

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 551 Public Nuisances
SPONSOR(S): Civil Justice Subcommittee, McClain, Payne and others
TIED BILLS: IDEN./SIM. **BILLS:** CS/SB 668

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	15 Y, 0 N, As CS	Deatherage	Poche
2) State Affairs Committee	20 Y, 0 N	Darden	Williamson
3) Judiciary Committee	18 Y, 0 N	Deatherage	Poche

SUMMARY ANALYSIS

Public nuisances violate public rights; subvert public order, decency, and morals; and cause inconvenience to the public. Nuisances that annoy the community, injure the health of citizens in general, or corrupt the public morals are generally classified as second degree misdemeanors. Certain nuisances may also be abated and enjoined. Current law deems certain places and groups engaged in certain activities, including criminal gang-related activity, public nuisances.

CS/HB 551 removes the requirement that a location be used for gang-related activity on two or more occasions, thereby making a property a public nuisance when it has been used for such activity at least once. Additionally, the bill makes a site a public nuisance when it is used for certain enumerated offenses on more than two occasions within a six-month period. These offenses include dealing in stolen property, assault and battery, burglary, theft, and robbery by sudden snatching.

The bill also limits liability for rental property owners. A rental property that is declared a nuisance may not be abated or subject to forfeiture if someone other than the owner of the property committed the nuisance. However, the property owner must commence rehabilitation of the property within 30 days after the property is declared a nuisance to maintain this protection.

The bill increases the required notice from one three-day notice to two notices with a total of 25 days to abate the nuisance. This requirement may be waived where the nuisance presents an immediate and irreparable danger. Notice must be served by personal service. The bill requires the notice to:

- Describe the property or activities amounting to a nuisance;
- Describe the actions necessary to abate the nuisance; and
- State that costs will be assessed if a nuisance is found and abatement is not completed.

The notice timeframe before a lien may attach to a property owned by someone other than the person causing the nuisance is extended from five days to 15 days.

There may be an indeterminate fiscal impact on state and local governments. The bill subjects additional activities and properties to being abated or enjoined as a public nuisance. Accordingly, state and local governments may incur additional legal expenses proceedings when suing to abate or enjoin such nuisances.

The bill provides an effective date of July 1, 2019.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Nuisances

Nuisances can be classified as public or private. A public nuisance is one that affects the public at large, while a private nuisance affects an individual or a limited number of individuals.¹ Public nuisances violate public rights; subvert public order, decency, and morals; or cause inconvenience to the public generally.²

Nuisances that annoy the community, injure the health of citizens in general, or corrupt the public morals are second degree misdemeanors, punishable by a \$500 fine,³ except that a violation of s. 823.10, F.S., relating to nuisances associated with illegal activity involving controlled substances, is a third degree felony.⁴ Certain nuisances may also be abated and enjoined under ss. 60.05 and 60.06, F.S.⁵

Current Law

Places and Groups Declared a Nuisance

Section 823.05, F.S., deems certain places public nuisances. A person is guilty of maintaining a nuisance if they erect, establish, continue, maintain, own, or lease any:

- Building, booth, tent, or place that tends to annoy the community, injure the health of the community, or become manifestly injurious to the morals or manners of the people;
- House or place of prostitution, assignation, or lewdness;
- Place in which persons engage in games of chance in violation of the law; and
- Place where any law of the state is violated.⁶

Such places or persons shall be abated or enjoined as provided in ss. 60.05 and 60.06 F.S.⁷

Additionally, a criminal gang, gang member, or criminal gang associate who engages in the commission of criminal gang-related activity is a public nuisance, and such persons shall be abated or enjoined. The use of a location on two or more occasions by such persons is also a public nuisance, and such use shall be abated or enjoined.⁸

The statute authorizes the state to institute civil proceedings under s. 823.05(2), F.S., relating to gang activity, and requires circuit courts to proceed to the hearing and determination of these actions as soon as practicable. The circuit courts are authorized to enter injunctions, prohibitions, or restraining orders, or take such actions, as the court deems proper, at any time pending final determination.⁹

¹ Black's Law Dictionary (10th ed. 2014); 38 Fla. Jur. 2d. *Nuisances* § 5.

² 38 Fla. Jur. 2d. *Nuisances* § 5.

³ S. 823.01, F.S.; s. 775.083, F.S.

⁴ S. 823.01, F.S. A third degree felony is punishable by up to five years in prison and a \$5,000 fine. Ss. 775.082(3)(e) and 775.083(1)(c), F.S.

⁵ S. 60.05, F.S. sets forth the procedures used to abate an enjoin nuisances.

