

1 SB111
2 173358-1
3 By Senator Ward
4 RFD: County and Municipal Government
5 First Read: 07-FEB-17

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9 A BILL
10 TO BE ENTITLED
11 AN ACT
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13 Relating to Class 8 municipalities; to provide for
14 the abatement of grass or weeds which become a nuisance under
15 certain conditions; to provide for notice to the property
16 owners; to provide for the assessment of the costs for
17 abatement when the work is required to be performed by the
18 municipalities; to provide for the collection by the
19 municipality of the costs through the addition of the costs to
20 ad valorem taxes and for enforcement by the county tax
21 collecting official; and to provide for liens on the property
22 under certain conditions.

23 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

24 Section 1. This act shall apply only to any Class 8
25 municipality.

26 Section 2. An abundance of overgrown grass or weeds
27 within the municipality which is injurious to the general

1 public health, safety, and general welfare by providing
2 breeding grounds and shelter for rats, mice, snakes,
3 mosquitoes, and other vermin, insects, and pests; or attaining
4 heights and dryness so as to constitute a serious fire threat
5 or hazard; or bearing wingy or downy seeds, when mature, that
6 cause the spread of weeds and, when breathed, irritation to
7 the throat, lungs, and eyes of the public; or hiding debris,
8 such as broken glass or metal, which could inflict injury on a
9 person going upon the property; or being unsightly; or a
10 growth of grass or weeds, including plants of no value,
11 undesirable, and usually of rank growth; or grass, shrubs, and
12 undergrowth, other than ornamental plant growth, which exceeds
13 12 inches in height, are declared to be a public nuisance and
14 abated as provided in this act.

15 Section 3. For the purposes of this act, the
16 following words have the following meanings:

17 (1) ADMINISTRATIVE OFFICIAL. A person designated by
18 the municipal council to hear appeals for the purposes of this
19 act, but the person shall not be the same person as the
20 enforcing official.

21 (2) ENFORCING OFFICIAL. The municipal manager or
22 mayor or any other municipal official or employee the mayor or
23 municipal manager from time to time may designate.

24 (3) TAX COLLECTING OFFICIAL. The county tax
25 collector, county revenue commissioner, or other county ad
26 valorem tax collecting official.

1 Section 4. (a) Whenever, in the opinion of the
2 enforcing official, a public nuisance exists as described in
3 Section 2, the enforcing official may serve written notice
4 upon the owner of the property on which the nuisance is
5 located ordering the abatement of the nuisance.

6 (b) The enforcing official may serve the owner with
7 the written notice by delivering it to the owner; or by
8 mailing it to the owner, via first class mail, at the owner's
9 last known address. Delivery under this subsection means
10 handing it to the owner, or in a case where the owner is an
11 impersonal entity, to an agent or officer of the entity; or by
12 leaving it at the owner's residence or place of business with
13 a person of suitable age and discretion residing or employed
14 therein. Service by mail is complete upon mailing.

15 (c) The enforcing officer may, but is not required
16 to, rely upon any information appearing on record in the
17 office of the county tax collecting official to establish the
18 identity of an owner of property and to establish the owner's
19 last known address, which, if utilized, shall be deemed
20 conclusive and sufficient proof of the same.

21 (d) The written notice shall also be posted at a
22 conspicuous place on the property on which the nuisance is
23 located, on or prior to the date of service of the written
24 notice as described in subsection (c).

25 (e) The enforcing official is authorized, but not
26 required, to utilize any additional means of providing notice
27 that the enforcing official deems appropriate. Specifically,

1 the enforcing official is authorized, but not required, to
2 provide this additional, optional notice by placement of
3 notice in a public place or places located within the city, or
4 by publishing notice in a newspaper of general circulation
5 published in the city as often and for as long as deemed
6 appropriate. The additional, optional notice provided for in
7 this section may be provided in whatever form the enforcing
8 official deems appropriate.

9 (f) The written notice to the owner shall require
10 the owner to abate the condition within the time stated in the
11 notice or to request a hearing before the administrative
12 official to determine whether the conditions on the property
13 constitute a public nuisance that should be abated. The notice
14 shall apprise the owner of the facts of the alleged nuisance,
15 including a description or address of the property, or both,
16 that provides reasonable notice of its location, the address
17 of the enforcing official, and shall name the particular date,
18 time, and place for the hearing before the administrative
19 official if requested by the owner, which date shall be at
20 least 10 days after the date of the written notice.

21 (g) If the owner desires a hearing before the
22 administrative official, then the owner may request a hearing
23 by delivering a written notice to the enforcing official
24 within five days after the date of service of the notice. If
25 so requested, then the enforcing official's order to abate the
26 nuisance shall be suspended, and the administrative official
27 shall hold a hearing at the time and place specified in the

1 notice previously issued by the enforcing official or at such
2 other time and place that may be mutually agreed upon by the
3 administrative official and the owner. The administrative
4 official may continue the hearing from time to time, upon good
5 cause shown. At the hearing, any interested party shall have
6 the right to present evidence and testimony. The hearing shall
7 be open to the public, and a record of the proceedings shall
8 be kept as a part of the public records of the municipality.
9 The administrative official shall render a written decision on
10 the merits of the proposed abatement within five days of the
11 conclusion of the hearing. The enforcing official shall notify
12 the owner by personal service or by first class mail of the
13 written determination of the administrative official. If the
14 administrative official determines that a nuisance exists and
15 should be abated, the written determination of the
16 administrative official shall inform the owner that the owner
17 must complete the abatement ordered by the enforcing official
18 within 10 days of the date of the administrative official's
19 decision, or upon such additional time, but in no case more
20 than 28 days from the administrative official's determination.
21 If the administrative official determines that a nuisance does
22 not exist, then the enforcing official's notice to abate the
23 nuisance will be null and void, but such determination shall
24 not bar any subsequent notice concerning the same property.

