

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

ENROLLED

Committee Substitute

for

Senate Bill 631

SENATORS PALUMBO, JEFFRIES AND TAKUBO,

original sponsors

[Passed April 7, 2017; in effect 90 days from passage]

FILED

2017 APR 24 P 4:31

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SECRETARY OF STATE

SB 631

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1 AN ACT to amend and reenact §8-12-13 and §8-12-16 of the Code of West Virginia, 1931, as
2 amended, all relating generally to municipal ordinances and procedures; creating a
3 procedure for misdemeanor prosecutions of violations of municipal ordinances; defining
4 terms; providing for the designation of enforcement agencies; providing a procedure for
5 code enforcement agency officials to enter premises for investigation or inspection of a
6 structure, dwelling or building; granting plenary power to the governing body of every
7 municipality to adopt an ordinance providing for the vacating, closing, removal or
8 demolition of specific dwellings, structures or buildings by a municipality in the absence of
9 owner agreement or court order with specific requirements; providing for notice to the
10 owner of the right to apply to the circuit court for a temporary injunction or other similar
11 relief; requiring a hearing to be held within twenty days if the owner makes such application
12 to the circuit court; requiring an owner to pay a bond into court if the owner seeks a
13 continuance of the hearing seeking a temporary injunction or other similar relief; allowing
14 for the disbursement of moneys paid into court by an owner if a court finds that the property
15 is unsafe, unsanitary, dangerous or detrimental to the public safety or welfare; permitting
16 a governing body of a municipality to file a lien against the real property for an amount that
17 reflects all costs incurred by a municipality for repairing, altering or improving, or of
18 vacating and closing, removing or demolishing any dwelling or building; permitting a
19 municipality to institute a civil action in circuit court against a landowner or other
20 responsible party to obtain an order to take corrective action up to and including demolition
21 of any structure, dwelling or building that is unsafe, unsanitary, dangerous or detrimental
22 to the public safety or welfare and permitting a municipality to recover all reasonable costs
23 and expenses incurred by the municipality with respect to the property and for reasonable
24 attorney fees and court costs incurred in the prosecution of the action; providing for service
25 of notices of violations; and providing for a procedure to prosecute ordinances adopted
26 under the section pertaining to regulating the repair, alteration, improvement, closing,

27 demolition, etc., of structures, dwelling or buildings that are unsafe, unsanitary, dangerous
28 or detrimental to the public safety or welfare.

Be it enacted by the Legislature of West Virginia:

1 That §8-12-13 and §8-12-16 of the Code of West Virginia, 1931, as amended, be amended
2 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.**

§8-12-13. Building regulation; general and special codes; state building code.

1 (a) The governing body of every municipality shall have plenary power and authority by
2 ordinance or a code of ordinances to:

3 (1) Regulate the erection, construction, repair or alteration of structures of every kind
4 within the corporate limits of the municipality, prohibit, within specified territorial limits, the
5 erection, construction, repair or alteration of structures of wood or other combustible material, and
6 regulate excavations upon private property;

7 (2) Regulate electric wiring by prescribing minimum specifications to be followed in the
8 installation, alteration or repair; and

9 (3) Regulate plumbing by prescribing the minimum specifications to be followed in the
10 installation, alteration or repair of plumbing, including equipment, water and sewer pipe, traps,
11 drains, cesspools and septic tanks.

12 (b) Notwithstanding the provisions of subsection (a) of this section, all existing municipal
13 building codes are void one year after the promulgation of a state building code by the State Fire
14 Commission as provided under section five-b, article three, chapter twenty-nine of this code.

15 Upon the voidance of the municipality's existing building code, if the municipality votes to
16 adopt a building code, it must be the state building code promulgated under section five-b, article
17 three, chapter twenty-nine of this code.

18 (c) The governing body of every municipality shall have plenary power and authority by
19 ordinance or a code of ordinances to adopt such state building code promulgated by the State
20 Fire Commission.

21 (d) Unless otherwise authorized by state law, any misdemeanor prosecution of a violation
22 of an ordinance adopted under this section before a municipal judge or other municipal official
23 lawfully authorized to hear and determine violations of municipal code shall be initiated by a
24 complaint presented to and sworn or affirmed before a municipal judge or other municipal official
25 with lawful authority to hear and determine violations of municipal code in the municipality where
26 the offense is alleged to have occurred. Unless otherwise provided by statute, the presentation
27 and oath or affirmation shall be made by a code enforcement department official or municipal
28 attorney showing reason to have reliable information and belief. If the municipal judge or other
29 municipal official with lawful authority to hear and determine violations of municipal code finds
30 probable cause, the complaint becomes the charging instrument initiating a criminal proceeding.

