

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE

House Bill 1084

(Delegate Alston, *et al.*)

Environmental Matters

**Real Property - Community Improvement Organizations - Liens for Nuisance
Abatement**

This bill authorizes a community improvement organization (CIO) to summarily abate a nuisance on vacant, unoccupied property. If the owner of the property has not reimbursed the CIO the cost of the abatement within 90 days after the abatement has been completed, the CIO may obtain a lien on the real property for the cost of the abatement.

Fiscal Summary

State Effect: The bill does not materially affect State finances or operations.

Local Effect: Potential minimal increase in expenditures due to legal costs in determining the priority of liens on a property with multiple liens.

Small Business Effect: Potential minimal.

Analysis

Bill Summary: “Nuisance” means an act or condition knowingly created, performed, or maintained externally on private property that constitutes a local code violation and that (1) significantly affects other residents of the neighborhood; (2) diminishes the value of neighboring property; and (3) is injurious to public health, safety, or welfare of neighboring residents or obstructs the reasonable use of other property in the neighborhood.

A CIO is a nonprofit organization, including a civic association, organized to (1) advance, encourage, and promote the industrial, economic, commercial, or civic

development of a community; (2) facilitate the reclamation, rehabilitating, and reutilization of vacant, abandoned, foreclosed, or other real property; (3) manage such property pending its reclamation, rehabilitation, and reutilization; (4) assist governmental units or other organizations to assemble, clear, and clear the title of such property; or (5) promote economic and housing development in the county or region.

Before a CIO may summarily abate a nuisance on vacant property, a county, CIO, or homeowners association must serve an abatement order by certified mail to the owner of the property or, if the owner cannot be found, post an abatement order on the property where the nuisance exists. If the owner only partially abates or fails to abate the nuisance within 14 days, a CIO may enter the property and, at the expense of the owner, perform the work or use any materials necessary to abate the nuisance.

Current Law/Background:

The concept of a “nuisance” originates under common law as 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.

In Baltimore City and Anne Arundel, Baltimore, Harford, and Prince George’s counties, a community association, State’s Attorney, county attorney, or local city attorney may bring an action to abate a nuisance based on a local code violation. Each county or city has a slightly different definition for a community association; however, each requires that a community association operate primarily for the promotion of social welfare and general neighborhood improvement and enhancement, be in existence for at least one year, and be tax-exempt under the Internal Revenue Service.

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.

There are several types of nuisances specifically addressed in State law, including:

- the presence of mosquitos, pests, and noxious weeds (Agriculture Article);
- dwellings, buildings, vehicle, vessel, aircraft, or any other place 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 (Criminal Law Article);

- all nuisances that affect public health, including those involving plumbing, drainage, water supplies, and disposal of any waste material (Environment Article);
- all nuisances affecting the sanitary interests of the people of the State, including an inadequately protected swimming pool, a foul pigpen, a deal animal, a contaminated water supply, a rodent harborage, and an excessive accumulation of trash or garbage (Health-General Article); and
- the presence of nonnative aquatic organisms (Natural Resources Article).

Each department charged with abating the above nuisances is authorized to enter onto private property to determine its existence.

Local Fiscal Effect: Montgomery, Washington, and Worcester counties noted there is no impact on local government finances or operations. Baltimore City expressed concern over the CIO's ability to place a lien on the real property. Baltimore City advises that the additional time required to determine which lien is subordinate on properties may cause increased expenditures. Kent County advises that the bill does not have a fiscal impact if a CIO lien is subordinated to any existing county lien.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Kent, Montgomery, Washington, and Worcester counties; Baltimore City; Office of the Attorney General (Consumer Protection Division); Judiciary (Administrative Office of the Courts); Secretary of State; Department of Legislative Services

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ncs/kdm

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