WEST VIRGINIA LEGISLATURE
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.]
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.
(d) In addition to the powers and duties imposed by this section, county litter control officers shall have authority to issue citations for open dumps, as prohibited by subsection (a), section ten, article fifteen, chapter twenty-two of this code, unlawful disposal of litter, as prohibited by section four, article fifteen-a, chapter twenty-two of this code, and failure to provide proof of proper disposal of solid waste, as prohibited by subsection (a), section ten, article four, chapter twenty-two-c of this code, after completing a training course offered by the West Virginia Department of Environmental Protection. Nothing in this subsection supersedes the authority or duty of the Department of Environmental Protection or 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) (1) Complaints authorized by this section shall be brought before the county commission. 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
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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
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 determined to be unsafe, unsanitary, dangerous or detrimental to the public safety or welfare, whether the result of natural or manmade force or effect.

(7) 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 an order.

(8) 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 clean up. The county commission may enter into any contract with any contractor to accomplish the ordered repairs, alterations or improvements or the ordered demolition, removal or clean up.

(h) A civil proceeding may be brought in circuit court by the county commission against the owner or owners of the private land or other responsible party that the subject matter of the order of the county commission to subject the private land in question: (1) 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; (2) to order and decree the sale of the private land in question to satisfy the lien; (3) to order and decree that the contractor may enter upon the private land in question at any and all times necessary to make ordered repairs, alterations or improvements, or ordered demolition, removal or clean up; and (4) to order the payment of 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 Day of , 2009.

Governor
PRESENTED TO THE GOVERNOR

MAY 7 2009

Time 11:15