25 (h) Any person aggrieved by the decision of the
26 administrative official at the hearing, within 10 days from
27 the issuance of the determination by the administrative

1 official, may appeal to the circuit court upon filing with the
2 clerk of the circuit court notice of the appeal and bond for
3 security of costs in the form and amount to be approved by the
4 circuit clerk.

5 (i) Upon filing of the notice of appeal and approval
6 of the bond, the clerk of the court shall serve a copy of the
7 notice of appeal on the clerk of the municipality and the
8 appeal shall be docketed in the court and shall be a preferred
9 case. The clerk of the municipality, upon receiving the
10 notice, shall file with the clerk of the court a copy of the
11 finding and determination of the administrative official in
12 its proceedings. Any trials shall be held without a jury upon
13 the determination of the administrative official that the
14 weeds are a public nuisance.

15 Section 5. (a) If the owner fails, neglects, or
16 refuses to abate the nuisance, or the nuisance is not
17 otherwise abated, (1) within the time permitted to do so as
18 stated in the enforcing official's notice, where such notice
19 was not suspended by the request for a hearing before the
20 administrative official; or (2) within the time permitted to
21 do so as stated in the administrative official's written
22 determination, then the municipality may enter upon the
23 property and abate the nuisance using its own forces, or it
24 may provide by contract for the abatement. However, if an
25 appeal has been taken to the circuit court as provided in
26 subsection (i) of Section 3, then the municipality may not

1 abate the nuisance until the determination or judgment
2 authorizing abatement becomes final as provided by law.

3 (b) Upon completion of the abatement work performed
4 by the municipality, including work by contractors employed by
5 the municipality, the enforcing official shall compute the
6 expenses of the municipality for the abatement of the
7 nuisance, including, but not limited to, cost of labor, value
8 of the use of the equipment, advertising expenses, postage,
9 administrative expense, legal expense, and materials purchased
10 which were incurred by the municipality as a result of the
11 work. An itemized statement of the expenses shall be given by
12 first class mail to the last known address of the owner of the
13 property. This notice shall be sent at least five days in
14 advance of the time fixed by the municipal council to consider
15 the assessment of the cost against property.

16 (c) At the time fixed for receiving and considering
17 the statement, the municipal council shall hear the same,
18 together with any objections which may be raised by the owner
19 whose property is liable to be assessed for the expenses of
20 the municipality for the abatement of the nuisance, and
21 thereupon make modifications in the statement as deemed
22 necessary, after which a resolution may assess the cost. The
23 cost stated in the resolution shall constitute a lien on the
24 property and shall be referred to as a weed lien on the
25 property.

26 (d) A copy of the resolution shall be given to the
27 county tax collecting official. It shall be the duty of the

1 county tax collecting official to add the costs of the weed
2 lien to the next regular bill for taxes levied against the
3 property subject to the weed lien, and thereafter, the costs
4 shall be collected and remitted to the municipality at the
5 same time and in the same manner as ordinary municipal ad
6 valorem taxes are collected, and shall be subject to the same
7 penalties and the same procedure under foreclosure and sale in
8 case of delinquency; provided, however, that if the
9 foreclosure and sale is the result of a delinquency caused by
10 a weed lien, the municipality shall reimburse the county tax
11 collecting official for all costs associated with the
12 foreclosure and sale unless the costs are collected at the
13 time of sale as part of the sale.

14 (e) The municipal clerk may also cause a certified
15 copy of the resolution showing the weed lien to be filed for
16 recording in the office of the judge of probate.

17 Section 6. When a weed lien is made against a lot or
18 lots or parcel or parcels of land, a subsequent redemption
19 thereof by a person authorized to redeem, or sale thereof by
20 the state, shall not operate to discharge, or in any manner
21 affect the weed lien of the municipality, but a redemptioner
22 or purchaser at a sale by the state of any lot or lots, parcel
23 or parcels of land upon which a weed lien has been made,
24 whether prior to or subsequent to a sale to the state for the
25 nonpayment of taxes, shall take the same subject to the weed
26 lien.

1 Section 7. Upon payment of the weed lien, the city
2 clerk shall notify the county tax collecting official and may
3 file a notice of satisfaction of weed lien in the records of
4 the probate court.

5 Section 8. This act is cumulative in its nature and
6 in addition to any and all power and authority which a
7 municipality may have under any other law.

8 Section 9. This act shall become effective
9 immediately following its passage and approval by the
10 Governor, or its otherwise becoming law.