

1 SB72
2 196784-1
3 By Senator Ward
4 RFD: Governmental Affairs
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8 SYNOPSIS: This bill would provide an alternative
9 procedure for any Class 8 municipality to abate
10 grass or weeds which become a nuisance and would
11 provide for the assessment and collection of the
12 costs of the abatement when the work is required to
13 be performed by the municipality.

14
15 A BILL
16 TO BE ENTITLED
17 AN ACT

18
19 Relating to Class 8 municipalities; to provide for
20 the abatement of grass or weeds which become a nuisance under
21 certain conditions; to provide for notice to the property
22 owners; to provide for the assessment of the costs for
23 abatement when the work is required to be performed by the
24 municipalities; to provide for the collection by the
25 municipality of the costs through the addition of the costs to
26 ad valorem taxes and for enforcement by the county tax

1 collecting official; and to provide for liens on the property
2 under certain conditions.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. This act shall apply only to any Class 8
5 municipality.

6 Section 2. An abundance of overgrown grass or weeds
7 within the municipality which is injurious to the general
8 public health, safety, and general welfare by providing
9 breeding grounds and shelter for rats, mice, snakes,
10 mosquitoes, and other vermin, insects, and pests; or attaining
11 heights and dryness so as to constitute a serious fire threat
12 or hazard; or bearing wingy or downy seeds, when mature, that
13 cause the spread of weeds and, when breathed, irritation to
14 the throat, lungs, and eyes of the public; or hiding debris,
15 such as broken glass or metal, which could inflict injury on a
16 person going upon the property; or being unsightly; or a
17 growth of grass or weeds, including plants of no value,
18 undesirable, and usually of rank growth; or grass, shrubs, and
19 undergrowth, other than ornamental plant growth, which exceeds
20 12 inches in height, are declared to be a public nuisance and
21 abated as provided in this act.

22 Section 3. For the purposes of this act, the
23 following words have the following meanings:

24 (1) ADMINISTRATIVE OFFICIAL. A person designated by
25 the municipal council to hear appeals for the purposes of this
26 act, but the person may not be the same person as the
27 enforcing official.

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

4 (3) TAX COLLECTING OFFICIAL. The county tax
5 collector, county revenue commissioner, or other county ad
6 valorem tax collecting official.

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

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

21 (c) The enforcing officer may rely upon any
22 information appearing on record in the office of the county
23 tax collecting official to establish the identity of an owner
24 of property and to establish the owner's last known address,
25 which, if utilized, shall be deemed conclusive and sufficient
26 proof of the same.

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

5 (e) The enforcing official is authorized, but not
6 required, to utilize any additional means of providing notice
7 that the enforcing official deems appropriate. Specifically,
8 the enforcing official is authorized, but not required, to
9 provide this additional, optional notice by placement of
10 notice in a public place or places located within the city, or
11 by publishing notice in a newspaper of general circulation
12 published in the city as often and for as long as deemed
13 appropriate. The additional, optional notice provided for in
14 this section may be provided in whatever form the enforcing
15 official deems appropriate.

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

1 (g) (1) If the owner desires a hearing before the
2 administrative official, then the owner may request a hearing
3 by delivering a written notice to the enforcing official
4 within five days after the date of service of the notice. If
5 requested, then the enforcing official's order to abate the
6 nuisance shall be suspended, and the administrative official
7 shall hold a hearing at the time and place specified in the
8 notice previously issued by the enforcing official or at such
9 other time and place that may be mutually agreed upon by the
10 administrative official and the owner. The administrative
11 official may continue the hearing from time to time, upon good
12 cause shown.

13 (2) At the hearing, any interested party shall have
14 the right to present evidence and testimony. The hearing shall
15 be open to the public, and a record of the proceedings shall
16 be kept as a part of the public records of the municipality.

