

# **WEST VIRGINIA LEGISLATURE**

## **2023 REGULAR SESSION**

**Introduced**

### **Senate Bill 585**

By Senator Hamilton

[Introduced February 08, 2023; referred to the Committee on Agriculture and Natural Resources; and then to the Committee on Government Organization]

1 A BILL to amend and reenact §7-1-3 of the Code of West Virginia, 1931, as amended; to amend  
 2 and reenact §7-1-3ff of said code; and to amend and reenact §16-3-6 of said code, all  
 3 relating to prohibiting county commissions from adopting any ordinance, rule, license  
 4 requirement, or other authorization that exceeds state law, rule, or regulation regarding  
 5 agricultural operations; revoking any ordinance, rule, or regulation previously adopted by  
 6 county commissions regarding agricultural operations; prohibiting county commissions  
 7 from adopting any ordinance, rule, regulation, or other authorization that applies to use of  
 8 federal or state pesticides, herbicides, or insecticides; prohibiting county commissions  
 9 from adopting ordinances that regulate dwellings or other buildings on agricultural land or  
 10 operations; requiring appointment of at-large member on county enforcement agency to  
 11 have background or knowledge of agricultural operations; and clarifying that authorization  
 12 of public health official to obtain nuisance injunction does not apply to agricultural  
 13 operations.

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

**CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.**

**ARTICLE 1. COUNTY COMMISSIONS GENERALLY.**

**§7-1-3. Jurisdiction, powers and duties.**

1 (a) The county commissions, through their clerks, shall have the custody of all deeds and  
 2 other papers presented for record in their counties and the same shall be preserved therein, or  
 3 otherwise disposed of as now is, or may be prescribed by law. They shall have jurisdiction in all  
 4 matters of probate, the appointment and qualification of personal representatives, guardians,  
 5 committees, curators and the settlement of their accounts and in all matters relating to  
 6 apprentices. They shall also, under the rules as now are or may be prescribed by law, have the  
 7 superintendence and administration of the internal police and fiscal affairs of their counties,  
 8 including the establishment and regulation of roads, ways, streets, avenues, drives and the like,

9 and the naming or renaming thereof, in cooperation with local postal authorities, the Division of  
10 Highways and the directors of county emergency communications centers, to assure uniform,  
11 nonduplicative conversion of all rural routes to city-type addressing on a permanent basis,  
12 bridges, public landings, ferries and mills, with authority to lay and disburse the county levies. They  
13 shall, in all cases of contest, judge of the election, qualification and returns of their own members,  
14 and of all county and district officers, subject to appeal as prescribed by law. The tribunals as have  
15 been heretofore established by the Legislature under and by virtue of section thirty-four, article VIII  
16 of the Constitution of one thousand eight hundred seventy-two, for police and fiscal purposes,  
17 shall, until otherwise provided by law, remain and continue as at present constituted in the  
18 counties in which they have been respectively established, and shall be and act as to police and  
19 fiscal matters in lieu of the county commission herein mentioned, until otherwise provided by law.  
20 And until otherwise provided by law, the clerk as is mentioned in section twenty-six of said article,  
21 as amended, shall exercise any powers and discharge any duties heretofore conferred on, or  
22 required of, any court or tribunal established for judicial purposes under said section, or the clerk of  
23 the court or tribunal, respectively, respecting the recording and preservation of deeds and other  
24 papers presented for record, matters of probate, the appointment and qualification of personal  
25 representatives, guardians, committees, curators and the settlement of their accounts and in all  
26 matters relating to apprentices. The county commission may not limit the right of any person to  
27 purchase, possess, transfer, own, carry, transport, sell or store any revolver, pistol, rifle or shotgun  
28 or any ammunition or ammunition components to be used therewith nor to so regulate the keeping  
29 of gunpowder so as to, directly or indirectly, prohibit the ownership of the ammunition: *Provided,*  
30 That no provision in this section may be construed to limit the authority of a county to restrict the  
31 commercial use of real estate in designated areas through planning or zoning ordinance.

32 (b) County Commissions may not adopt any ordinance, rule, license requirement, or any  
33 other authorization governing agricultural operations as defined in §19-19-2 of this code that  
34 exceeds any state law, rule, or regulation for the purpose of establishing, expanding, or continuing

35 an agricultural operation. Any previously adopted ordinance, rule, regulation, license, or other  
36 authorization regarding agricultural operations that exceed any state law, rule, or regulation is  
37 hereby revoked.

38 (c) County commissions may not establish any ordinance, rule, regulation, or other action  
39 that cancels or alters the purchase, use or application of any federal or state registered pesticide,  
40 herbicide, or insecticide product.

**§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 used for farm purposes on land actually being used for farming~~ on agricultural lands or  
5 operations as defined in §19-19-2 of this code, unfit for human habitation due to dilapidation,  
6 defects increasing the hazard of fire, accidents, or other calamities, lack of ventilation, light or  
7 sanitary facilities, or any other conditions prevailing in any dwelling or building, whether used for  
8 human habitation or not, which would cause the dwellings or other buildings to be unsafe,  
9 unsanitary, dangerous, or detrimental to the public safety or welfare, whether the result of natural  
10 or manmade force or effect.

