

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Committee Substitute

for

Senate Bill 412

BY SENATOR TRUMP

[Originating in the Committee on the Judiciary;

Reported on February 19, 2018]

1 A BILL to amend and reenact §7-1-3ff of the Code of West Virginia, 1931, as amended; and to
2 amend and reenact §30-29-1 of said code, all relating to providing that any litter control
3 officer who is trained and certified as a law-enforcement officer and whose certification is
4 active has the same authority as any other law-enforcement officer to enforce all litter
5 laws; and including litter control officers in the definition of the term “law-enforcement
6 officer”.

Be it enacted by the Legislature of West Virginia:

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

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

10 (b) Plenary power and authority are hereby conferred upon every county commission to
11 adopt ordinances regulating the removal and clean up of any accumulation of refuse or debris,

12 overgrown vegetation or toxic spillage or toxic seepage located on private lands which is
13 determined to be unsafe, unsanitary, dangerous, or detrimental to the public safety or welfare,
14 whether the result of natural or manmade force or effect.

15 (c) The county commission, in formally adopting ordinances, shall designate an
16 enforcement agency which shall consist of the county engineer (or other technically qualified
17 county employee or consulting engineer), county health officer or his or her designee, a fire chief
18 from a county fire company, the county litter control officer, if the commission chooses to hire one,
19 and two members-at-large selected by the county commission to serve two-year terms. The
20 county sheriff shall serve as an ex officio member of the enforcement agency and the county
21 officer charged with enforcing the orders of the county commission under this section.

22 (d) In addition to the powers and duties imposed by this section, county litter control
23 officers shall have authority to issue citations for open dumps, as prohibited by §22-15-10(a) of
24 this code, unlawful disposal of litter, as prohibited by §22-15A-4 of this code, and failure to provide
25 proof of proper disposal of solid waste, as prohibited by §22C-4-10(a) of this code, after
26 completing a training course offered by the West Virginia Department of Environmental
27 Protection: Provided, That any litter control officer who is trained and certified as a law-
28 enforcement officer and whose certification is active has the same authority as any other law-
29 enforcement officer to enforce all litter laws in this code. Nothing in this subsection supersedes
30 the authority or duty of the Department of Environmental Protection or other law-enforcement
31 officers to preserve law and order and enforce the litter control program.

32 (e) Any ordinance adopted pursuant to the provisions of this section shall provide fair and
33 equitable rules of procedure and any other standards considered necessary to guide the
34 enforcement agency, or its agents, in the investigation of dwelling or building conditions,
35 accumulation of refuse or debris, overgrown vegetation, or toxic spillage or toxic seepage and
36 shall provide for fair and equitable rules of procedure for instituting and conducting hearings in
37 the matters before the county commission. Any entrance upon premises for the purpose of making

38 examinations shall be made in a manner ~~as to cause~~ that causes the least possible inconvenience
39 to the persons in possession.

40 (f) (1) Complaints authorized by this section shall be brought before the county
41 commission. Complaints shall be initiated by citation issued by the county litter control officer or
42 petition of the county engineer (or other technically qualified county employee or consulting
43 engineer) on behalf of and at the direction of the enforcement agency, but only after that agency
44 has investigated and determined that any dwelling, building, accumulation of refuse or debris,
45 overgrown vegetation, or toxic spillage or toxic seepage is unsafe, unsanitary, dangerous, or
46 detrimental to the public safety or welfare and should be repaired, altered, improved, vacated,
47 removed, closed, cleaned, or demolished.

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

51 (3) The complaint shall state the findings and recommendations of the enforcement
52 agency and that unless the owner or owners of the property file with the clerk of the county
53 commission a written request for a hearing within 10 days of receipt of the complaint, an order
54 will be issued by the county commission implementing the recommendations of the enforcement
55 agency.

56 (4) If the owner or owners of the property file a request for a hearing, the county
57 commission shall issue an order setting this matter down for hearing within 20 days. Hearings
58 shall be recorded by electronic device or by court reporter. The West Virginia Rules of Evidence
59 do not apply to the proceedings, but each party has the right to present evidence and examine
60 and cross-examine all witnesses.

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

63 (6) At the conclusion of the hearing, the county commission shall make findings of fact,

64 determinations, and conclusions of law as to whether the dwelling or building: Is unfit for human
65 habitation due to dilapidation; has defects that increase the hazard of fire, accidents, or other
66 calamities; lacks ventilation, light, or sanitary facilities; or any other conditions prevailing in the
67 dwelling or building, whether used for human habitation or not and whether the result of natural
68 or manmade force or effect, which would cause ~~such~~ the dwelling or other building to be unsafe,
69 unsanitary, dangerous, or detrimental to the public safety or welfare; or whether there is an
70 accumulation of refuse or debris, overgrown vegetation, toxic spillage or toxic seepage on private
71 lands which is determined to be unsafe, unsanitary, dangerous, or detrimental to the public safety
72 or welfare, whether the result of natural or manmade force or effect.

