WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Enrolled

Committee Substitute

for

Senate Bill 412

SENATOR TRUMP, original sponsor

[Passed March 6, 2018; in effect 90 days from passage]
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[Passed March 6, 2018; in effect 90 days from passage]
AN ACT to amend and reenact §7-1-3ff of the Code of West Virginia, 1931, as amended; and to amend and reenact §30-29-1 of said code, all relating to providing that any litter control officer who is trained and certified as a law-enforcement officer and whose certification is active has the same authority as any other law-enforcement officer to enforce all litter laws; and including litter control officers in the definition of the term “law-enforcement officer”.

Be it enacted by the Legislature of West Virginia:

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

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.

(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 used 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 clean up 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 open dumps, as prohibited by §22-15-10(a) of
this code, unlawful disposal of litter, as prohibited by §22-15A-4 of this code, and failure to provide
proof of proper disposal of solid waste, as prohibited by §22C-4-10(a) of this code, after
completing a training course offered by the West Virginia Department of Environmental
Protection: Provided, That any litter control officer who is trained and certified as a law-
enforcement officer and whose certification is active has the same authority as any other law-
enforcement officer to enforce all litter laws in this code. 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 that causes 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 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.

(2) 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.

(3) 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 10 days of receipt of the complaint, an order 
will be issued by the county commission implementing the recommendations of the enforcement 
agency.

(4) 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 20 days. Hearings 
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.

(5) 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.

(6) 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
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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 the 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 §58-3-1 et seq. 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 may receive and accept grants, subsidies, donations, and services in kind consistent with the objectives of this section.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 29. LAW-ENFORCEMENT TRAINING AND CERTIFICATION.

§30-29-1. Definitions.

For the purposes of this article, unless a different meaning clearly appears in the context:

(1) “Approved law-enforcement training academy” means any training facility which is approved and authorized to conduct law-enforcement training as provided in this article;

(2) “Chief executive” means the Superintendent of the State Police; the chief natural resources police officer of the Division of Natural Resources; the sheriff of any West Virginia county; any administrative deputy appointed by the chief natural resources police officer of the Division of Natural Resources; or the chief of any West Virginia municipal law-enforcement agency;

(3) “County” means the 55 major political subdivisions of the state;

(4) “Exempt rank” means any noncommissioned or commissioned rank of sergeant or above;

(5) “Governor’s Committee on Crime, Delinquency, and Correction” or “Governor’s committee” means the Governor’s Committee on Crime, Delinquency, and Correction established as a state planning agency pursuant to §15-9-1 of this code;

(6) “Law-enforcement officer” means any duly authorized member of a law-enforcement agency who is authorized to maintain public peace and order, prevent and detect crime, make
arrests, and enforce the laws of the state or any county or municipality thereof, other than parking ordinances, and includes those persons employed as campus police officers at state institutions of higher education in accordance with the provisions of §18B-4-5 of this code, and persons employed by the Public Service Commission as motor carrier inspectors and weight-enforcement officers charged with enforcing commercial motor vehicle safety and weight restriction laws, although those institutions and agencies may not be considered law-enforcement agencies. The term also includes those persons employed as county litter control officers charged with enforcing litter laws: Provided, That those persons have been trained and certified as law-enforcement officers and that certification is currently active. The term also includes those persons employed as rangers by resort area districts in accordance with the provisions of §7-25-23 of this code, although no resort area district may be considered a law-enforcement agency: Provided, however, That the subject rangers shall pay the tuition and costs of training. As used in this article, the term “law-enforcement officer” does not apply to the chief executive of any West Virginia law-enforcement agency or any watchman or special natural resources police officer;

(7) “Law-enforcement official” means the duly appointed chief administrator of a designated law-enforcement agency or a duly authorized designee;

(8) “Municipality” means any incorporated town or city whose boundaries lie within the geographic boundaries of the state;

(9) “Subcommittee” or “law-enforcement professional standards subcommittee” means the subcommittee of the Governor’s Committee on Crime, Delinquency, and Correction created by §30-29-2 of this code; and

(10) “West Virginia law-enforcement agency” means any duly authorized state, county, or municipal organization employing one or more persons whose responsibility is the enforcement of laws of the state or any county or municipality thereof: Provided, That neither the Public Service Commission nor any state institution of higher education nor any resort area district is a law-enforcement agency.
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The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signatures]
Chairman, Senate Committee

Chairman, House Committee

Originated in the Senate.

In effect 90 days from passage.

[Signatures]
Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 27th Day of March, 2018.

Governor
PRESENTED TO THE GOVERNOR

Time 10:15am