1931, as amended, be amended and reenacted, all to read
23 as follows:

24 **ARTICLE 12. GENERAL AND SPECIFIC POWERS, DUTIES AND ALLIED**
25 **RELATIONS OF MUNICIPALITIES, GOVERNING BODIES AND**

1 **MUNICIPAL OFFICERS AND EMPLOYEES; SUITS AGAINST**
2 **MUNICIPALITIES.**

3 **§8-12-16. Ordinances regulating the repair, closing, demolition,**
4 **etc., of dwellings or buildings unfit for human**
5 **habitation; procedures.**

6 (a) Plenary power and authority are hereby conferred upon
7 every municipality to adopt ordinances regulating the repair,
8 alteration or improvement, or the vacating and closing or removal
9 or demolition, or any combination thereof, of any dwellings or
10 other buildings unfit for human habitation due to dilapidation,
11 defects increasing the hazard of fire, accidents or other
12 calamities, lack of ventilation, light or sanitary facilities or
13 any other conditions prevailing in any dwelling or building,
14 whether used for human habitation or not, which would cause such
15 dwellings or other buildings to be unsafe, unsanitary, dangerous or
16 detrimental to the public safety or welfare.

17 (b) The governing body in formally adopting the ordinances
18 shall designate the enforcement agency, which shall consist of the
19 mayor, the municipal engineer or building inspector and one member
20 at large, to be selected by and to serve at the will and pleasure
21 of the mayor. The ranking health officer and fire chief shall
22 serve as ex officio members of the enforcement agency.

23 (c) Any ordinance adopted pursuant to the provisions of this
24 section must provide fair and equitable rules of procedure and any
25 other standards deemed necessary to guide the enforcement agency,

1 or its agents, in the investigation of dwelling or building
2 conditions, and in conducting hearings: *Provided*, That any entrance
3 upon premises for the purpose of making examinations is made in a
4 manner as to cause the least possible inconvenience to the persons
5 in possession.

6 (d) The governing body of every municipality has plenary power
7 and authority to adopt an ordinance requiring the owner or owners
8 of any dwelling or building under determination of the State Fire
9 Marshal, as provided in section twelve, article three, chapter
10 twenty-nine of this code, or under order of the enforcement agency
11 of the municipality, to pay for the costs of repairing, altering or
12 improving, or of vacating and closing, removing or demolishing any
13 dwelling or building.

14 (e) Every municipality:

15 (1) May file a lien against the real property in question for
16 an amount that reflects all costs incurred by the municipality for
17 repairing, altering or improving, or of vacating and closing,
18 removing or demolishing any dwelling or building; and

19 (2) May institute a civil action in a court of competent
20 jurisdiction against the landowner or other responsible party for
21 all costs incurred by the municipality with respect to the property
22 and for reasonable attorney fees and court costs incurred in the
23 prosecution of the action.

24 (f) Not less than ten days prior to instituting a civil action
25 as provided in this section, the governing body of the municipality
26 shall send notice to the landowner by certified mail, return

1 receipt requested, advising the landowner of the governing body's
2 intention to institute such action.

3 (g) The notice shall be sent to the most recent address of the
4 landowner of record in the office of the assessor of the county
5 where the subject property is located. If, for any reason, such
6 certified mail is returned without evidence of proper receipt
7 thereof, then in such event, the governing body shall cause a Class
8 III-0 legal advertisement to be published in a newspaper of general
9 circulation in the county wherein the subject property is located
10 and post notice on the front door or other conspicuous location on
11 the subject property.

12 (h) If any landowner desires to contest any demand brought
13 forth pursuant to this section, the landowner may seek relief in a
14 court of competent jurisdiction.

15 (i) For purposes of this section, "owner" or "landowner" means
16 a person who individually or jointly with others:

17 (1) Has legal title to the property, with or without actual
18 possession of the property;

19 (2) Has charge, care or control of the property as owner or
20 agent of the owner;

21 (3) Is an executor, administrator, trustee or guardian of the
22 estate of the owner;

23 (4) Is the agent of the owner for the purpose of managing,
24 controlling or collecting rents; or

25 (5) Is entitled to control or direct the management or
26 disposition of the property.

