

SB 440

FILED

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WEST VIRGINIA LEGISLATURE

OFFICE OF THE CLERK
WEST VIRGINIA
CLERK OF STATE

SEVENTY-NINTH LEGISLATURE

REGULAR SESSION, 2009



ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 440

(SENATORS KESSLER, UNGER, D. FACEMIRE
AND LAIRD, *original sponsors*)

[Passed April 11, 2009; in effect ninety days from passage.]

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

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[Passed April 11, 2009; 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 giving county litter control officers the authority to issue citations for failure to prove proper disposal of trash and creating, contributing to or allowing an open dump.

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 regulate unsafe or unsanitary structures and refuse on private land; authority to establish an enforcement agency; county litter control officers; procedure for complaints; 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 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 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
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, 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 open dumps, as prohibited by subsec-
39 tion (a), section ten, article fifteen, chapter twenty-two of
40 this code, unlawful disposal of litter, as prohibited by
41 section four, article fifteen-a, chapter twenty-two of this
42 code, and failure to provide proof of proper disposal of
43 solid waste, as prohibited by subsection (a), section ten,
44 article four, chapter twenty-two-c of this code, after
45 completing a training course offered by the West Virginia
46 Department of Environmental Protection. Nothing in this
47 subsection supercedes the authority or duty of the Depart-
48 ment of Environmental Protection or other law-enforce-
49 ment officers to preserve law and order and enforce the
50 litter control program.

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

63 (f) (1) Complaints authorized by this section shall be
64 brought before the county commission. Complaints shall
65 be initiated by citation issued by the county litter control
66 officer or petition of the county engineer (or other techni-
67 cally qualified county employee or consulting engineer) on
68 behalf of and at the direction of the enforcement agency,
69 but only after that agency has investigated and deter-
70 mined that any dwelling, building, accumulation of refuse
71 or debris, overgrown vegetation or toxic spillage or toxic

72 seepage is unsafe, unsanitary, dangerous or detrimental to
73 the public safety or welfare and should be repaired,
74 altered, improved, vacated, removed, closed, cleaned or
75 demolished.

76 (2) The county commission shall cause the owner or
77 owners of the private land in question to be served with a
78 copy of the complaint. Service shall be accomplished in
79 the manner provided in rule four of the West Virginia
80 Rules of Civil Procedure.

81 (3) The complaint shall state the findings and recom-
82 mendations of the enforcement agency and that unless the
83 owner or owners of the property file with the clerk of the
84 county commission a written request for a hearing within
85 ten days of receipt of the complaint, an order will be
86 issued by the county commission implementing the
87 recommendations of the enforcement agency.

88 (4) If the owner or owners of the property file a request
89 for a hearing, the county commission shall issue an order
90 setting this matter down for hearing within twenty days.
91 Hearings shall be recorded by electronic device or by court
92 reporter. The West Virginia rules of evidence do not apply
93 to the proceedings, but each party has the right to present
94 evidence and examine and cross-examine all witnesses.

95 (5) The enforcement agency has the burden of proving
96 its allegation by a preponderance of the evidence and has
97 the duty to go forward with the evidence.

98 (6) At the conclusion of the hearing the county commis-
99 sion shall make findings of fact, determinations and
100 conclusions of law as to whether the dwelling or building:
101 Is unfit for human habitation due to dilapidation; has
102 defects that increase the hazard of fire, accidents or other
103 calamities, lacks ventilation, light or sanitary facilities; or
104 any other conditions prevailing in the dwelling or build-
105 ing, whether used for human habitation or not and

106 whether the result of natural or manmade force or effect,
107 which would cause such dwelling or other building to be
108 unsafe, unsanitary, dangerous or detrimental to the public
109 safety or welfare; or whether there is an accumulation of
110 refuse or debris, overgrown vegetation, toxic spillage or
111 toxic seepage on private lands which is determined to be
112 unsafe, unsanitary, dangerous or detrimental to the public
113 safety or welfare, whether the result of natural or man-
114 made force or effect.

115 (7) The county commission has authority to order the
116 owner or owners thereof to repair, alter, improve, vacate,
117 remove, close, clean up or demolish the dwelling or
118 building in question or to remove or clean up any accumu-
119 lation of refuse or debris, overgrown vegetation or toxic
120 spillage or toxic seepage within a reasonable time and to
121 impose daily civil monetary penalties on the owner or
122 owners who fail to obey an order.

123 (8) Appeals from the county commission to the circuit
124 court shall be in accordance with the provisions of article
125 three, chapter fifty-eight of this code.

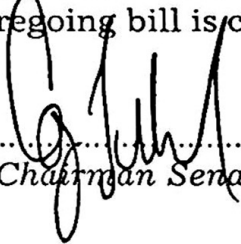
126 (g) Upon the failure of the owner or owners of the
127 private land to perform the ordered duties and obligations
128 as set forth in the order of the county commission, the
129 county commission may advertise for and seek contractors
130 to make the ordered repairs, alterations or improvements
131 or the ordered demolition, removal or clean up. The
132 county commission may enter into any contract with any
133 contractor to accomplish the ordered repairs, alterations
134 or improvements or the ordered demolition, removal or
135 clean up.

136 (h) A civil proceeding may be brought in circuit court
137 by the county commission against the owner or owners of
138 the private land or other responsible party that the subject
139 matter of the order of the county commission to subject
140 the private land in question: (1) To a lien for the amount of

141 the contractor's costs in making these ordered repairs,
142 alterations or improvements or ordered demolition,
143 removal or clean up, together with any daily civil mone-
144 tary penalty imposed; (2) to order and decree the sale of
145 the private land in question to satisfy the lien; (3) to order
146 and decree that the contractor may enter upon the private
147 land in question at any and all times necessary to make
148 ordered repairs, alterations or improvements, or ordered
149 demolition, removal or clean up; and (4) to order the
150 payment of all costs incurred by the county with respect to
151 the property and for reasonable attorney fees and court
152 costs incurred in the prosecution of the action.

153 (i) County commissions have the power and authority to
154 receive and accept grants, subsidies, donations and
155 services in kind consistent with the objectives of this
156 section.


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


.....
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


.....
Speaker House of Delegates

The within *is appended* this the *16*
Day of *May*, 2009.


.....
Governor

PRESENTED TO THE
GOVERNOR

MAY 7 2009

Time 11:15 AM