
Local Government Committee

HB 2519

Brief Description: Allowing nuisance abatement cost recovery for cities.

Sponsors: Representatives McCaslin, Gregerson, Shea, Appleton, Tharinger, Peterson, McBride, Manweller, Stokesbary, Reykdal, Sells, Fitzgibbon, Springer, Kochmar, Orwall, Nealey, Pike, Van De Wege and Stanford.

Brief Summary of Bill

- Authorizes cities and towns to levy a special assessment against property for the expense of abating a nuisance that threatens health or safety.
- Provides that the special assessment constitutes a lien against property and, after the lien is recorded, up to \$2,000 of the recorded lien is of equal rank with state, county, and municipal taxes.
- Requires a city or town: (a) prior to abatement, to send notice to the property owner that abatement is pending and a special assessment may be levied for the expense; and (b) prior to levying the special assessment, send notice to the property owner and any identifiable mortgage holder stating that a special assessment will be levied and the estimated amount of the assessment.

Hearing Date: 1/27/16

Staff: Michaela Murdock (786-7289).

Background:

"Nuisance" is defined in statute as unlawfully doing an act, or omitting to perform a duty, which:

- annoys, injures, or endangers the comfort, repose, health, or safety of others;
- offends decency;
- unlawfully interferes with, obstructs, or renders dangerous for passage a lake, navigable river, bay, stream, canal, basin, public park, square, street, or highway; or
- in any way renders other persons insecure in life or in the use of property.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

A public nuisance is a nuisance that affects equally the rights of an entire community or neighborhood. Statutes further define other types of nuisances and provide civil and criminal remedies and penalties for creating or allowing nuisances.

Authority of Cities and Towns to Declare Nuisances.

All cities and towns are authorized to declare what is deemed a nuisance and to abate the nuisance. Various statutes provide the following:

- First class cities are authorized to declare and define a nuisance, abate any nuisance, and impose fines upon persons creating, continuing, or allowing nuisances.
- Second class cities are authorized to declare and define a nuisance, prevent or abate nuisances at the expense of the party creating or maintaining the nuisance, and levy a special assessment against premises where the nuisance is located to recover abatement costs.
- Code cities are granted by reference the same authority as other cities to declare and define nuisances and to abate nuisances.
- Towns may declare by ordinance what is deemed a nuisance and may exercise all remedies provided by law for preventing and abating nuisances.

Additionally, any city or town may by general ordinance require property owners: (a) to remove all or part of trees or vegetation that have died or that impair the use of sidewalks or streets; and (b) to remove debris on their property that is a fire hazard or menace to public health, safety, or welfare. Cities and towns are authorized to provide for removal of hazardous trees, vegetation, and debris, and to charge the property owner for the cost of removal. The charge is a lien against the property, and may be enforced and foreclosed in the manner provided by law for liens for labor and materials (*i.e.*, mechanics' liens).

Buildings or Premises Unfit for Use or Habitation.

All cities and towns are authorized by statute to adopt ordinances relating to dwellings, buildings, structures, or premises that are unfit for human habitation or other uses due to: dilapidation; disrepair; structural defects; defects increasing the hazards of fire, accidents, or other calamities; inadequate ventilation and uncleanliness; inadequate light or sanitary facilities; inadequate drainage; overcrowding; or other conditions that are inimical to the health and welfare of the community.

Under certain circumstances, a city or town may repair, close, remove, or demolish a dwelling, building, structure, or premises found to be unfit for use or habitation. The amount of the cost to take such action may be assessed against the real property. The assessment constitutes a lien against the property of equal rank with tax liens. If left unpaid, the amount of the assessment may be entered by the county treasurer upon the property tax rolls and collected at the same time as general taxes.

Liens and Lien Priority.

A mechanics' lien is a lien on property for the contract price of labor, professional services, materials, or equipment that was furnished for the improvement of real property. The lien is prior to any lien, mortgage, deed of trust, or other encumbrance that attaches after the mechanics' lien attaches, or that was unrecorded at the time labor, services, materials, or equipment included in the mechanics' lien was first furnished. A mechanics' lien must be recorded not later than 90 days after the person claiming a lien ceases to furnish labor, services, materials, or equipment or

the last date that employee benefit contributions were due. From the time that a mechanics' lien is recorded, the lien generally attaches to the property for a period of eight months.

All taxes and levies imposed by the state, a county, or a municipality are liens upon the real and personal property upon which the taxes or levies are imposed or assessed. A state, county, or municipality tax lien has priority to and must be fully paid and satisfied before any other recognizance, mortgage, judgment, debt, obligation, or responsibility.

Collection of Special Assessments.

A local government may contract with the county treasurer for collection of special assessments, excise taxes, rates, or charges imposed by the local government on property. If a contract is entered into, notice of special assessments, excise taxes, rates, or charges may be: (a) included on the notice of property taxes due; (b) included on a separate notice mailed with the notice of property taxes due; or (c) sent separately from the notice of property taxes due. County treasurers may impose an annual fee for collecting amounts on behalf of local governments, not to exceed 1 percent of the value of the special assessments, excise taxes, rates, or charges collected.

Summary of Bill:

Cities and towns that exercise authority under various existing statutes or other law to declare a nuisance, abate a nuisance, or impose fines or costs upon persons who create, continue, or maintain a nuisance are authorized to levy a special assessment on property where a nuisance is situated. The special assessment is for the purpose of reimbursing the city or town for the expense of abatement. The special assessment levied by the city or town is a lien, and after it is recorded in the county, up to \$2,000 of the recorded lien is of equal rank with state, county, and municipal taxes.

Cities and towns that exercise authority to abate a nuisance or levy a special assessment for the costs of abatement must provide prior notice of the action to the property owner. Notices must be sent by regular mail as follows:

- Before a city or town abates a nuisance, notice must be provided to the property owner that: (a) abatement is pending; and (b) a special assessment may be levied on the property.
- Before a special assessment is levied, notice must be provided to the property owner and any identifiable mortgage holder stating: (a) that a special assessment will be levied on the property; and (b) the estimated amount of the special assessment.

Cities and towns levying a special assessment for nuisance abatement may contract with the county treasurer to collect the special assessment in accordance with applicable statute.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.