1 (j) All orders issued by the enforcement agency shall be
2 served in accordance with the law of this state concerning the
3 service of process in civil actions, and be posted in a conspicuous
4 place on the premises affected by the complaint or order: *Provided,*
5 That no ordinance may be adopted without providing for the right to
6 apply to the circuit court for a temporary injunction restraining
7 the enforcement agency pending final disposition of the cause.

8 (k) In the event such application is made, a hearing thereon
9 shall be had within twenty days, or as soon thereafter as possible,
10 and the court shall enter such final order or decree as the law and
11 justice may require.

12 **§8-12-16a. Registration of uninhabitable property.**

13 (a) The governing body of a municipality may, by ordinance,
14 establish a property registration for any real property improved by
15 a structure that is uninhabitable and violates the applicable
16 building code adopted by the municipality. An owner of real
17 property subject to the registration shall be assessed a fee as
18 provided by the ordinance.

19 (b) The mayor of the municipality shall appoint a code
20 enforcement officer to investigate and determine whether real
21 property violates provisions of the applicable building code of the
22 municipality.

23 (c) After inspecting the property, if the officer determines
24 the property is uninhabitable and violates the applicable building
25 code, then:

26 (1) The officer shall post a written notice on the property

1 which shall include:

2 (A) An explanation of the violation(s);

3 (B) A description of the registration;

4 (C) The date the fee will be assessed;

5 (D) An explanation of how to be removed from the registration;

6 (E) An explanation of the appeals process; and

7 (F) A statement that if the fee is not paid, then the property
8 is subject to forfeiture; and

9 (2) Within five business days of the inspection and the
10 posting of the property, the officer shall, by certified mail, send
11 a copy of the notice that was posted to the owner(s) of the
12 property at the last known address according to the county property
13 tax records.

14 (d) Within forty-five days of receipt of the notification by
15 the owner(s), the property owner may:

16 (1) Make and complete any repairs to the property that violate
17 the applicable building code; or

18 (2) Provide written information to the officer showing that
19 repairs are forthcoming in a reasonable period of time.

20 (e) For purposes of this section, "owner" or "property owner"
21 means a person who individually or jointly with others:

22 (1) Has legal title to the property, with or without actual
23 possession of the property;

24 (2) Has charge, care or control of the property as owner or
25 agent of the owner;

26 (3) Is an executor, administrator, trustee or guardian of the

1 estate of the owner;

2 (4) Is the agent of the owner for the purpose of managing,
3 controlling or collecting rents; or

4 (5) Is entitled to control or direct the management or
5 disposition of the property.

6 (f) After the repairs are made, the owner may request a
7 reinspection of the property to ensure compliance with the
8 applicable building code. If the officer finds the violations are
9 fixed, the owner is not subject to the registration and no fee will
10 be incurred.

11 (g) The officer may reinspect the property at any time to
12 determine where in the process the repairs fall.

13 (h) Within ninety days of receipt of the notification by the
14 owner(s), the property owner has the right to appeal the decision
15 of the officer to the enforcement agency, created in section
16 sixteen, article twelve of this chapter.

17 (i) If an appeal is not filed within ninety days, the property
18 is registered and the fee is assessed to the owner(s) on the date
19 specified in the notice. The notice of the fee shall be recorded
20 in the office of the clerk of the county commission of the county
21 where the property is located and if different, in the office of
22 the clerk of the county commission of the county where the property
23 is assessed for real property taxes.

24 (j) If the enforcement agency affirms the registration and
25 assessment of the registration fee, the property owner has the
26 right to appeal the decision of the enforcement agency to the

1 circuit court within thirty days of the decision. If the decision
2 is not appealed in a timely manner to the circuit court, then the
3 property is registered and the fee is assessed on the date
4 specified in the notice. The notice of the fee shall be recorded
5 in the office of the clerk of the county commission of the county
6 where the property is located and if different, in the office of
7 the clerk of the county commission of the county where the property
8 is assessed for real property taxes.

9 (k) A fee assessed under this section shall be recorded in the
10 same manner as a lien is recorded in the office of the clerk of the
11 county commission of the county.

12 (l) If the fee is paid, then the municipality shall record a
13 release of the fee in the office of the clerk of the county
14 commission of the county where the property is located and if
15 different, in the office of the clerk of the county commission of
16 the county where the property is assessed for real property taxes.

