

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 600**

(By Senator Yost, Snyder, Miller, Laird, Edgell and Fitzsimmons)

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[Originating in the Committee on Government Organization;  
reported February 18, 2014.]

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A BILL to amend and reenact §8-12-16, §8-12-16a and §8-12-16c of the Code of West Virginia, 1931, as amended, all relating to the registration, maintenance and regulation of dwellings unfit for human habitation and vacant buildings and properties by municipal governments; defining terms; clarifying the parties responsible for compliance with municipal ordinances regarding these dwellings, buildings and properties; and authorizing municipalities to enact maintenance of vacant buildings and properties ordinances.

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

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

**ARTICLE 12. GENERAL AND SPECIFIC POWERS,  
DUTIES AND ALLIED RELATIONS  
OF MUNICIPALITIES, GOVERNING  
BODIES AND MUNICIPAL  
OFFICERS AND EMPLOYEES; SUITS  
AGAINST MUNICIPALITIES.**

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

1 (a) Plenary power and authority are hereby conferred  
2 upon every municipality to adopt ordinances regulating the  
3 repair, alteration or improvement, or the vacating and closing  
4 or removal or demolition, or any combination thereof, of any  
5 dwellings or other buildings unfit for human habitation due  
6 to dilapidation, defects increasing the hazard of fire,  
7 accidents or other calamities, lack of ventilation, light or

8 sanitary facilities or any other conditions prevailing in any  
9 dwelling or building, whether used for human habitation or  
10 not, which would cause such dwellings or other buildings to  
11 be unsafe, unsanitary, dangerous or detrimental to the public  
12 safety or welfare.

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

20 (c) Any ordinance adopted pursuant to the provisions of  
21 this section must provide fair and equitable rules of  
22 procedure and any other standards deemed necessary to guide  
23 the enforcement agency, or its agents, in the investigation of  
24 dwelling or building conditions, and in conducting hearings:  
25 *Provided*, That any entrance upon premises for the purpose

26 of making examinations is made in a manner as to cause the  
27 least possible inconvenience to the persons in possession.

28 (d) The governing body of every municipality has  
29 plenary power and authority to adopt an ordinance requiring  
30 the owner or owners of any dwelling or building under  
31 determination of the State Fire Marshal, as provided in  
32 section twelve, article three, chapter twenty-nine of this code,  
33 or under order of the enforcement agency of the municipality,  
34 to pay for the costs of repairing, altering or improving, or of  
35 vacating and closing, removing or demolishing any dwelling  
36 or building.

37 (e) Every municipality:

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

43 (2) May institute a civil action in a court of competent  
44 jurisdiction against the landowner or other responsible party

45 for all costs incurred by the municipality with respect to the  
46 property and for reasonable attorney fees and court costs  
47 incurred in the prosecution of the action.

48 (f) Not less than ten days prior to instituting a civil action  
49 as provided for in this section, the governing body of the  
50 municipality shall send notice to the landowner by certified  
51 mail, return receipt requested, advising the landowner of the  
52 governing body's intention to institute such action.

53 (g) The notice shall be sent to the most recent address of  
54 the landowner of record in the office of the assessor of the  
55 county where the subject property is located. If, for any  
56 reason, such certified mail is returned without evidence of  
57 proper receipt thereof, then in such event, the governing body  
58 shall cause a Class III-0 legal advertisement to be published  
59 in a newspaper of general circulation in the county wherein  
60 the subject property is located and post notice on the front  
61 door or other conspicuous location on the subject property.

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

65 (i) For purposes of this section, “owner” or “landowner”

66 means a person who individually or jointly with others:

67 (1) Has legal title to the property, with or without actual

68 possession of the property;

69 (2) Has charge, care or control of the property as owner

70 or agent of the owner;

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

72 the estate of the owner;

73 (4) Is the agent of the owner for the purpose of managing,

74 controlling or collecting rents; or

75 (5) Is entitled to control or direct the management or

76 disposition of the property.

