

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 214

(Senator Brochin, *et al.*)

Judicial Proceedings

Local Government - Public Nuisances - Restriction on Local "Padlock" Laws

This bill prohibits a county from enacting or enforcing a local law that authorizes the chief law enforcement officer to order the discontinuance of a public nuisance on any premises or the closing of the premises to the extent necessary to abate a public nuisance, unless the local law provides for a hearing before a circuit court judge without the necessity of a request by the owner of the premises, before the issuance of the order. The bill's provisions apply to all counties, including Baltimore City.

Fiscal Summary

State Effect: None. The bill does not materially affect State operations or finances.

Local Effect: While the bill may result in local laws that generate additional litigation in the circuit courts, the impact is likely small enough that it can be handled with existing resources. Revenues are not affected.

Small Business Effect: Minimal.

Analysis

Current Law: The concept of "nuisance" originates under common law and is something that causes offense, annoyance, trouble, or injury. A private nuisance obstructs the rights of a specific individual or group, while a public nuisance is an act or omission that obstructs, damages, or inconveniences the rights of the community.

Nuisance abatement is generally handled by local jurisdictions. However, several types of nuisances are specifically addressed in State law, including:

- conditions that are dangerous to health or safety, including an inadequately protected swimming pool, an unprotected open ditch, an unsanitary outhouse, a foul pigpen, an improperly functioning sewage system, an unkempt junkyard or scrap metal processing facility, an excessive accumulation of trash or garbage, a dead animal, a contaminated or inadequately protected water supply, a rodent harborage, poor housekeeping that could endanger an individual's health, or any condition that may endanger health and may be transmitted by means including surface drainage and air currents (Title 20 of the Health-General Article);
- dwellings, buildings, vehicles, vessels, aircraft, or any other place(s) used by individuals to administer illegally controlled substances or where controlled dangerous substances or controlled substances or controlled paraphernalia are manufactured, distributed, dispensed, stored, or concealed illegally (Title 5 of the Criminal Law Article);
- conditions affecting public health and involving plumbing, drainage, offensive trades, water supplies, and disposal of any waste material (Title 10 of the Environment Article); and
- property that is used for prostitution or for the administration, manufacture, distribution, or storage of a controlled dangerous substance or related paraphernalia (Title 14 of the Real Property Article).

Depending on the nuisance, the department charged with abating the nuisance is authorized to enter onto private property to determine its existence.

Additionally, each county board of health is authorized to adopt and enforce rules and regulations on any nuisance or cause of disease in the county. If a county health officer investigates and finds a nuisance, the health officer is required to serve a written notice to the person who is causing the nuisance, ordering the person to abate the nuisance within a specified period of time.

A municipality may provide that violations of ordinances and resolutions authorized by this division are punishable as misdemeanors. A penalty for a violation of an ordinance or resolution that is declared to be a misdemeanor may not exceed imprisonment for six months and/or a fine of \$1,000.

Unless State law classifies a violation as a criminal offense, a municipality may provide, by law, that a violation of a municipal ordinance is a municipal infraction. A municipal infraction is a civil offense. A municipality may classify as a municipal infraction a violation of an ordinance or regulation concerning zoning or land use and littering in the municipality. A fine not exceeding \$1,000 may be imposed for each municipal infraction.

Local Expenditures: Local jurisdictions that were surveyed regarding the potential fiscal impact of the bill advise that the bill has no fiscal impact. However, currently, a hearing for a business that is “padlocked” is held by the local jurisdiction. The bill requires that a local law provide for a hearing before a circuit court judge; therefore, a potential decrease in hearings held by the local jurisdiction may result if such local laws are created. Likewise, the bill may result in an increase in caseloads for the circuit courts. An increase is also possible for jury trials and appeals. While the impact on caseloads is difficult to project due to uncertainty regarding the number of such local laws that will be enacted or enforced and the resulting additional case filings, the fiscal and operational impact on the circuit courts is not expected to be significant.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Garrett and Montgomery counties; Judiciary (Administrative Office of the Courts); Department of Legislative Services

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