17 (m) If an owner fails to pay the fee, then the officer shall
18 annually post the written notice on the property and send the
19 written notice to the owner(s) by certified mail.

20 (n) If a registration fee remains delinquent for two years
21 from the date it was placed on record in the clerk of the county
22 commission in which the property is located and assessed, the
23 municipality may take action to receive the subject property by
24 means of forfeiture. Should the municipality take the steps
25 necessary to receive the subject property, the municipality then
26 becomes the owner of record and takes the property subject to all

1 liens and real and personal property taxes.

2 **§8-12-16c. Registration of vacant buildings; registration fees;**
3 **procedures for administration and enforcement.**

4 (a) The governing body of a municipality shall have plenary
5 power and authority to establish by ordinance a vacant building and
6 property registration and maintenance program.

7 (b) For purposes of this section:

8 (1) "Owner" or "property owner" means a person who
9 individually or jointly with others:

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

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

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

16 (D) Is the agent of the owner for the purpose of managing,
17 controlling or collecting rents; or

18 (E) Is entitled to control or direct the management or
19 disposition of the property.

20 (2) "Vacant building" means a building or other structure that
21 is unoccupied, or unsecured and occupied by one or more
22 unauthorized persons for an amount of time as determined by the
23 ordinance. A new building under construction or a building that by
24 definition is exempted by ordinance of the municipality, is not
25 deemed a vacant building. The governing body of a municipality, on
26 a case-by-case basis, upon request by the property owner, shall

1 exempt a vacant building from registration upon a finding for good
2 cause shown that the person will be unable to occupy the building
3 for a determinant period of time.

4 (3) "Vacant property" means a property on which no building is
5 erected and no routine activity occurs.

6 (c) An owner of real property subject to registration and
7 maintenance requirements may be charged a fee or fees as provided
8 by ordinance. The ordinance shall provide administrative
9 procedures for the administration and enforcement of registration
10 and payment and collection of registration fees.

11 (d) The ordinance may require that when the owner of the
12 vacant building or property resides outside of the state that the
13 owner provide the name and address of a person who resides within
14 the state who is authorized to accept service of process and
15 notices of fees due under this section on behalf of the owner and
16 who is designated as a responsible, local party or agent for the
17 purposes of notification in the event of an emergency affecting the
18 public health, safety or welfare.

19 (e) The ordinance may authorize the municipality to institute
20 a civil action against the property owner and/or file a lien on
21 real property for unpaid and delinquent vacant building
22 registration fees. Before any lien is filed, the municipality
23 shall give notice to the property owner or owner's agent, by
24 certified mail, return receipt requested, that the municipality
25 will file the lien unless the delinquent fees are paid by a date
26 stated in the notice, which must be no less than thirty days from

1 the date the notice is received by the owner or the owner's agent,
2 which shall be the date of delivery shown on the signed certified
3 mail return receipt card. The ordinance may provide for
4 alternative means of service when service cannot be obtained by
5 certified mail.

6 (f) The ordinance may require that the owner maintain the
7 vacant building or property to a standard deemed reasonable by the
8 governing body. The ordinance may include authority for the
9 municipality, following notice to the owner, to act to bring the
10 vacant building or property into compliance with the standard, or
11 otherwise eliminate the public nuisance caused by any noncomplaint
12 conditions: *Provided*, That nothing in this section is to be
13 interpreted to impose a duty, obligation or requirement that a
14 municipality must undertake such repairs, demolition or maintenance
15 measures which remain as obligations and responsibilities of the
16 owner. Cost of the repairs, demolition and maintenance and related
17 legal and administrative costs incurred by the municipality are to
18 be paid by the owner. Collection of these costs may be enforced in
19 civil proceedings against the owner.

20 (g) The ordinance shall permit a property owner to challenge
21 any determination made pursuant to the ordinance. The
22 administrative procedures adopted pursuant to the ordinance shall
23 include the right to appeal to the circuit court of the county in
24 which the property is located.

25 (h) The governing body of a municipality shall deposit the fee
26 into a separate account, which shall be used to:

1 (1) Improve public safety efforts, especially for police and
2 fire personnel, who most often contend with the dangerous
3 situations manifested in vacant properties;

4 (2) Monitor and administer this section; and

5 (3) Repair, close or demolish a vacant structure as authorized
6 by section sixteen of this article.