

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1996

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STATE OF WEST VIRGINIA

HOUSE BILL No. 4160

(By Delegate Mr. Speaker, Mr. Chambers)  
and Delegates Johnson, Fragale & Manuel

— • —

Passed March 9, 1996

In Effect 90 Days From Passage

## ENROLLED

# H. B. 4160

(BY MR. SPEAKER, MR. CHAMBERS, AND DELEGATES  
JOHNSON, FRAGALE AND MANUEL)

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[Passed March 9, 1996; in effect ninety days from passage.]

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AN ACT to amend and reenact section three-ff, article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section sixteen, article twelve, chapter eight of said code; to amend and reenact section sixteen, article three, chapter twenty-nine of said code; to amend and reenact section nine-a, article seventeen, chapter thirty-three of said code; and to further amend said article by adding thereto a new section designated section nine-b, all relating to the authority of county commissions and municipalities to require clearance of refuse and debris or to repair, vacate, close, remove, improve, demolish or otherwise alter buildings on private lands; removing the obligation of county commissions to require clearance of refuse or debris; providing for the filing of a judgment lien in an amount not to exceed the assessed value of the property; providing for notification to the landowner; authorizing county commissions and municipalities to adopt ordinances requiring landowners to pay costs, providing for the filing of liens and creating a cause of action for the reimbursement of costs; authorizing the state fire marshal to notify county or municipal officials respecting fire hazards; providing for notification and disbursement of certain insurance proceeds; and making certain technical revisions.

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

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That section three-ff, article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section sixteen, article twelve, chapter eight of said code be amended and reenacted; that section sixteen, article three, chapter twenty-nine of said code be amended and reenacted; that section nine-a, article seventeen, chapter thirty-three of said code be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section nine-b, all to read as follows:

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

### **ARTICLE 1. COUNTY COMMISSIONS GENERALLY.**

#### **§7-1-3ff. Clearance of refuse and debris from private lands; demolition of buildings and recovery of costs incurred; notice of demand thereof; procedure to contest demand.**

1       (a) County commissions, as set forth in this article,  
2 county health officers, as set forth in section two, article  
3 two, chapter sixteen of this code, and state fire marshals as  
4 set forth in section twelve, article three, chapter  
5 twenty-nine of this code, are hereby authorized to require  
6 clearance of any refuse or debris consisting of remnants  
7 or remains of any unused or unoccupied dwelling, cement  
8 foundation, piping, basements, intact chimneys, nonfarm  
9 building, structure or manmade appurtenance on all private  
10 lands within their respective scopes of authority by  
11 the owners thereof that has accumulated as the result of  
12 any natural or manmade fire, force or effect which presents  
13 a safety or health hazard including the removal of  
14 toxic or contaminant spillage and seepage: *Provided*, That  
15 upon request from a landowner and a written determination  
16 and approval from the state fire marshal, where appropriate,  
17 a landowner may fill the remains of a basement  
18 to ground level with inert fill material in lieu of complete  
19 removal of such cement foundation, piping and basement.

20       (b) Upon determination by the state fire marshal that  
21 substantial accumulations of refuse, debris or destroyed  
22 structures or appurtenances, as described above, exist on  
23 the property as a result of a natural or manmade fire, notice  
24 shall be given by the fire marshal and forwarded to

25 the owner immediately informing the landowner of the  
26 requirements of this article to effect repair, removal, clo-  
27 sure or demolition of the fire damaged property within  
28 ninety days of the receipt of such notice.

29 (c) Upon a determination by a county commission or  
30 county health officer that substantial accumulations of  
31 refuse or the presence of debris, as described above exist  
32 on any such private lands, notice shall be forwarded to the  
33 landowner advising him or her:

34 (1) Of the commission's or health officer's demand to  
35 remove all refuse and debris within ninety days of the  
36 receipt of notice unless an extension be granted by the  
37 county commission or health officer for good cause  
38 shown;

39 (2) Of the landowner's right to contest such demand  
40 and of the proper procedure in which to do so;

41 (3) That if the landowner fails to both properly con-  
42 test and comply with the commission's or health officer's  
43 demand, that removal will be achieved otherwise and that  
44 the reasonable costs incurred thereto will become a civil  
45 debt owed by the landowner to the county; and

46 (4) That if the county incurs costs of removal and the  
47 landowner fails to pay such costs within ninety days of  
48 the removal, then the county may file a judgment lien on  
49 the subject property, for an amount not to exceed the  
50 assessed value of the property as recorded in the office of  
51 the county assessor, in the office of the clerk of the county  
52 commission of the county in which the property is lo-  
53 cated.