31 A complaint lawfully authorized by this subsection together with a summons setting forth
32 the date, time and place of appearance before a municipal judge or other municipal official with
33 lawful authority to hear and determine violations of municipal code, shall be served in accordance
34 with the law of the State of West Virginia concerning the service of process in civil actions, except
35 that personal service of a summons and complaint may be made by a code enforcement
36 department official. If service is made by certified mail under Rule 4(d)(1)(D) of the West Virginia
37 Rules of Civil Procedure and delivery of the summons and complaint is refused, the code
38 enforcement department official, promptly upon the receipt of the notice of the refusal, shall mail
39 to the person or entity being noticed, by first class mail, postage prepaid, a copy of the summons
40 and complaint. If the first class mailing is not returned as undeliverable by the U. S. Postal

41 Service, service of the summons and complaint is presumed to have been effectuated. Upon
42 service of the summons and complaint consistent with this subsection, the violation may be
43 prosecuted consistent with state and local law.

**§8-12-16. Ordinances regulating the repair, alteration, improvement, closing, demolition,
etc., of structures, dwellings or buildings that are unsafe, unsanitary, dangerous or
detrimental to the public safety or welfare; procedures.**

1 (a) For the purposes of this section:

2 (1) "Code enforcement agency" means either a code enforcement department as defined
3 by 87 CSR 7-2, as may be amended, or an enforcement agency as permitted by subsection (c)
4 of this section.

5 (2) "Code enforcement agency official" means any lawful agent of a code enforcement
6 agency.

7 (3) "Owner" or "landowner" means a person who individually or jointly with others:

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

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

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

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

12 or

13 (E) May control or direct the management or disposition of the property.

14 (4) "Unsafe, unsanitary, dangerous or detrimental to the public safety or welfare" means:

15 (A) Any door, aisle, passageway, stairway, exit or other means of egress that does not
16 conform to the approved building or fire code of the jurisdiction as related to the requirements for
17 existing buildings;

18 (B) The walking surface of any aisle, passageway, stairway, exit or other means of egress
19 is so warped, worn loose, torn or otherwise unsafe as to not provide safe and adequate means of
20 egress;

21 (C) Any portion of a dwelling, building, structure or appurtenance that has been damaged
22 by fire, earthquake, wind, flood, deterioration, neglect, abandonment, vandalism or by any other
23 cause to an extent that it is likely to partially or completely collapse, or to become detached or
24 dislodged;

25 (D) Any portion of a structure or building, or any member, appurtenance or ornamentation
26 on the exterior that is not of sufficient strength or stability, or is not so anchored, attached or
27 fastened in place so as to be capable of resisting natural or artificial loads of one and one-half the
28 original designed value;

29 (E) The dwelling, building or structure, or part of the building or structure, because of
30 dilapidation, deterioration, decay, faulty construction, the removal or movement of some portion
31 of the ground necessary for the support, or for any other reason, is likely to partially or completely
32 collapse, or some portion of the foundation or underpinning of the building or structure is likely to
33 fail or give way;

34 (F) The dwelling, building or structure, or any portion, is clearly unsafe for its use;

35 (G) The dwelling, building or structure is neglected, damaged, dilapidated, unsecured or
36 abandoned so as to become an attractive nuisance to children, becomes a harbor for vagrants,
37 criminals, criminal activity or enables persons to resort to the dwelling, building or structure for
38 committing a nuisance or an unlawful act;

39 (H) Any dwelling, building or structure constructed, exists or maintained in violation of any
40 specific requirement or prohibition applicable to any dwelling, building or structure provided by
41 the approved building or fire code of the jurisdiction or of any law or ordinance that presents either
42 a substantial risk of fire, building collapse or any other threat to life and safety;

43 (I) A dwelling, building or structure, used or intended to be used for dwelling purposes,
44 because of inadequate maintenance, dilapidation, decay, contamination by any hazardous
45 substance or material including, but not limited to, substance resulting from the illegal
46 manufacture of drugs, damage, faulty construction or arrangement, inadequate light, ventilation,

47 mechanical or plumbing system, or otherwise, is determined by the code enforcement agency to
48 be unsanitary, unfit for human habitation or in such a condition that is likely to cause sickness or
49 disease;

50 (J) Any dwelling, building or structure, because of a lack of sufficient or proper fire
51 resistance-rated construction, fire protection systems, electrical system, fuel connections,
52 mechanical system, plumbing system or other cause, is determined by the code official to be a
53 threat to life or health; or

54 (K) Any portion of a building that remains on a site after the demolition or destruction of
55 the building or structure, or whenever any building or structure is abandoned.