11 (b) Plenary power and authority are hereby conferred upon every county commission to  
12 adopt ordinances regulating the removal and cleanup of any accumulation of refuse or debris,  
13 overgrown vegetation or toxic spillage or toxic seepage located on private lands which is  
14 determined to be unsafe, unsanitary, dangerous, or detrimental to the public safety or welfare,  
15 whether the result of natural or manmade force or effect.

16 (c) The county commission, in formally adopting ordinances, shall designate an  
17 enforcement agency which shall consist of the county engineer (or other technically qualified  
18 county employee or consulting engineer), county health officer or his or her designee, a fire chief  
19 from a county fire company, the county litter control officer, if the commission chooses to hire one,  
20 and two members-at-large, one of whom has a background in or knowledge of agricultural  
21 operations as defined in §19-19-2, selected by the county commission to serve two-year terms.  
22 The county sheriff shall serve as an ex officio member of the enforcement agency and the county  
23 officer charged with enforcing the orders of the county commission under this section.

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

34 (e) Any ordinance adopted pursuant to the provisions of this section shall provide fair and  
35 equitable rules of procedure and any other standards considered necessary to guide the  
36 enforcement agency, or its agents, in the investigation of dwelling or building conditions,  
37 accumulation of refuse or debris, overgrown vegetation, or toxic spillage or toxic seepage and  
38 shall provide for fair and equitable rules of procedure for instituting and conducting hearings in the  
39 matters before the county commission. Any entrance upon premises for the purpose of making  
40 examinations shall be made in a manner that causes the least possible inconvenience to the  
41 persons in possession.

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

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

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

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

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

65 (6) At the conclusion of the hearing, the county commission shall make findings of fact,  
66 determinations, and conclusions of law as to whether the dwelling or building: Is unfit for human  
67 habitation due to dilapidation; has defects that increase the hazard of fire, accidents, or other

68 calamities; lacks ventilation, light, or sanitary facilities; or any other conditions prevailing in the  
69 dwelling or building, whether used for human habitation or not and whether the result of natural or  
70 manmade force or effect, which would cause the dwelling or other building to be unsafe,  
71 unsanitary, dangerous, or detrimental to the public safety or welfare; or whether there is an  
72 accumulation of refuse or debris, overgrown vegetation, toxic spillage or toxic seepage on private  
73 lands which is determined to be unsafe, unsanitary, dangerous, or detrimental to the public safety  
74 or welfare, whether the result of natural or manmade force or effect.

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

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

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

88 (h) A civil proceeding may be brought in circuit court by the county commission against the  
89 owner or owners of the private land or other responsible party that the subject matter of the order  
90 of the county commission to subject the private land in question: (1) To a lien for the amount of the  
91 contractor's costs in making these ordered repairs, alterations, or improvements or ordered  
92 demolition, removal, or clean up, together with any daily civil monetary penalty imposed; (2) to  
93 order and decree the sale of the private land in question to satisfy the lien; (3) to order and decree

94 that the contractor may enter upon the private land in question at any and all times necessary to  
 95 make ordered repairs, alterations, or improvements, or ordered demolition, removal, or clean up;  
 96 and (4) to order the payment of all costs incurred by the county with respect to the property and for  
 97 reasonable attorney fees and court costs incurred in the prosecution of the action.

98 (i) County commissions may receive and accept grants, subsidies, donations, and services  
 99 in kind consistent with the objectives of this section.

**CHAPTER 16. PUBLIC HEALTH.**

**ARTICLE 3. PREVENTION AND CONTROL OF COMMUNICABLE AND OTHER  
 INFECTIOUS DISEASES.**

**§16-3-6. Nuisances affecting public health.**

1 (a) The state director of health or any county or municipal health officer shall inquire into  
 2 and investigate all nuisances affecting the public health within his or her jurisdiction; and the said  
 3 director or any such officer or the county commission of any county or any municipality is  
 4 authorized and empowered to apply to the circuit court of the county in which any such nuisance  
 5 exists, or to the judge thereof in vacation, for an injunction forthwith to restrain, prevent or abate  
 6 such nuisance.

7 (b) The authority set forth in subsection (a) of this section shall not apply to agricultural  
 8 lands or operations as defined in §19-19-2 of this code.

NOTE: The purpose of this bill is to prohibit county commissions from adopting any ordinance, rule, license requirement, or other authorization that exceeds state law, rule, or regulation regarding agricultural operations. The bill revokes any ordinance, rule, or regulation previously adopted by county commissions regarding agricultural operations. The bill prohibits county commissions from adopting any ordinance, rule, regulation, or other authorization that applies to use of federal or state pesticides, herbicides, or insecticides. The bill prohibits county commissions from adopting ordinances that regulate dwellings or other buildings on agricultural land or operations; requiring appointment of at-large member on county enforcement agency to have background or knowledge of agricultural operations. The bill clarifies that authorization of public health official to obtain nuisance injunction does not apply to agricultural operations.

Strike-throughs indicate language that would be stricken from a heading or the present law



and underscoring indicates new language that would be added.