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.

(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 habitation 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 habitation or not, which would cause the dwellings or other buildings to be unsafe, unsanitary, dangerous or detrimental 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 cleanup of any accumulation of refuse or debris, overgrown vegetation or toxic spillage or toxic seepage located on private lands which is determined 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 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, the county litter control officer, if the commission chooses to hire one, 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 the enforcement agency and the county officer
charged with enforcing the orders of the county commission under this section.

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

(e) Any ordinance adopted pursuant to the provisions of this section shall provide fair and equitable rules of procedure and any other standards considered 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 the matters before the county commission. Any entrance upon premises for the purpose of making examinations shall be made in a manner as to cause the least possible inconvenience to the persons in possession.

(f) Any county commission adopting ordinances authorized by this section shall hear and determine complaints of the enforcement agency. Complaints shall be initiated by citation issued by the county litter control officer or 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 implement-
ing 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. Hear-
ings shall be recorded by electronic device or by court
reporter. The West Virginia rules of evidence do not apply
to the 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 detrimen-
tal 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
determined to be unsafe, unsanitary, dangerous or detri-
mental to the public safety or welfare, whether the result
of natural or manmade force or effect. The county com-
mmission 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 cleanup any accumulation of refuse or debris, over-
grown 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 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.

(g) 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 cleanup. The county
commission may enter into any contract with any contrac-
tor to accomplish the ordered repairs, alterations or
improvements or the ordered demolition, removal or
cleanup.

(h) 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 cleanup, 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 cleanup.
In addition, the county commission shall have the author-
ity 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.

(i) 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.
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 ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the 16th Day of April, 2004.

Governor