

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE
Revised

House Bill 365

(Delegate Mitchell, *et al.*)

Environmental Matters

Judicial Proceedings

Baltimore City - Nuisance Abatement and Local Code Enforcement - Community Associations

This bill alters several provisions in the nuisance abatement statute for nuisances located in Baltimore City. The bill amends the definitions of a “community association” and “nuisance” and prohibits a community association from seeking injunctive and other equitable relief for abatement of a nuisance if the Baltimore City Department of Housing and Community Development has provided the community association with specified notice that the property is part of an active code enforcement plan. The bill repeals the requirement that a community association must file a bond with the court before seeking relief in a legal action. Assuming all other requirements are met, it also authorizes standing for an action against a vacant dwelling that is maintained in a boarded condition, free from trash and debris, and secure against trespassers and weather entry.

Fiscal Summary

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

Local Effect: Potential minimal decrease in Baltimore City expenditures if the bill results in a greater number of nuisance actions brought by community associations rather than the city. No impact on revenues.

Small Business Effect: Minimal.

Analysis

Bill Summary: The bill alters the definitions of “community association” and “nuisance” for purposes of the nuisance abatement statute. The bill also updates the

references to Baltimore City Code incorporated in the definition of “local code violation.”

The bill defines community association as a nonprofit association, corporation, or other organization that is:

- composed of residents of a community within which a nuisance is located;
- operated exclusively for the promotion of social welfare and general neighborhood improvement and enhancement; and
- exempt from taxation under § 501(c)(3) or (4) of the Internal Revenue Code.

A community association may also be a nonprofit association, corporation, or other organization that is:

- composed of residents of a contiguous community that is defined by specific geographic boundaries, within which a nuisance is located;
- operated for the promotion of the welfare, improvement, and enhancement of that community; and
- in good standing with the State Department of Assessments and Taxation.

The bill redefines nuisance by removing the requirement that a nuisance must diminish the value of neighboring property.

The bill also adds the Housing Authority of Baltimore City (HABC) to the list of entities that may not be the subject of any action brought under the statute or an action resulting from an action brought under the statute against a private property owner.

Current Law/Background:

In General: The concept of a “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.

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

- the presence of mosquitoes, pests, and noxious weeds (Agriculture 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 (Criminal Law Article);

- 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 dead animal, a contaminated water supply, a rodent haborage, 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.

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.

Baltimore City Laws: A community association within Baltimore City may seek injunctive and other equitable relief in the circuit court for the abatement of a nuisance once it complies with the specified notice requirements. A community association means a Maryland nonprofit association, corporation in good standing, or other organization that (1) comprises at least 25 households or 25% of the households, whichever is less, of a local neighborhood consisting of 40 or more individual households as defined by the bylaws or charter of the association; (2) requires, as a condition of membership, the voluntary payment of monetary dues at least annually; (3) is operated primarily for the promotion of social welfare and general neighborhood improvement and enhancement; (4) has been in existence for at least two years when it files an action to abate a nuisance; and (5) either is an Internal Revenue Service (IRS) tax-exempt organization or has been included in the Baltimore City Department of Planning's Community Association Directory for at least two years prior to bringing a nuisance abatement action.

A nuisance means, within the boundaries of the community represented by the community association, an act or condition knowingly created, performed, or maintained on private property that constitutes a local code violation. The local code violation must significantly affect other residents of the neighborhood, diminish the value of neighboring property, and either be injurious to public, health, safety, or welfare of neighboring residents or obstruct the reasonable use of other neighborhood property.

The community association must wait to bring an action until 60 days after it sends notice of the nuisance and its intention to bring an action to both the appropriate code enforcement agency and the property's tenant, if any, and owner. The community association must also file a bond with the court in an amount determined by the court to cover any costs the adverse party may sustain as result of the suit if the court finds that the action was filed in bad faith or without substantial justification.

If the appropriate code enforcement agency has already filed an action for equitable relief, the community association may not bring its own action in circuit court. The nuisance abatement statute does not grant standing to bring an action abating a nuisance which consists of (1) a condition relating to lead paint; (2) an interior physical defect of a property; or (3) a vacant dwelling that is maintained in a boarded condition, free from trash and debris, and secure against trespassers and weather entry.

Laws for Other Jurisdictions: In Anne Arundel, Baltimore, Harford, and Prince George's counties a community association 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 Code.

Additionally, each county or city defines nuisance differently. Baltimore City and Prince George's and Anne Arundel counties require that the condition of the property diminish the value of neighboring property.

Housing Authority of Baltimore City: According to its website, HABC provides federally funded public housing programs and related services for Baltimore's low-income residents. HABC currently houses over 20,000 residents in more than 10,000 units. Though HABC is closely affiliated with the Baltimore City Department of Housing and Community Development, HABC has maintained its programmatic, financial, and legal identity.

Additional Information

Prior Introductions: None.

Cross File: Although designated as a cross file, SB 130 (Senators Ferguson and Gladden - Judicial Proceedings) is not identical.

Information Source(s): Baltimore City, Housing Authority of Baltimore City, Office of the Attorney General (Consumer Protection Division), Judiciary (Administrative Office of the Courts), Secretary of State, Department of Legislative Services

Fiscal Note History: First Reader - February 14, 2012
mlm/kdm Revised - House Third Reader - March 19, 2012

Analysis by: Michael F. Bender

Direct Inquiries to:
(410) 946-5510
(301) 970-5510