56 (b) Plenary power and authority are hereby conferred upon every municipality to adopt
57 ordinances regulating the repair, alteration or improvement, or the vacating and closing or removal
58 or demolition, or any combination, of any structure, dwelling or building, whether used for human
59 habitation or not, that is unsafe, unsanitary, dangerous or detrimental to the public safety or
60 welfare.

61 (c) The governing body in formally adopting any ordinance under this section shall
62 designate the enforcement agency, which shall consist of the code enforcement agency as
63 provided by the state building code and authorized by section five-b, article three, chapter twenty-
64 nine of this code and section thirteen, article twelve, chapter eight of this code; or municipal
65 officials as may otherwise be authorized by this code; or municipal officials or agents as
66 authorized by rules promulgated by the State Fire Commission and approved by the Legislature;
67 or municipal officials or agents as may otherwise be authorized by the State Fire Commission.
68 Notwithstanding any provision of this code to the contrary, for the purposes of this section any
69 municipality that has not adopted the state building code may designate an enforcement agency
70 consisting of the mayor, the municipal engineer or building inspector and one member at large,
71 to be selected by and to serve at the will and pleasure of the mayor, and the ranking health officer
72 and fire chief who shall serve as ex officio members of the enforcement agency.

73 (d) Any ordinance adopted under the provisions of this section must provide fair and
74 equitable rules of procedure and any other procedures required by law or necessary and
75 appropriate to guide the code enforcement agency, or its officials, in the investigation of any
76 structure, dwelling or building conditions, and in any corrective action taken by the code
77 enforcement agency.

78 (e) When a code enforcement agency official enters the premises of the property for
79 investigating or inspecting any structure, dwelling or building, the investigation shall be performed
80 to minimize the inconvenience to the owner or persons in possession and shall be consistent with
81 the following:

82 (1) Except in exigent circumstances and as permitted by law, the enforcement agency
83 shall provide reasonable advance notice to the owner and request permission from the owner to
84 enter the property.

85 (2) If the owner cannot be located after reasonable inquiry by the code enforcement
86 agency as required by this section, or if the owner refuses entry, the code enforcement agency
87 may obtain an administrative search warrant from either the municipal court or the magistrate
88 court located in the jurisdiction of the municipality or county where the structure, dwelling or
89 building is located. Before obtaining an administrative search warrant, a code enforcement
90 agency official is required to make a sworn statement and prima facie case showing that the code
91 enforcement agency was unable to gain access to the structure, dwelling or building after
92 reasonable and good faith efforts, and that there is a legitimate and substantial safety concern
93 involving the structure, dwelling or building that supports the requested entry.

94 (3) If granted by the court, and if the owner can be located, the code enforcement agency
95 shall provide the owner a copy of the administrative search warrant five days before entering the
96 property. If applicable, the code enforcement agency shall also provide the same notice to any
97 tenant or other person in possession of the structure, dwelling or building.

98 (4) Entry is for the sole purpose of inspection of the structure, dwelling or building for
99 unsafe or unsanitary conditions and not for the purpose of criminal prosecution or gathering
100 evidence for use in any criminal charge or proceeding unrelated to the unsafe or unsanitary
101 condition of the structure, dwelling or building.

102 (f) The governing body of every municipality has plenary power and authority to adopt an
103 ordinance providing for the vacating, closing, removal or demolition of any dwelling, structure or
104 building by the municipality in the absence of owner agreement or court order: *Provided, That the*
105 ordinance requires the code enforcement agency to provide lawful notice to and undertake
106 reasonable efforts to seek agreement from the owner before taking any action permitted by this
107 section and shall comply with the requirements set forth in this subsection:

108 (1) Any ordinance adopted under this subsection applies only to dwellings, structures or
109 buildings which meet the definition of unsafe, unsanitary, dangerous or detrimental to the public
110 safety or welfare as set forth in:

111 (A) Paragraph (C), (E) or (H), subdivision (4), subsection (a) of this section; or

112 (B) Paragraph (F), (G), (I) or (K), subdivision (4), subsection (a) of this section: *Provided,*
113 That the dwelling, building or structure is vacant, abandoned or has been lawfully declared unfit
114 for human habitation; and the reasonable estimated cost of repair, rehabilitation or corrective
115 action exceeds the fair market value of the dwelling, building or structure.