54 (d) The commission or health officer shall send notice  
55 as described in subsection (c) of this section by certified  
56 mail, return receipt requested, to the most recent address  
57 of the landowner on file in the office of the county asses-  
58 sor of the county in which the subject property is located.  
59 If, for any reason, the certified mail is returned without  
60 evidence of proper receipt thereof, then in such event, a  
61 Class III-0 legal advertisement shall be published in a  
62 newspaper of general circulation in the county wherein the  
63 subject land is situated in order to render proper notice in

64 accordance with this section. In addition, the commission  
65 or health officer shall post the notice on the front door or  
66 other conspicuous location on the subject property: *Pro-*  
67 *vided*, That if the commission or health officer determines,  
68 after notice and inquiry as provided herein, that the refuse  
69 or debris was created by someone other than the present  
70 landowner, without the landowner's expressed or implied  
71 permission, the commission or health officer shall remove  
72 any such refuse or debris and shall apply to and be eligi-  
73 ble to receive from the solid waste reclamation and envi-  
74 ronmental response fund created under section eleven,  
75 article fifteen, chapter twenty-two of this code for reim-  
76 bursement for all reasonable costs incurred for removal.

77 (e) The county commission of every county shall have  
78 plenary power and authority to adopt an ordinance requir-  
79 ing the owner or owners of any nonfarm dwelling or  
80 building, under order of the county commission or county  
81 health officer or determination by the state fire marshal as  
82 provided for in subsection (a) of this section, to pay for  
83 the costs of clearing any refuse or debris or of repairing,  
84 vacating, closing, removing, demolishing or otherwise  
85 altering any dwelling or nonfarm building. The county  
86 commission shall also have the power and authority to  
87 seek reimbursement for such costs by filing a lien against  
88 the real property in question for an amount not to exceed  
89 the assessed value of the property as recorded in the office  
90 of the county assessor, or to institute a civil action in a  
91 court of competent jurisdiction against the landowner or  
92 other responsible party for all costs incurred by the coun-  
93 ty with respect to the property and for reasonable attorney  
94 fees and court costs incurred in the prosecution of the  
95 action.

96 (f) Not less than ten days prior to instituting a civil  
97 action as provided for in this section, the county commis-  
98 sion shall send notice to the landowner by certified mail,  
99 return receipt requested, advising the landowner of the  
100 county commission's intention to institute such action. The  
101 notice shall be sent to the most recent address of the land-  
102 owner of record in the office of the assessor of the county  
103 where the subject property is located. If, for any reason,  
104 such certified mail is returned without evidence of proper

105 receipt thereof, then in such event, the county commission  
106 shall cause a Class III-0 legal advertisement to be pub-  
107 lished in a newspaper of general circulation in the county  
108 wherein the subject property is located and post notice on  
109 the front door or other conspicuous location on the sub-  
110 ject property.

111 (g) In the event any landowner desires to contest any  
112 demand brought forth pursuant to this section, the land-  
113 owner shall do so in accordance with article three, chapter  
114 fifty-eight of this code.

## **CHAPTER 8. MUNICIPAL CORPORATIONS.**

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

#### **§8-12-16. Ordinances regulating the repair, closing, demoli- tion, 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  
3 the repair, alteration or improvement, or the vacating and  
4 closing or removal or demolition, or any combination  
5 thereof, of any dwellings or other buildings unfit for hu-  
6 man habitation due to dilapidation, defects increasing the  
7 hazard of fire, accidents or other calamities, lack of venti-  
8 lation, light or sanitary facilities or any other conditions  
9 prevailing in any dwelling or building, whether used for  
10 human habitation or not, which would cause such dwell-  
11 ings or other buildings to be unsafe, unsanitary, dangerous  
12 or detrimental to the public safety or welfare.

