

SB 228

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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1998



ENROLLED

Committee Substitute for
SENATE BILL NO. 228

(By Senator LOVE, ET AL)



PASSED MARCH 14, 1998
In Effect NINETY DAYS FROM Passage

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OFFICE OF THE
SECRETARY OF STATE

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COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 228

(SENATORS LOVE, SNYDER, HUNTER AND
BUCKALEW, *original sponsors*)

[Passed March 14, 1998; in effect ninety days from passage.]

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, relating to the authority of county commissions to adopt ordinances regulating the repair, alteration, improvement, vacating, closing, removal or demolition of structures and the removal or cleanup of refuse, debris, overgrown vegetation, toxic spillage or seepage on private lands representing a health or safety hazard to the public; creating an agency to enforce such ordinances; providing for promulgation of rules governing investigation and hearing of complaints; establishing a procedure for complaints; requiring the owner of

such property to perform the ordered repairs, alterations or clean-up; authorizing imposition of daily civil monetary penalties on an owner who refuses to comply with such order; authorizing the county commission to contract with private individuals for the ordered repairs, alterations or clean-up; permitting the county commission to institute a civil action for imposition of a lien against the property to recover the costs of such services, any civil penalties imposed, attorney fees and court costs and for the sale of the property to satisfy the lien; authorizing the county commission to institute a civil action for damages to recover such costs from the landowner; authorizing entry on the private land for purposes of conducting designated repairs or alterations and for purposes of satisfying the lien; and allowing the county commission to receive grants and subsidies for the purposes of this section.

Be it enacted by the Legislature of West Virginia:

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 to read as follows:

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-3ff. Authority of county commission to enact ordinances regulating the repair, alteration, improvement, vacating, closing, removal or demolition of unsafe or unsanitary structures and the clearance and removal of refuse, debris, overgrown vegetation, toxic spills or toxic seepage on private land; authority to create enforcement agency; procedure for complaints; promulgation of rules governing investigation and hearing of complaints; remedies for failure to comply with commission-ordered repairs or alterations; 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

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

16 (b) Plenary power and authority are hereby conferred
17 upon every county commission to adopt ordinances
18 regulating the removal and clean up of any accumulation
19 of refuse or debris, overgrown vegetation or toxic spillage
20 or toxic seepage located on private lands which is deemed
21 to be unsafe, unsanitary, dangerous or detrimental to the
22 public safety or welfare whether the result of natural or
23 manmade force or effect.

24 (c) The county commission in formally adopting such
25 ordinances shall designate an enforcement agency, which
26 shall consist of the county engineer (or other technically
27 qualified county employee or consulting engineer), county
28 health officer or his or her designee, a fire chief from a
29 county fire company, and two members at large selected
30 by the county commission to serve two-year terms. The
31 county sheriff shall serve as an ex officio member of such
32 enforcement agency and the county officer charged with
33 enforcing the orders of the county commission under this
34 section.

35 (d) Any ordinance adopted pursuant to the provisions of
36 this section shall provide fair and equitable rules of
37 procedure and any other standards deemed necessary to

38 guide the enforcement agency, or its agents, in the investi-
39 gation of dwelling or building conditions, accumulation of
40 refuse or debris, overgrown vegetation or toxic spillage or
41 toxic seepage, and shall provide for fair and equitable
42 rules of procedure for instituting and conducting hearings
43 in such matters before the county commission. Any
44 entrance upon premises for the purpose of making exami-
45 nations shall be made in such manner as to cause the least
46 possible inconvenience to the persons in possession.

47 (e) Any county commission adopting ordinances autho-
48 rized by this section shall hear and determine complaints
49 of the enforcement agency. Complaints shall be initiated
50 by petition of the county engineer (or other technically
51 qualified county employee or consulting engineer) on
52 behalf of and at the direction of the enforcement agency,
53 but only after that agency has investigated and deter-
54 mined that any dwelling, building, accumulation of refuse
55 or debris, overgrown vegetation or toxic spillage or toxic
56 seepage is unsafe, unsanitary, dangerous or detrimental to
57 the public safety or welfare and should be repaired,
58 altered, improved, vacated, removed, closed, cleaned or
59 demolished. The county commission shall cause the owner
60 or owners of the private land in question to be served with
61 a copy of the complaint. Service shall be accomplished in
62 the manner provided in rule four of the West Virginia
63 rules of civil procedure. The complaint shall state the
64 findings and recommendations of the enforcement agency
65 and that unless the owner or owners of the property file
66 with the clerk of the county commission a written request
67 for a hearing within ten days of receipt of the complaint,
68 an order will be issued by the county commission imple-
69 menting the recommendations of the enforcement agency.
70 If the owner or owners of the property file a request for a
71 hearing, the county commission shall issue an order
72 setting this matter down for hearing within twenty days.
73 Hearings shall be recorded by electronic device or by court
74 reporter. The West Virginia rules of evidence do not apply