77 (i) (j) All orders issued by the enforcement agency shall

78 be served in accordance with the law of this state concerning

79 the service of process in civil actions, and be posted in a

80 conspicuous place on the premises affected by the complaint

81 or order: *Provided*, That no ordinance may be adopted

82 without providing for the right to apply to the circuit court

83 for a temporary injunction restraining the enforcement  
84 agency pending final disposition of the cause.

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

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

1 (a) The governing body of a municipality may, by  
2 ordinance, establish a property registration for any real  
3 property improved by a structure that is uninhabitable and  
4 violates the applicable building code adopted by the  
5 municipality. An owner of real property subject to the  
6 registration shall be assessed a fee as provided by the  
7 ordinance.

8 (b) The mayor of the municipality shall appoint a code  
9 enforcement officer to investigate and determine whether real  
10 property violates provisions of the applicable building code  
11 of the municipality.

12 (c) After inspecting the property, if the officer determines  
13 the property is uninhabitable and violates the applicable  
14 building code, then:

15 (1) The officer shall post a written notice on the property  
16 which shall include:

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

18 (B) A description of the registration;

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

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

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

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

25 (2) Within five business days of the inspection and the  
26 posting of the property, the officer shall, by certified mail,  
27 send a copy of the notice that was posted to the owner(s) of  
28 the property at the last known address according to the  
29 county property tax records.



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

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

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

36 (e) For purposes of this section, “owner” or “property  
37 owner” means a person who individually or jointly with  
38 others:

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

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

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

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

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

49       ~~(e)~~ (f) After the repairs are made, the owner may request  
50 a reinspection of the property to ensure compliance with the  
51 applicable building code. If the officer finds the violations  
52 are fixed, the owner is not subject to the registration and no  
53 fee will be incurred.

54       ~~(f)~~ (g) The officer may reinspect the property at any time  
55 to determine where in the process the repairs fall.

56       ~~(g)~~ (h) Within ninety days of receipt of the notification by  
57 the owner(s), the property owner has the right to appeal the  
58 decision of the officer to the enforcement agency, created in  
59 section sixteen, article twelve of this chapter.

60       ~~(h)~~ (i) If an appeal is not filed within ninety days, the  
61 property is registered and the fee is assessed to the owner(s)  
62 on the date specified in the notice. The notice of the fee shall  
63 be recorded in the office of the clerk of the county  
64 commission of the county where the property is located and  
65 if different, in the office of the clerk of the county  
66 commission of the county where the property is assessed for  
67 real property taxes.

68        ~~(i)~~ (j) If the enforcement agency affirms the registration  
69 and assessment of the registration fee, the property owner has  
70 the right to appeal the decision of the enforcement agency to  
71 the circuit court within thirty days of the decision. If the  
72 decision is not appealed in a timely manner to the circuit  
73 court, then the property is registered and the fee is assessed  
74 on the date specified in the notice. The notice of the fee shall  
75 be recorded in the office of the clerk of the county  
76 commission of the county where the property is located and  
77 if different, in the office of the clerk of the county  
78 commission of the county where the property is assessed for  
79 real property taxes.

80        ~~(j)~~ (k) A fee assessed under this section shall be recorded  
81 in the same manner as a lien is recorded in the office of the  
82 clerk of the county commission of the county.

83        ~~(k)~~ (l) If the fee is paid, then the municipality shall record  
84 a release of the fee in the office of the clerk of the county  
85 commission of the county where the property is located and  
86 if different, in the office of the clerk of the county

87 commission of the county where the property is assessed for  
88 real property taxes.

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

92 ~~(m)~~ (n) If a registration fee remains delinquent for two  
93 years from the date it was placed on record in the clerk of the  
94 county commission in which the property is located and  
95 assessed, the municipality may take action to receive the  
96 subject property by means of forfeiture. Should the  
97 municipality take the steps necessary to receive the subject  
98 property, the municipality then becomes the owner of record  
99 and takes the property subject to all liens and real and  
100 personal property taxes.

