

## **BILL ANALYSIS**

C.S.H.B. 2438  
By: Farias  
County Affairs  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Interested parties note that the owner of an abandoned property currently suffers no consequences for abandoning the property. In these cases, the county can take action to restore the property; however, such properties quickly deteriorate, causing the county to repeat its efforts. Such parties note that many abandoned properties become havens for crime and the homeless, can be damaged by fire, or are dangerous structurally and must be demolished. While current law allows a lien to be filed against the property to assist a county in recovering the cost of clean-up and demolition, the value of the property is often less than all liens pending on the property. The parties contend that adding a cause of action against the owner of a property that has become a public nuisance would ameliorate this problem by incentivizing the owner to abate the nuisance without county intervention. C.S.H.B. 2438 seeks to reduce the incidence of abandoned properties that become public nuisances.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 2438 amends the Health and Safety Code to require a county to attempt to recover the costs and fees for abatement of a public nuisance from the person responsible for causing the nuisance, if that person can be identified, before assessing costs and fees against the owner of the premises. The bill authorizes a county to file a civil action in district court to recover the costs and fees assessed against a person for abatement of a public nuisance and interest on the unpaid costs and fees and authorizes the court to award court costs and reasonable attorney's fees to the prevailing party. The bill revises the notice of a public nuisance to reflect the county's authority to assess the costs of abatement against the person who receives the notice, rather than against the person responsible for causing the nuisance. The bill requires the notice to state, among other information, that if the county seeks to recover abatement costs, including legal notification and administrative fees, the county will make an effort to recover costs from the person responsible for causing the nuisance, if that person can be identified, before assessing costs against the owner of the premises. The bill specifies that abatement procedures must require that written notice be given to the owner of the premises or an agent of the owner, rather than to the owner, lessee, occupant, agent, or person in charge of the premises, and to the person responsible for causing the nuisance when applicable.

### **EFFECTIVE DATE**

September 1, 2013.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 2438 may differ from the original in minor or nonsubstantive ways, the

following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

#### INTRODUCED

SECTION 1. Section 343.022(c), Health and Safety Code, is amended to read as follows:

- (c) The notice must state:
- (1) the specific condition that constitutes a nuisance;
  - (2) that the person receiving notice shall abate the nuisance before the:
    - (A) 31st day after the date on which the notice is served, if the person has not previously received a notice regarding a nuisance on the premises; or
    - (B) 10th business day after the date on which the notice is served, if the person has previously received a notice regarding a nuisance on the premises;
  - (3) that failure to abate the nuisance may result in:
    - (A) abatement by the county;
    - (B) assessment of costs **to** the person receiving the notice [~~responsible for causing the nuisance when that person can be identified~~]; and
    - (C) a lien against the property on which the nuisance exists [~~if the person responsible for causing the nuisance has an interest in the property~~];

(4) that the county may prohibit or control access to the premises to prevent a continued or future nuisance described by

#### HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Sections 343.022(b) and (c), Health and Safety Code, are amended to read as follows:

- (b) The abatement procedures must require that written notice be given to:
- (1) the owner [~~lessee, occupant, agent, or person in charge~~] of the premises or an agent of the owner; and
  - (2) the person responsible for causing a public nuisance on the premises when:
    - (A) that person is not the owner [~~lessee, occupant, agent, or person in charge~~] of the premises or an agent of the owner; and
    - (B) the person responsible can be identified.
- (c) The notice must state:
- (1) the specific condition that constitutes a nuisance;
  - (2) that the person receiving notice shall abate the nuisance before the:
    - (A) 31st day after the date on which the notice is served, if the person has not previously received a notice regarding a nuisance on the premises; or
    - (B) 10th business day after the date on which the notice is served, if the person has previously received a notice regarding a nuisance on the premises;
  - (3) that failure to abate the nuisance may result in:
    - (A) abatement by the county;
    - (B) assessment of costs against [to] the person receiving the notice [~~responsible for causing the nuisance when that person can be identified~~]; and
    - (C) a lien against the property on which the nuisance exists [~~if the person responsible for causing the nuisance has an interest in the property~~];
  - (4) that if the county seeks to recover abatement costs, including legal notification and administrative fees, the county will make an effort to recover costs from the person responsible for causing the nuisance, if that person can be identified, before assessing costs against the owner of the premises;
  - (5) that the county may prohibit or control access to the premises to prevent a continued or future nuisance described by Section 343.011(c)(1), (6), (9), or (10); and