116 (2) Any ordinance adopted under this subsection must provide for the following:

117 (A) The code enforcement agency shall produce a written notice containing the date of
118 the last inspection, the name of the inspector, a reasonable description of the unsafe, unsanitary,
119 dangerous, or detrimental condition(s), the corrective measures required, the allotted time to
120 correct the substandard condition(s) and the allotted time the owner has to apply to the circuit
121 court for a temporary injunction or other similar relief restraining action by the enforcement
122 agency.

123 (B) The notice shall be served upon the owner or landowner by conspicuously posting and
124 attaching a copy of the notice to the subject property, and by serving the notice on the owner or
125 landowner in the same manner as service of a complaint as set forth in subsection (j) of this
126 section.

127 (C) If the code enforcement agency cannot effect personal service on the owner, a code
128 enforcement agency official shall subscribe a written affidavit, to be maintained for a minimum of
129 two years, that demonstrates the structure, dwelling or building falls within one of the categories
130 set forth in paragraph (A) or (B), subdivision (1), subsection (f) of this section sets forth the basis
131 in reasonable detail including documentation of same, and memorializes the code enforcement
132 agency official's efforts to contact or get permission for entry and corrective action from the owner;
133 and the code enforcement agency shall publish notice of its intent to enter the property for the
134 purpose of demolition or correction, along with the address of the property, the name of the
135 owner(s) and the date of the proposed action, as a Class II legal advertisement consistent with
136 the requirements of section two, article three, chapter fifty-nine of this code, the first of which shall
137 run at least thirty days before the date of the proposed action by the enforcement agency, and
138 the last being no later than twenty days before the date of the proposed action by the enforcement
139 agency.

140 (D) If there is no response to the notice by the owner or landowner in the time specified in
141 the notice, then the municipality shall have the authority to proceed in correction or demolition of
142 the subject dwelling, building or structure.

143 (3) It shall be an absolute defense to any civil action by an owner, landowner or tenant for
144 damages resulting from the closure, demolition or other corrective action taken by a municipality
145 under this section: *Provided*, That the municipality acted in good faith, can demonstrate that the
146 structure, dwelling or building falls within one of the categories set forth in paragraph (A) or (B),
147 subdivision (1), subsection (f) of this section, the municipality followed the procedures set forth in

148 this subsection and the municipality had adopted the state building code at the time of the closure,
149 demolition or other corrective action occurred.

150 (4) Any ordinance adopted under this subsection must also provide for notice to the owner
151 of the right of the owner to apply to the circuit court for a temporary injunction or other similar relief
152 restraining correction or demolition by the enforcement agency. If the application is made by the
153 owner, a hearing shall be had within twenty days of the application, or as soon as reasonably
154 possible.

155 (A) Continuances of the hearing provided for in this subdivision may be made for cause
156 only. If a continuance is granted upon request by the owner, the owner is required to pay into
157 court, in the form of a bond, any reasonable and necessary costs related to the property likely to
158 be incurred by the municipality during the continuance.

159 (B) At the conclusion of a hearing held under this subdivision, if the court finds that the
160 property is unsafe, unsanitary, dangerous, or detrimental to the public safety or welfare, the court
161 shall make and enter an order granting the relief as requested by the municipality. The court may
162 disburse any moneys paid into court by the owner in accordance with this section.

163 (g) The governing body of every municipality has plenary power and authority to adopt an
164 ordinance requiring the owner of any dwelling or building under determination of the State Fire
165 Marshal, as provided in section twelve, article three, chapter twenty-nine of this code, or under
166 order of the code enforcement agency of the municipality, to pay for the costs of repairing, altering
167 or improving, or of vacating and closing, removing or demolishing any dwelling or building and
168 may file a lien against the real property in question for an amount that reflects all costs incurred
169 by the municipality for repairing, altering or improving, or of vacating and closing, removing or
170 demolishing any dwelling or building.

