ENROLLED

Committee Substitute for

SENATE BILL NO. 228

(By Senator LOVE, et al.)

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.

(a) Plenary power and authority are hereby conferred
upon every county commission to adopt ordinances
regulating the repair, alteration or improvement, or the
vacating and closing or removal or demolition, or any
combination thereof, of any dwellings or other buildings,
except for buildings utilized for farm purposes on land
actually being used for farming, unfit for human habita-
tion due to dilapidation, defects increasing the hazard of
fire, accidents or other calamities, lack of ventilation, light
or sanitary facilities or any other conditions prevailing in
any dwelling or building, whether used for human habita-
tion or not, which would cause such dwellings or other
buildings to be unsafe, unsanitary, dangerous or detrimen-
tal to the public safety or welfare, whether the result of
natural or manmade force or effect.

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

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

(d) Any ordinance adopted pursuant to the provisions of
this section shall provide fair and equitable rules of
procedure and any other standards deemed necessary to
guide the enforcement agency, or its agents, in the investigation of dwelling or building conditions, accumulation of refuse or debris, overgrown vegetation or toxic spillage or toxic seepage, and shall provide for fair and equitable rules of procedure for instituting and conducting hearings in such matters before the county commission. Any entrance upon premises for the purpose of making examinations shall be made in such manner as to cause the least possible inconvenience to the persons in possession.

(e) Any county commission adopting ordinances authorized by this section shall hear and determine complaints of the enforcement agency. Complaints shall be initiated by petition of the county engineer (or other technically qualified county employee or consulting engineer) on behalf of and at the direction of the enforcement agency, but only after that agency has investigated and determined that any dwelling, building, accumulation of refuse or debris, overgrown vegetation or toxic spillage or toxic seepage is unsafe, unsanitary, dangerous or detrimental to the public safety or welfare and should be repaired, altered, improved, vacated, removed, closed, cleaned or demolished. The county commission shall cause the owner or owners of the private land in question to be served with a copy of the complaint. Service shall be accomplished in the manner provided in rule four of the West Virginia rules of civil procedure. The complaint shall state the findings and recommendations of the enforcement agency and that unless the owner or owners of the property file with the clerk of the county commission a written request for a hearing within ten days of receipt of the complaint, an order will be issued by the county commission implementing the recommendations of the enforcement agency. If the owner or owners of the property file a request for a hearing, the county commission shall issue an order setting this matter down for hearing within twenty days. Hearings shall be recorded by electronic device or by court reporter. The West Virginia rules of evidence do not apply
to such proceedings, but each party has the right to present evidence and examine and cross examine all witnesses. The enforcement agency has the burden of proving its allegation by a preponderance of the evidence and has the duty to go forward with the evidence. At the conclusion of the hearing the county commission shall make findings of fact, determinations and conclusions of law as to whether the dwelling or building: Is unfit for human habitation due to dilapidation; has defects that increase the hazard of fire, accidents or other calamities, lacks ventilation, light or sanitary facilities; or any other conditions prevailing in the dwelling or building, whether used for human habitation or not, and whether the result of natural or manmade force or effect, which would cause such dwelling or other building to be unsafe, unsanitary, dangerous or detrimental to the public safety or welfare; or whether there is an accumulation of refuse or debris; overgrown vegetation; toxic spillage or toxic seepage on private lands which is deemed to be unsafe, unsanitary, dangerous or detrimental to the public safety or welfare, whether the result of natural or manmade force or effect. The county commission has authority to order the owner or owners thereof to repair, alter, improve, vacate, remove, close, clean up or demolish the dwelling or building in question or to remove or clean up any accumulation of refuse or debris, overgrown vegetation or toxic spillage or toxic seepage within a reasonable time and to impose daily civil monetary penalties on the owner or owners who fail to obey such an order. Appeals from the county commission to the circuit court shall be in accordance with the provisions of article three, chapter fifty-eight of this code.

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

(g) A civil proceeding may be brought in circuit court by the county commission against the owner or owners of the private land which is the subject matter of the order of the county commission to subject the private land in question to a lien for the amount of the contractor's costs in making these ordered repairs, alterations or improvements, or ordered demolition, removal or clean up together with any daily civil monetary penalty imposed and reasonable attorney fees and court costs and to order and decree the sale of the private land in question to satisfy the lien, and to order and decree that the contractor may enter upon the private land in question at any and all times necessary to make improvements, or ordered repairs, alterations or improvements, or ordered demolition, removal or clean up. In addition, the county commission shall have the authority to institute a civil action in a court of competent jurisdiction against the landowner or other responsible party for all costs incurred by the county with respect to the property and for reasonable attorney fees and court costs incurred in the prosecution of the action.

(h) County commissions have the power and authority to receive and accept grants, subsidies, donations and services in kind consistent with the objectives of this section.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
Chairman Senate Committee.

[Signature]
Chairman House Committee

Originated in the Senate.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker House of Delegates

The within ............... approved this the ............... day of ............... April ............... 1998.

[Signature]
Governor