Section 343.011(c)(1), (6), (9), or (10); and (5) that the person receiving notice is entitled to submit a written request for a hearing before the:

(A) 31st day after the date on which the notice is served, if the person has not previously received a notice regarding a nuisance on the premises; or

(B) 10th business day after the date on which the notice is served, if the person has previously received a notice regarding a nuisance on the premises.

SECTION 2. Section 343.023, Health and Safety Code, is amended by amending Subsection (a) and adding Subsection (g) to read as follows:

(a) A county may:

(1) assess to a person receiving notice under Section 343.022:

(A) the cost of abating the nuisance, including management, remediation, storage, transportation, and disposal costs, and damages and other expenses incurred by the county;

(B) the cost of legal notification by publication; and

(C) an administrative fee of not more than \$100 [~~on the person receiving notice under Section 343.022~~]; or

(2) by resolution or order, assess against the property on which the nuisance exists:

(A) the cost of abating the nuisance;

(B) the cost of legal notification by publication; and

(C) an administrative fee of not more than \$100 [~~against the property on which the nuisance exists~~].

(g) The county may file a civil action in district court to recover the costs and fees assessed against a person under this section and interest on the unpaid costs and fees. The court may award court costs and reasonable attorney's fees to the prevailing party.

SECTION 3. (a) Section 343.022(c), Health

~~(6)~~ [(5)] that the person receiving notice is entitled to submit a written request for a hearing before the:

(A) 31st day after the date on which the notice is served, if the person has not previously received a notice regarding a nuisance on the premises; or

(B) 10th business day after the date on which the notice is served, if the person has previously received a notice regarding a nuisance on the premises.

SECTION 2. Section 343.023, Health and Safety Code, is amended by amending Subsection (a) and adding Subsections (g) and (h) to read as follows:

(a) Except as provided by Subsection (g), a [A] county may:

(1) assess against a person receiving notice under Section 343.022:

(A) the cost of abating the nuisance, including management, remediation, storage, transportation, and disposal costs, and damages and other expenses incurred by the county;

(B) the cost of legal notification by publication; and

(C) an administrative fee of not more than \$100 [~~on the person receiving notice under Section 343.022~~]; or

(2) by resolution or order, assess against the property on which the nuisance exists:

(A) the cost of abating the nuisance;

(B) the cost of legal notification by publication; and

(C) an administrative fee of not more than \$100 [~~against the property on which the nuisance exists~~].

(g) Before assessing costs and fees against an owner of the premises under this section, a county must attempt to recover the costs from the person responsible for causing the nuisance if that person can be identified.

(h) The county may file a civil action in district court to recover the costs and fees assessed against a person under this section and interest on the unpaid costs and fees. The court may award court costs and reasonable attorney's fees to the prevailing party.

SECTION 3. (a) Sections 343.022(b) and

and Safety Code, as amended by this Act, applies only to a notice given on or after the effective date of this Act. A notice given before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

(b) Section 343.023, Health and Safety Code, as amended by this Act, applies only to an assessment of costs for which notice was given on or after the effective date of this Act. An assessment of costs for which notice was given before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

SECTION 4. This Act takes effect September 1, 2013.

(c), Health and Safety Code, as amended by this Act, apply only to a notice given on or after the effective date of this Act. A notice given before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

(b) Section 343.023, Health and Safety Code, as amended by this Act, applies only to an assessment of costs for which notice was given on or after the effective date of this Act. An assessment of costs for which notice was given before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

SECTION 4. Same as introduced version.