171 (h) Every municipality may also institute a civil action in circuit court against the landowner
172 or other responsible party to get an order to take corrective action up to and including demolition
173 of any structure, dwelling or building that is unsafe, unsanitary, dangerous or detrimental to the

174 public safety or welfare; and to recover all reasonable costs and expenses incurred by the
175 municipality with respect to the property and for reasonable attorney fees and court costs incurred
176 in the prosecution of the action:

177 (1) No fewer than ten days before instituting a civil action as provided in this subsection,
178 the municipality shall send notice to the landowner by certified mail, return receipt requested,
179 advising the landowner of the governing body's intention to institute such action.

180 (2) The notice shall be sent to the most recent address of the landowner of record in the
181 office of the assessor of the county where the subject property is located and to any other address
182 for the landowner as may exist on record with the municipality. If, for any reason, such certified
183 mail is returned without evidence of proper receipt, the municipality shall resend the notice(s) by
184 first class mail, postage prepaid, and shall also post notice on the front door or other conspicuous
185 location on the subject property.

186 (i) To the extent not otherwise authorized by state law, all notices of violation or correction
187 for violations that do not fall within one of the categories set forth in paragraph (A) or (B),
188 subdivision (1), subsection (f) of this section issued by the enforcement agency of a municipality
189 that has adopted the state building code shall be served in accordance with the process set forth
190 in the state building code. All notices of violation or correction orders for violations that do not fall
191 within one of the categories set forth in paragraph (A) or (B), subdivision (1), subsection (f) of this
192 section issued by a code enforcement agency of a municipality that has not adopted the state
193 building code shall be served in accordance with the law of this state concerning the service of
194 process in civil actions, except that personal service may be made by a code enforcement agency
195 official and the method of service effectuated by mail by the clerk of a court as permitted by Rule
196 4(d)(1)(D) of the West Virginia Rules of Civil Procedure is effectuated by mailing by a code
197 enforcement agency official and shall be posted in a conspicuous place on the property that is
198 the subject of the notice of violation or correction.

199 (j) Any violation of an ordinance adopted under this section, may be prosecuted by the
200 municipality consistent with state and local laws. Unless otherwise authorized by state law,
201 prosecution of a violation shall be initiated by a complaint presented to and sworn or affirmed
202 before a municipal judge or other municipal official with lawful authority to hear and determine
203 violations of municipal code in the municipality where the offense is alleged to have occurred.
204 Unless otherwise provided by statute, the presentation and oath or affirmation shall be made by
205 a code enforcement agency official or municipal attorney showing reason to have reliable
206 information and belief. If from the facts stated in the complaint the municipal judge or other
207 municipal official with lawful authority to hear and determine violations of municipal code finds
208 probable cause, the complaint becomes the charging instrument initiating a criminal proceeding.
209 A complaint lawfully authorized by this subsection along with a summons setting forth the date,
210 time and place of appearance before a municipal judge and or other municipal official with lawful
211 authority to hear and determine violations of municipal code shall be served in accordance with
212 the law of the State of West Virginia concerning the service of process in civil actions, except that
213 personal service of a summons and complaint may be made by a code enforcement agency
214 official. If service is made by certified mail under Rule 4(d)(1)(D) of the West Virginia Rules of
215 Civil Procedure and delivery of the summons and complaint is refused, the code enforcement
216 agency official, promptly upon the receipt of the notice of the refusal, shall mail to the person or
217 entity being noticed, by first class mail, postage prepaid, a copy of the summons and complaint.
218 If the first class mailing is not returned as undeliverable by the U. S. Postal Service, service of the
219 summons and complaint is presumed to have been effectuated. Upon service of the summons
220 and complaint consistent with this subsection, the violation may be prosecuted consistent with
221 state and local law.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


.....
Chairman, Senate Committee


.....
Chairman, House Committee

Originated in the Senate.

In effect 90 days from passage.


.....
Clerk of the Senate


.....
Clerk of the House of Delegates


.....
President of the Senate


.....
Speaker of the House of Delegates

OFFICE WEST VIRGINIA
SECRETARY OF STATE

2011 APR 24 P 4: 31

FILED

The within is approved this the 24th
April
Day of 2017.


.....
Governor

PRESENTED TO THE GOVERNOR

APR 20 2017

Time 10:40 am