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

1 (a) The governing body of a municipality shall have  
2 plenary power and authority to establish by ordinance a

3 vacant building and property registration and maintenance  
4 program.

5 (b) For purposes of this section:

6 (1) “Owner” or “property owner” means a person who  
7 individually or jointly with others:

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

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

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

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

16 (E) Is entitled to control or direct the management or  
17 disposition of the property.

18 ~~The term~~ (2) “Vacant building” means a building or other  
19 structure that is unoccupied, or unsecured and occupied by  
20 one or more unauthorized persons for an amount of time as  
21 determined by the ordinance. ~~Provided, That~~ A new building

22 under construction or a building that by definition is  
23 exempted by ordinance of the municipality, is not deemed a  
24 vacant building. ~~Provided, however, That~~ The governing  
25 body of a municipality, ~~shall~~ on a case-by-case basis, upon  
26 request by the property owner, shall exempt a vacant building  
27 from registration upon a finding for good cause shown that  
28 the person will be unable to occupy the building for a  
29 determinative period of time.

30 (3) “Vacant property” means a property on which no  
31 building is erected and no routine activity occurs.

32 (b) (c) An owner of real property subject to registration  
33 and maintenance requirements may be charged a fee or fees  
34 as provided by ordinance. The ordinance shall provide  
35 administrative procedures for the administration and  
36 enforcement of registration and payment and collection of  
37 registration fees.

38 (c) (d) The ordinance may require that when the owner of  
39 the vacant building or property resides outside of the state  
40 that the owner provide the name and address of a person who

41 resides within the state who is authorized to accept service of  
42 process and notices of fees due under this section on behalf  
43 of the owner and who is designated as a responsible, local  
44 party or agent for the purposes of notification in the event of  
45 an emergency affecting the public health, safety or welfare.

46 ~~(d)~~ (e) The ordinance may authorize the municipality to  
47 institute a civil action against the property owner and/or file  
48 a lien on real property for unpaid and delinquent vacant  
49 building registration fees. Before any lien is filed, the  
50 municipality shall give notice to the property owner or  
51 owner's agent, by certified mail, return receipt requested, that  
52 the municipality will file the lien unless the delinquent fees  
53 are paid by a date stated in the notice, which must be no less  
54 than thirty days from the date the notice is received by the  
55 owner or the owner's agent, which shall be the date of  
56 delivery shown on the signed certified mail return receipt  
57 card. The ordinance may provide for alternative means of  
58 service when service cannot be obtained by certified mail.

59 (f) The ordinance may require that the owner maintain  
60 the vacant building or property to a standard deemed  
61 reasonable by the governing body. The ordinance may  
62 include authority for the municipality, following notice to the  
63 owner, to act to bring the vacant building or property into  
64 compliance with the standard, or otherwise eliminate the  
65 public nuisance caused by any noncomplaint conditions:  
66 *Provided*, That nothing in this section is to be interpreted to  
67 impose a duty, obligation or requirement that a municipality  
68 must undertake such repairs, demolition or maintenance  
69 measures which remain as obligations and responsibilities of  
70 the owner. Cost of the repairs, demolition and maintenance  
71 and related legal and administrative costs incurred by the  
72 municipality are to be paid by the owner. Collection of these  
73 costs may be enforced in civil proceedings against the owner.

74 (e) (g) The ordinance shall permit a property owner to  
75 challenge any determination made pursuant to the ordinance.  
76 The administrative procedures adopted pursuant to the



77 ordinance shall include the right to appeal to the circuit court  
78 of the county in which the property is located.

79 (f) ~~(h)~~ The governing body of a municipality shall deposit  
80 the fee into a separate account, which shall be used to:

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

84 (2) Monitor and administer this section; and

85 (3) Repair, close or demolish a vacant structure as  
86 authorized by section sixteen of this article. ~~twelve, chapter~~

87 ~~eight~~