75 to such proceedings, but each party has the right to
76 present evidence and examine and cross examine all
77 witnesses. The enforcement agency has the burden of
78 proving its allegation by a preponderance of the evidence
79 and has the duty to go forward with the evidence. At the
80 conclusion of the hearing the county commission shall
81 make findings of fact, determinations and conclusions of
82 law as to whether the dwelling or building: Is unfit for
83 human habitation due to dilapidation; has defects that
84 increase the hazard of fire, accidents or other calamities,
85 lacks ventilation, light or sanitary facilities; or any other
86 conditions prevailing in the dwelling or building, whether
87 used for human habitation or not, and whether the result
88 of natural or manmade force or effect, which would cause
89 such dwelling or other building to be unsafe, unsanitary,
90 dangerous or detrimental to the public safety or welfare;
91 or whether there is an accumulation of refuse or debris;
92 overgrown vegetation; toxic spillage or toxic seepage on
93 private lands which is deemed to be unsafe, unsanitary,
94 dangerous or detrimental to the public safety or welfare,
95 whether the result of natural or manmade force or effect.
96 The county commission has authority to order the owner
97 or owners thereof to repair, alter, improve, vacate, remove,
98 close, clean up or demolish the dwelling or building in
99 question or to remove or clean up any accumulation of
100 refuse or debris, overgrown vegetation or toxic spillage or
101 toxic seepage within a reasonable time and to impose
102 daily civil monetary penalties on the owner or owners who
103 fail to obey such an order. Appeals from the county
104 commission to the circuit court shall be in accordance
105 with the provisions of article three, chapter fifty-eight of
106 this code.

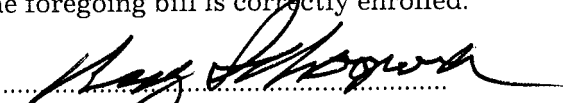
107 (f) Upon the failure of the owner or owners of the
108 private land to perform the ordered duties and obligations
109 as set forth in the order of the county commission, the
110 county commission may advertise for and seek contractors
111 to make the ordered repairs, alterations or improvements,

112 or the ordered demolition, removal or clean up. The
113 county commission may enter into any contract with any
114 such contractor to accomplish the ordered repairs, alter-
115 ations or improvements, or the ordered demolition,
116 removal or clean up.

117 (g) A civil proceeding may be brought in circuit court by
118 the county commission against the owner or owners of the
119 private land which is the subject matter of the order of the
120 county commission to subject the private land in question
121 to a lien for the amount of the contractor's costs in making
122 these ordered repairs, alterations or improvements, or
123 ordered demolition, removal or clean up together with any
124 daily civil monetary penalty imposed and reasonable
125 attorney fees and court costs and to order and decree the
126 sale of the private land in question to satisfy the lien, and
127 to order and decree that the contractor may enter upon the
128 private land in question at any and all times necessary to
129 make improvements, or ordered repairs, alterations or
130 improvements, or ordered demolition, removal or clean up.
131 In addition, the county commission shall have the author-
132 ity to institute a civil action in a court of competent
133 jurisdiction against the landowner or other responsible
134 party for all costs incurred by the county with respect to
135 the property and for reasonable attorney fees and court
136 costs incurred in the prosecution of the action.

137 (h) County commissions have the power and authority to
138 receive and accept grants, subsidies, donations and
139 services in kind consistent with the objectives of this
140 section.

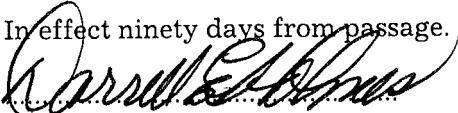
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


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Chairman Senate Committee.

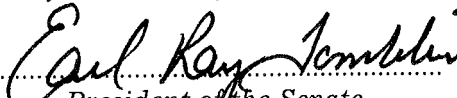

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Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

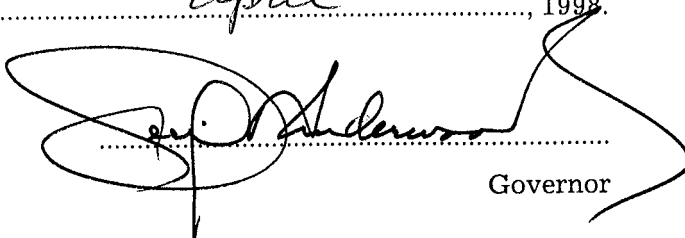

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Clerk of the Senate


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Clerk of the House of Delegates


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President of the Senate


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Speaker House of Delegates

The within approved this the 2nd
day of April, 1998.


.....
Governor

PRESENTED TO THE
GOVERNOR

Date 3/26/98

Time 12:01pm