

# HOUSE BILL REPORT

## EHB 1367

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**As Passed House:**  
February 13, 2014

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

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

**Sponsors:** Representatives Kirby, Jinkins, Crouse, Green, Fey, Sawyer, Kochmar, Fitzgibbon and Pollet.

**Brief History:**

**Committee Activity:**

Local Government: 2/1/13, 2/5/13 [DP].

**Floor Activity:**

Passed House: 2/13/14, 62-35.

**Brief Summary of Engrossed Bill**

- Authorizes code and non-code cities and towns that exercise their power to declare a nuisance, abate a nuisance, or impose fines or costs upon persons who create, continue, or maintain a nuisance to levy a special assessment on property for the expense of abatement.
- Establishes that the special assessment levied by the city or town is a lien that has equal rank with state, county, and municipal taxes.
- Creates certain notice requirements for code and non-code cities and towns: (1) Notice must be provided to a property owner before a city or town abates a nuisance; and (2) notice must be provided to the property owner and any identifiable mortgage holder before levying a special assessment for the expense of abatement.

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### HOUSE COMMITTEE ON LOCAL GOVERNMENT

**Majority Report:** Do pass. Signed by 6 members: Representatives Takko, Chair; Kochmar, Assistant Ranking Minority Member; Fitzgibbon, Liias, Springer and Crouse.

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*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.*

**Minority Report:** Do not pass. Signed by 2 members: Representatives Buys and Taylor.

**Staff:** Michaela Murdock (786-7289).

**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 or basin, or any 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 one which affects equally the rights of an entire community or neighborhood. Statutes further define other types of nuisance 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: (1) to remove all or part of trees or vegetation that have died or that impair the use of sidewalks or streets; or (2) 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 such items 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.

Mechanics' Liens.

A lien on property for the contract price of labor, professional services, materials, or equipment that was furnished for the improvement of real property is referred to as a mechanics' lien. A mechanics' lien is prior to any lien, mortgage, deed of trust, or other encumbrance that attaches to real property after the mechanics' lien attaches or that was

unrecorded when the labor, services, materials, or equipment included in the mechanics' lien was first furnished.

In order for a mechanics' lien to attach to property, it must be recorded with the county 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, it generally attaches to the property for a period of eight months. If properly recorded, a mechanics' lien may be foreclosed and enforced by civil action in the manner prescribed for judicial foreclosure of a mortgage. If a mechanics' lien is not recorded within the 90-day period, the lien may not be foreclosed.

#### 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 uncleanness; inadequate light or sanitary facilities; inadequate drainage; overcrowding; or other conditions which are inimical to the health and welfare of the community.

Under certain circumstances, the city or town may direct or cause the repair, closure, removal, or demolition of 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 that is of equal rank with tax liens. If left unpaid, the amount of the assessment may be entered by the county treasurer upon the tax rolls against the property and may be collected at the same time as general taxes.

#### **Summary of Engrossed Bill:**

Code and non-code cities and towns that exercise their 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 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.

Notice requirements for code and non-code cities and towns that choose to abate a nuisance or levy a special assessment are created:

- Before a city or town abates a nuisance, notice must be provided to the property owner that: (1) abatement is pending; and (2) 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: (1) that a special assessment will be levied on the property; and (2) the amount of the special assessment.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** 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 and towns will have the same authority that counties currently have to declare a nuisance, provide for abatement of the nuisance, and recover their costs through assessment of a lien on property. The language of this bill is identical to the language used in the statute governing counties; accordingly, cities and towns will have the same breadth of authority as counties.

Currently, there are a variety of different statutes, providing varying grants of authority that govern nuisance abatement and assessment of liens for cities and towns. The law governing cities and town will be clarified and will make nuisance abatement and collection of abatement costs simpler.

Cities may currently obtain liens on property for abatement costs; however, these liens expire. This forces the city to go back to court and renew the lien, which costs the city time and money. Cities want to avoid having to go back to court or having to write off a lien that has become difficult to maintain at the expense of the taxpayer. The bill will ensure that abatement liens do not expire, cities and towns do not have to go back to court to renew them, and that the lien will be paid when the property is sold.

The bill will give abatement liens for cities and towns equal rank with state, county, and municipal taxes.

Most property owners who receive code enforcement notices, for example, in Tacoma, abate the nuisance willingly by cutting vegetation, removing junk cars, or cleaning up trash. There are also several community programs that aid in cleaning up nuisances. In the past several years, there have been 18 abatement cases in Tacoma with average total abatement costs of approximately \$2,500 each. Tacoma tries to give property owners an opportunity to do the work on their own, and to avoid having to go down an avenue where it will have to assess an abatement lien.

(Opposed) None.

**Persons Testifying:** Representative Kirby, prime sponsor; Councilman Joe Lonergan, City of Tacoma; and Dave Williams, Association of Washington Cities.

**Persons Signed In To Testify But Not Testifying:** None.