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

20 (c) Any ordinance adopted pursuant to the provisions

21 of this section shall provide fair and equitable rules of  
22 procedure and any other standards deemed necessary to  
23 guide the enforcement agency, or its agents, in the investi-  
24 gation of dwelling or building conditions, and in conduct-  
25 ing hearings: *Provided*, That any entrance upon premises  
26 for the purpose of making examinations shall be made in  
27 such manner as to cause the least possible inconvenience  
28 to the persons in possession.

29 (d) The governing body of every municipality shall  
30 have plenary power and authority to adopt an ordinance  
31 requiring the owner or owners of any dwelling or building  
32 under determination of the state fire marshal, as provided  
33 in section twelve, article three, chapter twenty-nine of this  
34 code, or under order of the enforcement agency of the  
35 municipality, to pay for the costs of repairing, altering, or  
36 improving, or of vacating and closing, removing or de-  
37 molishing any dwelling or building. Every municipality  
38 shall also have the right to file a lien against the real prop-  
39 erty in question for an amount not to exceed the assessed  
40 value of the property as recorded in the office of the  
41 county assessor, or to institute a civil action in a court of  
42 competent jurisdiction against the landowner or other  
43 responsible party for all costs incurred by the municipality  
44 with respect to the property and for reasonable attorney  
45 fees and court costs incurred in the prosecution of the  
46 action.

47 Not less than ten days prior to instituting a civil action  
48 as provided for in this section, the governing body of the  
49 municipality shall send notice to the landowner by certi-  
50 fied mail, return receipt requested, advising the landowner  
51 of the governing body's intention to institute such action.  
52 The notice shall be sent to the most recent address of the  
53 landowner of record in the office of the assessor of the  
54 county where the subject property is located. If, for any  
55 reason, such certified mail is returned without evidence of  
56 proper receipt thereof, then in such event, the governing  
57 body shall cause a Class III-0 legal advertisement to be  
58 published in a newspaper of general circulation in the  
59 county wherein the subject property is located and post  
60 notice on the front door or other conspicuous location on  
61 the subject property.

62 In the event any landowner desires to contest any  
63 demand brought forth pursuant to this section, the land-  
64 owner may seek relief in a court of competent jurisdiction.

65 All orders issued by the enforcement agency shall be  
66 served in accordance with the law of this state concerning  
67 the service of process in civil actions, and shall, in addition  
68 thereto, be posted in a conspicuous place on the premises  
69 affected by the complaint or order: *Provided*, That no  
70 ordinance shall be adopted without providing therein for  
71 the right to apply to the circuit court for a temporary  
72 injunction restraining the enforcement agency pending  
73 final disposition of the cause. In the event such application  
74 is made, a hearing thereon shall be had within twenty days,  
75 or as soon thereafter as possible, and the court shall enter  
76 such final order or decree as the law and justice may re-  
77 quire.

## **CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.**

### **ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.**

#### **§29-3-16. Work to be done at expense of owner or occupant upon failure to comply with repair or demolition order; action to recover.**

1 In the event any owner of any building or premises  
2 served with a copy of an order as provided in sections  
3 fourteen and fifteen of this article shall fail substantially to  
4 comply with such order within thirty days from the date of  
5 issuance thereof, or within thirty days after any appeal  
6 from such order has been affirmed by the state fire com-  
7 mission or by the court, the state fire marshal may enter  
8 into and upon the premises affected by such order and  
9 cause the building, structure or premises to be repaired,  
10 torn down, materials removed and all dangerous condi-  
11 tions to be remedied, as the case may be, at the expense of  
12 the owner and with any administrative charges as estab-  
13 lished by the commission also being borne by the owner,  
14 and if such person shall fail or neglect to repay the state  
15 fire marshal the expense and administrative charge there-  
16 by incurred by him, within thirty days after written de-  
17 mand shall have been delivered or mailed to the said own-



18 er as provided in section fifteen of this article, the state fire  
19 marshal is hereby authorized to bring an action in the  
20 name of the state to recover such expenses, with interest,  
21 and any administrative charge as established by the com-  
22 mission, in any court of competent jurisdiction.

