

HOUSE BILL REPORT

SSB 5694

As Reported by House Committee On: Local Government

Title: An act relating to assessments for nuisance abatement in cities and towns.

Brief Description: Allowing assessments for nuisance abatement in cities and towns.

Sponsors: Senate Committee on Government Operations & Security (originally sponsored by Senators Padden, Baumgartner and Billig).

Brief History:

Committee Activity:

Local Government: 3/18/15, 3/19/15 [DPA].

**Brief Summary of Substitute Bill
(As Amended by Committee)**

- Authorizes a city or town to levy a special assessment, not to exceed \$5,000, on land or premises where a nuisance is situated to reimburse the city or town for the expense of abatement.
- Requires a city or town that exercises authority to abate a nuisance to: (a) send notice to the property owner that abatement is pending and a special assessment may be levied on the property for the expense of abatement; and (b) prior to levying a special assessment, send notice to the property owner and any mortgage holder that a special assessment will be levied and provide the estimated amount of the assessment.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

Majority Report: Do pass as amended. Signed by 7 members: Representatives Takko, Chair; Gregerson, Vice Chair; Fitzgibbon, McBride, McCaslin, Peterson and Pike.

Minority Report: Do not pass. Signed by 2 members: Representatives Taylor, Ranking Minority Member; Griffey, Assistant Ranking Minority Member.

Staff: Michaela Murdock (786-7289).

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.

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.

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 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, or 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.

Mechanics' Liens.

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. A mechanics' lien may be foreclosed and enforced by civil action in the manner prescribed for judicial foreclosure of a mortgage.

Collection of Special Assessments by County Treasurer.

A local government may contract with the county treasurer for collection of special assessments, excise taxes, rates, or charges imposed by the local government. 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 Amended Bill:

Cities and towns that exercise authority under applicable 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, not to exceed \$5,000, 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 that has equal rank with state, county, and municipal taxes.

Cities and towns that choose to abate a nuisance or levy a special assessment must send notice 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: (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.

Amended Bill Compared to Substitute Bill:

The maximum amount of the special assessment that a city or town may levy for the expense of nuisance abatement is increased from \$2,000, as provided in the substitute bill, to \$5,000.

Appropriation: None.

Fiscal Note: Not requested.

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

Staff Summary of Public Testimony:

(In support) Cities such as Spokane Valley have had problems recouping costs for nuisance abatement. This bill will benefit taxpayers by helping cities recoup these costs. Cities will be authorized to use the same authority that counties currently have, although, unlike special assessments levied by counties, special assessments levied by cities are limited to \$2,000.

When cities take abatement action, they do so to address health and safety hazards associated with the nuisance, and to protect neighborhood property values effected by a nuisance. Garbage and junk that accumulates on properties creates hazards. When complaints about a property are received by a city, the city makes every attempt to work with the owner to clean up the property. If such efforts fail, though, the city must go to court, get an order requiring cleanup, and use taxpayer money to address the immediate health and safety risks posed by the nuisance. Cities taking abatement action do not beautify properties, they only address the immediate hazards.

This bill will help cities recover the cost of doing nuisance cleanups. Taxpayers should not be burdened with cleaning up other peoples' messes, which are often drug-related. Currently, cities can send a bill to property owners for the cost of cleanup, but if the person does not pay, nothing happens. For example, Spokane Valley currently has about \$40,000 of outstanding abatement costs. The special assessment authorized by the bill will have the same priority as property taxes, and when the city sends an abatement cost notice to a property owner, the notice will have some teeth to it.

This version of the bill is slightly different than prior versions. Provisions governing notice to property owners and banks have been expanded. Also, a \$2,000 cap has been placed on the special assessment that a city is authorized to levy. A cap on the special assessment will

give banks some predictability in anticipating potential impacts to the notes they hold on properties. While banks, and community banks in particular, are not supportive of liens that can potentially impact the priority of notes they hold, the approach taken in the bill is a good middle-of-the-road approach that recognizes both that banks need certainty and that local jurisdictions need a way to recoup costs.

The original bill had a \$5,000 cap, but an amendment lowered it to \$2,000. The \$2,000 cap is too low for cities. The average cost of abatement is approximately \$4,750. An amendment that changes the cap back to \$5,000 is requested. Also, an amendment that limits the priority of a special assessment lien to the first \$5,000, and provides that any amounts over \$5,000 constitute a lower priority lien, is also requested.

(Opposed) Nothing is more certain to interfere with property owners' rights than granting a new and potentially unregulated power to municipalities to impose special assessments worth thousands of dollars on property, and thereby subject property to possible foreclosure and seizure. While counties already have this authority, counties are larger, are better administered, and have better funding and legal representation. Giving similar power to cities is not warranted. In the hands of an opportunistic city, citizens could be deprived of their homes.

This bill lacks important protections such as due process requirements, standards to prevent unlawful seizures of property, or a process for appealing the special assessment. Granting this special assessment authority to cities is not in the best interests of the citizens of this state. Given the small amount of money that Spokane Valley wishes to recoup, it is not worth interfering with citizens' property rights. If this bill must pass, pass it only as a pilot project located in Spokane.

Persons Testifying: (In support) Senator Padden, prime sponsor; and Rod Higgins and Cary Driskoll, City of Spokane Valley.

(Opposed) Arthur West, National Freedom Alliance.

Persons Signed In To Testify But Not Testifying: None.