

Department of Legislative Services
Maryland General Assembly
2002 Session

FISCAL NOTE
Revised

Senate Bill 672 (Senator Munson, *et al.*)

Judicial Proceedings

Environmental Matters

Nuisance Control - Authority to Investigate and File a Complaint - Penalties for Violations

This bill redefines “nuisance,” authorizes a local health officer to perform duties related to nuisances formerly reserved to the Secretary of Health and Mental Hygiene, and increases the fines related to nuisances and the amount of money that may be spent to abate a nuisance.

Fiscal Summary

State Effect: Minimal increase in general fund revenues due to the bill’s penalty provisions. Potential minimal increase in general fund expenditures for nuisance abatement.

Local Effect: Any additional work for local health officers could be handled within existing resources.

Small Business Effect: None.

Analysis

Bill Summary: A nuisance is a condition that is 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, a dead animal, a contaminated or inadequately protected water supply, a rodent harborage, or poor housekeeping that could endanger the health of the owner, occupant, employee, or

neighbor. A nuisance also means any condition that may endanger health that may be transmitted by running streams, surface drainage, air currents, birds, domestic animals, or human beings. However, this does not include conditions resulting from farm operations following generally accepted agricultural practices that are not creating dangerous health or safety conditions.

The bill allows a local health officer to investigate and devise a means of controlling a suspected nuisance, and to bring an action to enjoin any person from committing a nuisance. If a local health officer finds that a nuisance exists, the health officer is required to serve written notice to the person who is causing the nuisance ordering the person to abate the nuisance within a specified time. The notice must be served on the person who is causing the nuisance, or if that person cannot be found, the notice is to be served on the owner or occupant of the property where the nuisance exists. A local health officer may file a complaint in the circuit court for the county where the nuisance exists if the person fails to comply with the requirements of the notice to abate the nuisance. The complaint may seek a court order requiring: (1) compliance with the requirements of the abatement notice; (2) abatement of the nuisance within a specified time; (3) prevention of the nuisance from recurring; or (4) payment of a fine of not more than \$1,000.

The bill eliminates the provision that on the written complaint of two physicians or of at least three persons who claim to be affected by the condition, the Secretary shall investigate a claim of a nuisance. Under the bill, the Secretary may investigate any suspected nuisance without qualification.

The bill further provides that if the owner, occupant, or tenant served with the abatement order fails to abate or only partially abates the nuisance, a local health officer may summarily abate a nuisance that is an immediate hazard to public health. In doing so, a local health officer or representative may: (1) enter the property; and (2) at the expense of the owner, occupant, or tenant of the property, do any work and use any materials necessary to abate the nuisance. The owner, occupant, or tenant must reimburse the State for the cost of the abatement.

The bill forbids any person from interfering with the local health officer or representative while performing abatement under the provisions of this bill.

The fine for noncompliance with a notice served under the provisions of this bill is a maximum of \$1,000; the fine for failing to exercise due diligence under a court order to abate is a maximum of \$1,000; the fine for a person who knowingly or willfully acts contrary to a court order to abate a condition is a maximum of \$1,000; the fine for interfering with the Secretary of Health and Mental Hygiene, a local health officer, or

their representative when entering on any property for the purpose of abatement is \$1,000. The maximum amount that DHMH or a local health officer can spend on abatement is \$5,000.

Imposing the fines for not following a court order to abate a condition, interfering with the abating of a nuisance, violating a rule or regulation regarding nuisances, or not abating a nuisance in Cecil or Allegany counties does not limit a circuit court's jurisdiction to order injunctive or other equitable relief to abate a nuisance. Imposing the other fines may not be construed to abrogate any equitable or legal right or remedy otherwise available under law to abate a nuisance.

The Department of Health and Mental Hygiene may adopt regulations to implement the provisions of this bill.

Current Law: Only the Secretary of Health and Mental Hygiene is authorized to perform the tasks enumerated in this bill.

The fine for noncompliance with a notice served under the provisions of this bill is a maximum of \$50; the fine for failing to exercise due diligence under a court order to abate is a maximum of \$10 per day for each day the condition is not abated; the fine for a person who knowingly or willfully acts contrary to a court order to abate a condition is \$20 for each day the violation continues; the fine for interfering with the Secretary or a representative of the Secretary is \$100. These violations are misdemeanors. The maximum amount that can be spent by the State on abatement is \$500.

State Fiscal Effect: Higher fines could generate an increase in general fund revenues. Any such increase is expected to be minimal. The bill's provision that increases the amount of money spent on abatement, from \$500 to \$5,000, could cause an increase in expenditures if this money is not recovered from the property owner, occupant, or tenant.

Additional Information

Prior Introductions: A similar bill was introduced as SB 577 in the 2001 session. It received an unfavorable report from the Senate Judicial Proceedings Committee.

Cross File: HB 685 (Delegates Owings and Hubbard) - Environmental Matters.

Information Source(s): Montgomery County, Prince George's County, Worcester County, Department of Health and Mental Hygiene, Department of Legislative Services

Fiscal Note History: First Reader - February 14, 2002
ncs/cer Revised - Senate Third Reader - April 3, 2002
Revised - Enrolled Bill - April 30, 2002

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