17 (3) The administrative official shall render a
18 written decision on the merits of the proposed abatement
19 within five days of the conclusion of the hearing. The
20 enforcing official shall notify the owner by personal service
21 or by first class mail of the written determination of the
22 administrative official. If the administrative official
23 determines that a nuisance exists and should be abated, the
24 written determination of the administrative official shall
25 inform the owner that the owner must complete the abatement
26 ordered by the enforcing official within 10 days of the date
27 of the administrative official's decision, or upon such

1 additional time, but in no case more than 28 days from the
2 administrative official's determination. If the administrative
3 official determines that a nuisance does not exist, then the
4 enforcing official's notice to abate the nuisance will be null
5 and void, but such determination shall not bar any subsequent
6 notice concerning the same property.

7 (h) Any person aggrieved by the decision of the
8 administrative official at the hearing, within 10 days from
9 the issuance of the determination by the administrative
10 official, may appeal to the circuit court upon filing with the
11 clerk of the circuit court notice of the appeal and bond for
12 security of costs in the form and amount to be approved by the
13 circuit clerk.

14 (i) Upon filing of the notice of appeal and approval
15 of the bond, the clerk of the court shall serve a copy of the
16 notice of appeal on the clerk of the municipality and the
17 appeal shall be docketed in the court and shall be a preferred
18 case. The clerk of the municipality, upon receiving the
19 notice, shall file with the clerk of the court a copy of the
20 finding and determination of the administrative official in
21 its proceedings. Any trials shall be held without a jury upon
22 the determination of the administrative official that the
23 weeds are a public nuisance.

24 Section 5. (a) If the owner fails, neglects, or
25 refuses to abate the nuisance, or the nuisance is not
26 otherwise abated, (1) within the time permitted to do so as
27 stated in the enforcing official's notice, where such notice

1 was not suspended by the request for a hearing before the
2 administrative official; or (2) within the time permitted to
3 do so as stated in the administrative official's written
4 determination, then the municipality may enter upon the
5 property and abate the nuisance using its own forces, or it
6 may provide by contract for the abatement. However, if an
7 appeal has been taken to the circuit court as provided in
8 subsection (i) of Section 3, then the municipality may not
9 abate the nuisance until the determination or judgment
10 authorizing abatement becomes final as provided by law.

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

24 (c) At the time fixed for receiving and considering
25 the statement, the municipal council shall hear the same,
26 together with any objections which may be raised by the owner
27 whose property is liable to be assessed for the expenses of

1 the municipality for the abatement of the nuisance, and
2 thereupon make modifications in the statement as deemed
3 necessary, after which a resolution may assess the cost. The
4 cost stated in the resolution shall constitute a lien on the
5 property and shall be referred to as a weed lien on the
6 property. A weed lien established pursuant to this act is
7 subject to and subordinate to any mortgage or security
8 interest recorded prior to the recordation of the weed lien.

9 (d) A copy of the resolution shall be given to the
10 county tax collecting official. It shall be the duty of the
11 county tax collecting official to add the costs of the weed
12 lien to the next regular bill for taxes levied against the
13 property subject to the weed lien, and thereafter, the costs
14 shall be collected and remitted to the municipality at the
15 same time and in the same manner as ordinary municipal ad
16 valorem taxes are collected, and shall be subject to the same
17 penalties and the same procedure under foreclosure and sale in
18 case of delinquency; provided, however, that if the
19 foreclosure and sale is the result of a delinquency caused by
20 a weed lien, the municipality shall reimburse the county tax
21 collecting official for all costs associated with the
22 foreclosure and sale unless the costs are collected at the
23 time of sale as part of the sale.

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

1 Section 6. When a weed lien is made against a lot or
2 lots or parcel or parcels of land, a subsequent redemption
3 thereof by a person authorized to redeem, or sale thereof by
4 the state, shall not operate to discharge, or in any manner
5 affect the weed lien of the municipality, but a redemptioner
6 or purchaser at a sale by the state of any lot or lots, parcel
7 or parcels of land upon which a weed lien has been made,
8 whether prior to or subsequent to a sale to the state for the
9 nonpayment of taxes, shall take the same subject to the weed
10 lien.

11 Section 7. Upon payment of the weed lien, the city
12 clerk shall notify the county tax collecting official and may
13 file a notice of satisfaction of weed lien in the records of
14 the probate court.

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

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