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

78 (8) Appeals from the county commission to the circuit court shall be in accordance with
79 the provisions of §58-3-1 *et seq.* of this code.

80 (g) Upon the failure of the owner or owners of the private land to perform the ordered
81 duties and obligations as set forth in the order of the county commission, the county commission
82 may advertise for and seek contractors to make the ordered repairs, alterations, or improvements
83 or the ordered demolition, removal, or clean up. The county commission may enter into any
84 contract with any contractor to accomplish the ordered repairs, alterations, or improvements or
85 the ordered demolition, removal, or clean up.

86 (h) A civil proceeding may be brought in circuit court by the county commission against
87 the owner or owners of the private land or other responsible party that the subject matter of the
88 order of the county commission to subject the private land in question: (1) To a lien for the amount
89 of the contractor's costs in making these ordered repairs, alterations, or improvements or ordered

90 demolition, removal, or clean up, together with any daily civil monetary penalty imposed; (2) to
91 order and decree the sale of the private land in question to satisfy the lien; (3) to order and decree
92 that the contractor may enter upon the private land in question at any and all times necessary to
93 make ordered repairs, alterations, or improvements, or ordered demolition, removal, or clean up;
94 and (4) to order the payment of all costs incurred by the county with respect to the property and
95 for reasonable attorney fees and court costs incurred in the prosecution of the action.

96 (i) County commissions ~~have the power and authority to~~ may receive and accept grants,
97 subsidies, donations, and services in kind consistent with the objectives of this section.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 29. LAW-ENFORCEMENT TRAINING AND CERTIFICATION.

§30-29-1. Definitions.

1 For the purposes of this article, unless a different meaning clearly appears in the context:

2 (1) "Approved law-enforcement training academy" means any training facility which is
3 approved and authorized to conduct law-enforcement training as provided in this article;

4 (2) "Chief executive" means the Superintendent of the State Police; the chief natural
5 resources police officer of the Division of Natural Resources; the sheriff of any West Virginia
6 county; any administrative deputy appointed by the chief natural resources police officer of the
7 Division of Natural Resources; or the chief of any West Virginia municipal law-enforcement
8 agency;

9 (3) "County" means the 55 major political subdivisions of the state;

10 (4) "Exempt rank" means any noncommissioned or commissioned rank of sergeant or
11 above;

12 (5) "Governor's Committee on Crime, Delinquency, and Correction" or "Governor's
13 committee" means the Governor's Committee on Crime, Delinquency, and Correction established
14 as a state planning agency pursuant to §15-9-1 of this code;

15 (6) "Law-enforcement officer" means any duly authorized member of a law-enforcement
16 agency who is authorized to maintain public peace and order, prevent and detect crime, make
17 arrests, and enforce the laws of the state or any county or municipality thereof, other than parking
18 ordinances, and includes those persons employed as campus police officers at state institutions
19 of higher education in accordance with the provisions of §18B-4-5 of this code, and persons
20 employed by the Public Service Commission as motor carrier inspectors and weight-enforcement
21 officers charged with enforcing commercial motor vehicle safety and weight restriction laws,
22 although those institutions and agencies may not be considered law-enforcement agencies. The
23 term also includes those persons employed as county litter control officers charged with enforcing
24 litter laws: *Provided, That those persons have been trained and certified as law-enforcement*
25 *officers and that certification is currently active.* The term also includes those persons employed
26 as rangers by resort area districts in accordance with the provisions of §7-25-23 of this code,
27 although no resort area district may be considered a law-enforcement agency: *Provided, however,*
28 That the subject rangers shall pay the tuition and costs of training. As used in this article, the term
29 "law-enforcement officer" does not apply to the chief executive of any West Virginia law-
30 enforcement agency or any watchman or special natural resources police officer;

31 (7) "Law-enforcement official" means the duly appointed chief administrator of a
32 designated law-enforcement agency or a duly authorized designee;

33 (8) "Municipality" means any incorporated town or city whose boundaries lie within the
34 geographic boundaries of the state;

35 (9) "Subcommittee" or "law-enforcement professional standards subcommittee" means
36 the subcommittee of the Governor's Committee on Crime, Delinquency, and Correction created
37 by §30-29-2 of this code; and

38 (10) "West Virginia law-enforcement agency" means any duly authorized state, county, or
39 municipal organization employing one or more persons whose responsibility is the enforcement
40 of laws of the state or any county or municipality thereof: *Provided, That neither the Public Service*

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41 Commission nor any state institution of higher education nor any resort area district is a law-
42 enforcement agency.