23 Upon a determination by the state fire marshal that the  
24 provisions of sections fourteen and fifteen of this article  
25 have not been met, and that such property constitutes a  
26 hazard to health or public safety, in lieu of initiating an  
27 order as therein provided, the state fire marshal may notify  
28 the county commission or the county health officer in  
29 order that they may perform their duties pursuant to sec-  
30 tion three-ff, article one, chapter seven of this code. The  
31 fire marshal may also, in lieu thereof, notify the munic-  
32 ipality where the property is located so that the municipali-  
33 ty may perform its duties pursuant to section fourteen,  
34 article twelve, chapter eight of this code.

### **CHAPTER 33. INSURANCE.**

#### **ARTICLE 17. FIRE AND MARINE INSURANCE.**

##### **§33-17-9a. Notice of insurance proceeds.**

1 Upon notice of a claim of an insured total loss to a  
2 structure located in this state, insurance companies must  
3 notify the insured, and the municipality or county in  
4 which the structure is located, of any coverage in the in-  
5 surance policy providing cleanup, removal of any refuse,  
6 debris, remnants or remains of the dwelling and appurte-  
7 nances and securing the structure. The notification shall  
8 be by letter to the insured, mailed within ten days of the  
9 notification of the claim, and shall include, but not be  
10 limited to:

11 (a) The terms and limits of coverage designated by the  
12 insurance policy for securing, cleanup and removal; and

13 (b) Any time limitations imposed on the insured for  
14 securing, cleanup and removal.

##### **§33-17-9b. Disbursement of insurance proceeds.**

1 No proceeds shall be paid by an insurance company  
2 which has issued a policy which provides coverage for

3 debris removal for cleanup, removal of refuse, debris,  
4 remnants, or remains of a dwelling or structure upon a  
5 claim of total loss unless and until the insurance company  
6 receives certification that the refuse, debris, remnants, or  
7 remains of the dwelling or structure have been cleaned up,  
8 removed or otherwise disposed of. In the event the insur-  
9 ance company receives, within six months of the date of  
10 loss, certification that such cleanup, removal or disposal  
11 costs have been incurred by a municipality county or  
12 other governmental entity, rather than the policyholder,  
13 such debris removal and cleanup proceeds shall be paid to  
14 the municipality, county or other government entity which  
15 has incurred such costs.

16 No insurance company subject to this section which  
17 complies with this section may be held liable for any claim  
18 that may arise out of the cleanup, removal or disposal of  
19 debris pursuant to this section.

20 An insurance company subject to this section which  
21 complies with this section shall be deemed to have fully  
22 satisfied all contractual obligations to the policyholder  
23 regarding debris removal.

24 In no event shall an insurance company be required to  
25 pay moneys in excess of policy limits for debris removal.

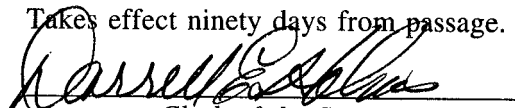
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

  
Chairman Senate Committee

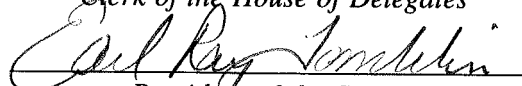
  
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

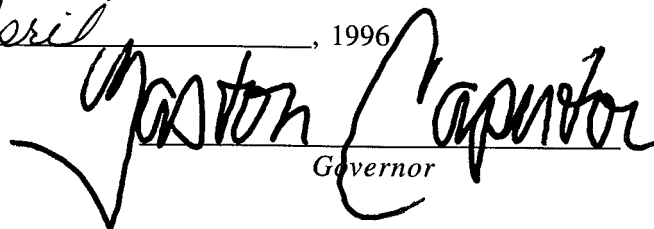
  
Clerk of the Senate

  
Clerk of the House of Delegates

  
President of the Senate

  
Speaker of the House of Delegates

The within is approved this the 1st  
day of April, 1996

  
Governor

PRESENTED TO THE

GOVERNOR

Date

3/27/96

Time

2:41 pm