

SB 444

FILED

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
Regular Session, 2004



ENROLLED

SENATE BILL NO. 444

(By Senators HUNTER AND OLIVERIO)



PASSED March 13, 2004

In Effect 90 days from Passage

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Senate Bill No. 444

(BY SENATORS HUNTER AND OLIVERIO)

[Passed March 13, 2004; in effect ninety days from passage.]

AN ACT to amend and reenact §7-1-3ff of the code of West Virginia, 1931, as amended, relating to authority of county commissions to hire litter control officer; and requiring county litter control officer to enforce litter laws under the litter control program.

Be it enacted by the Legislature of West Virginia:

That §7-1-3ff of the code of West Virginia, 1931, 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 the 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 cleanup of any accumulation
19 of refuse or debris, overgrown vegetation or toxic spillage
20 or toxic seepage located on private lands which is deter-
21 mined to be unsafe, unsanitary, dangerous or detrimental
22 to the public safety or welfare, whether the result of
23 natural or manmade force or effect.

24 (c) The county commission, in formally adopting ordi-
25 nances, shall designate an enforcement agency which shall
26 consist of the county engineer (or other technically quali-
27 fied county employee or consulting engineer), county
28 health officer or his or her designee, a fire chief from a
29 county fire company, the county litter control officer, if
30 the commission chooses to hire one, and two members at
31 large selected by the county commission to serve two-year
32 terms. The county sheriff shall serve as an ex officio
33 member of the enforcement agency and the county officer

34 charged with enforcing the orders of the county commis-
35 sion under this section.

36 (d) In addition to the powers and duties imposed by this
37 section, county litter control officers shall have authority
38 to issue citations for violations of the provisions of section
39 twenty-six, article seven, chapter twenty of this code, after
40 completing a training course offered by the West Virginia
41 division of natural resources. Nothing in this subsection
42 supercedes the authority or duty of other law-enforcement
43 officers to preserve law and order and enforce the litter
44 control program.

45 (e) Any ordinance adopted pursuant to the provisions of
46 this section shall provide fair and equitable rules of
47 procedure and any other standards considered necessary
48 to guide the enforcement agency, or its agents, in the
49 investigation of dwelling or building conditions, accumu-
50 lation of refuse or debris, overgrown vegetation or toxic
51 spillage or toxic seepage and shall provide for fair and
52 equitable rules of procedure for instituting and conducting
53 hearings in the matters before the county commission.
54 Any entrance upon premises for the purpose of making
55 examinations shall be made in a manner as to cause the
56 least possible inconvenience to the persons in possession.

57 (f) Any county commission adopting ordinances autho-
58 rized by this section shall hear and determine complaints
59 of the enforcement agency. Complaints shall be initiated
60 by citation issued by the county litter control officer or
61 petition of the county engineer (or other technically
62 qualified county employee or consulting engineer) on
63 behalf of and at the direction of the enforcement agency,
64 but only after that agency has investigated and determined
65 that any dwelling, building, accumulation of refuse or
66 debris, overgrown vegetation or toxic spillage or toxic
67 seepage is unsafe, unsanitary, dangerous or detrimental to
68 the public safety or welfare and should be repaired,
69 altered, improved, vacated, removed, closed, cleaned or
70 demolished. The county commission shall cause the owner

71 or owners of the private land in question to be served with
72 a copy of the complaint. Service shall be accomplished in
73 the manner provided in rule four of the West Virginia rules
74 of civil procedure. The complaint shall state the findings
75 and recommendations of the enforcement agency and that
76 unless the owner or owners of the property file with the
77 clerk of the county commission a written request for a
78 hearing within ten days of receipt of the complaint, an
79 order will be issued by the county commission implement-
80 ing the recommendations of the enforcement agency. If
81 the owner or owners of the property file a request for a
82 hearing, the county commission shall issue an order setting
83 this matter down for hearing within twenty days. Hear-
84 ings shall be recorded by electronic device or by court
85 reporter. The West Virginia rules of evidence do not apply
86 to the proceedings, but each party has the right to present
87 evidence and examine and cross-examine all witnesses.
88 The enforcement agency has the burden of proving its
89 allegation by a preponderance of the evidence and has the
90 duty to go forward with the evidence. At the conclusion of
91 the hearing the county commission shall make findings of
92 fact, determinations and conclusions of law as to whether
93 the dwelling or building: Is unfit for human habitation due
94 to dilapidation; has defects that increase the hazard of fire,
95 accidents or other calamities, lacks ventilation, light or
96 sanitary facilities; or any other conditions prevailing in the
97 dwelling or building, whether used for human habitation
98 or not and whether the result of natural or manmade force
99 or effect, which would cause such dwelling or other
100 building to be unsafe, unsanitary, dangerous or detrimen-
101 tal to the public safety or welfare; or whether there is an
102 accumulation of refuse or debris, overgrown vegetation,
103 toxic spillage or toxic seepage on private lands which is
104 determined to be unsafe, unsanitary, dangerous or detri-
105 mental to the public safety or welfare, whether the result
106 of natural or manmade force or effect. The county com-
107 mission has authority to order the owner or owners thereof
108 to repair, alter, improve, vacate, remove, close, clean up or

109 demolish the dwelling or building in question or to remove
110 or cleanup any accumulation of refuse or debris, over-
111 grown vegetation or toxic spillage or toxic seepage within
112 a reasonable time and to impose daily civil monetary
113 penalties on the owner or owners who fail to obey an
114 order. Appeals from the county commission to the circuit
115 court shall be in accordance with the provisions of article
116 three, chapter fifty-eight of this code.

117 (g) Upon the failure of the owner or owners of the
118 private land to perform the ordered duties and obligations
119 as set forth in the order of the county commission, the
120 county commission may advertise for and seek contractors
121 to make the ordered repairs, alterations or improvements,
122 or the ordered demolition, removal or cleanup. The county
123 commission may enter into any contract with any contrac-
124 tor to accomplish the ordered repairs, alterations or
125 improvements or the ordered demolition, removal or
126 cleanup.

127 (h) A civil proceeding may be brought in circuit court by
128 the county commission against the owner or owners of the
129 private land which is the subject matter of the order of the
130 county commission to subject the private land in question
131 to a lien for the amount of the contractor's costs in making
132 these ordered repairs, alterations or improvements or
133 ordered demolition, removal or cleanup, together with any
134 daily civil monetary penalty imposed and reasonable
135 attorney fees and court costs and to order and decree the
136 sale of the private land in question to satisfy the lien and
137 to order and decree that the contractor may enter upon the
138 private land in question at any and all times necessary to
139 make improvements, or ordered repairs, alterations or
140 improvements, or ordered demolition, removal or cleanup.
141 In addition, the county commission shall have the author-
142 ity to institute a civil action in a court of competent
143 jurisdiction against the landowner or other responsible
144 party for all costs incurred by the county with respect to

145 the property and for reasonable attorney fees and court
146 costs incurred in the prosecution of the action.

147 (i) County commissions have the power and authority to
148 receive and accept grants, subsidies, donations and
149 services in kind consistent with the objectives of this
150 section.

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

Larry Jones
.....
Chairman Senate Committee

Greg Butcher
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Darrell E. Gabel
.....
Clerk of the Senate

Bruce M. Boy
.....
Clerk of the House of Delegates

Carl Ray Tomblin
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

The within is approved this the 6th
Day of April, 2004.

Bob Wise
.....
Governor

PRESENTED TO THE
GOVERNOR

DATE 3/26/84

TIME 3:00