⁶ S. 823.05, F.S.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

Section 823.05, F.S., also provides that a massage establishment operated in violation of the law be declared a nuisance that may be abated or enjoined.¹⁰

Abating and Enjoining

The procedure for abating or enjoining a person or nuisance under s. 823.05, F.S., is provided in ss. 60.05 and 60.06, F.S.¹¹ Section 60.05, F.S., provides the persons who may sue on behalf of the state for a nuisance, including:

- The Attorney General;
- State attorney;
- City attorney;
- County attorney; or
- Any citizen of the county.¹²

The person bringing suit may apply for a temporary injunction of the nuisance. The defendant must be given at least three days' written notice of the time and place where application for the temporary injunction will occur. The court may order the temporary injunction with proper evidence. If a court issues an injunction, it must specify what activities are enjoined. Additionally, the court may not preclude the operation of a lawful business not conducive to the maintenance of the nuisance.¹³

Next, the court will determine whether a nuisance exists at trial. If a nuisance is found, the court shall issue a permanent injunction and order costs to be paid by the person establishing or maintaining the nuisance. If that person fails to pay, the costs will attach as a lien on the property occupied by the nuisance. However, if the property occupied by the nuisance is owned by someone other than the person establishing or maintaining the nuisance, a lien will not attach to that property unless the owner does not begin to abate the nuisance within five days after receiving written notice. The state is liable for costs and reasonable attorney fees if there was no reasonable ground for the action, and the Attorney General, a state attorney, or any other officer or agency of state government brought the action.¹⁴

Additionally, when the nuisance relates to controlled substances or prostitution, a tenant of a property subject to abatement who has been convicted of such an offense may be ordered to vacate the property within 72 hours.¹⁵

Section 60.06, F.S., requires the court, upon proper proof, to order the abatement of nuisances mentioned in s. 823.05, F.S., and authorizes the court to enforce injunctions by contempt.¹⁶

Effect of Proposed Changes

CS/HB 551 reorganizes s. 823.05(1), F.S., to list the places that constitute a public nuisance that may be abated or enjoined. This reorganization does not have any substantive meaning on the meaning of the law.

The bill eliminates the requirement that a location be used by a criminal gang, criminal gang member, or criminal gang associates for the purpose of engaging in gang-related activity on two or more occasions, allowing a property to be considered a public nuisance if it has been used for such activity at least once. The bill renders a site a public nuisance when it is used for certain enumerated offenses on

¹⁰ *Id.*

¹¹ S. 823.05, F.S.; s. 60.05, F.S.; s. 60.06, F.S.

¹² S. 60.05, F.S.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ S. 60.06, F.S.

more than two occasions within a six-month period. These crimes include dealing in stolen property, assault and battery, burglary, theft, and robbery by sudden snatching.

Additionally, the bill limits liability for owners of rental property. A rental property that is declared a nuisance may not be abated or subject to forfeiture if someone other than the owner of the property committed the nuisance. However, the property owner must commence rehabilitation of the property within 30 days after the property is declared a nuisance to maintain this protection.

The bill also amends s. 60.05, F.S., to increase the notice requirements from one three-day notice to two notices with a total of 25 days to abate the nuisance. The defendant must first be given the first written notice with a ten-day compliance period to abate the nuisance. If the defendant fails to abate the nuisance within these ten days, the defendant shall be given written notice of the application for temporary injunction if the defendant does not abate the nuisance within 15 days following the original ten-day period. However, the notice period may be shortened to a period of 24 to 72 hours where the nuisance presents an immediate and irreparable danger.

Contents of the notice must:

- Describe the property or activities amounting to a nuisance;
- Describe the actions necessary to abate the nuisance; and
- State that costs will be assessed if a nuisance is found and abatement is not completed.

Notice must be served by personal service to the owner of the affected premises as last shown on the assessment roll, or to the tenant. If an address is not found for the owner, the notice must be sent to the location of the nuisance and be prominently and conspicuously displayed.

The notice timeframe before a lien may attach when the property is owned by someone other than the person causing the nuisance is extended from five days to 15 days.

The bill provides an effective date of July 1, 2019.

B. SECTION DIRECTORY:

Section 1: Amends s. 60.05, F.S., relating to abatement of nuisances.

Section 2: Amends s. 823.05, F.S., relating to places and groups engaged in certain activities declared a nuisance; abatement and enjoinderment.

Section 3: Provides an effective date of July 1, 2019.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

There may be an indeterminate fiscal impact on state and local governments. The bill subjects additional activities and properties to being enjoined as a public nuisance. Accordingly, state and local governments may incur additional expenses from legal proceedings when suing to abate such nuisances. Costs are only assessed against the state when there is no reasonable ground for the action and the Attorney General, a state attorney, or any other officer or agency of state government brings the action.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 25, 2019, the Civil Justice Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Extended the notice period for the defendant to abate the nuisance from three days to ten days.
- Required a second written notice with a 15-day compliance period before an application for temporary injunction may be filed.
- Required the notice to describe the property or activities amounting to a nuisance, actions necessary to abate the nuisance, and a warning that costs will be assessed if abatement is not completed.
- Required that the notice be served by personal service.
- Allowed the notice period to be shortened to a period of 24 to 72 hours where the nuisance presents immediate and irreparable danger.
- Extended the period of notice before a lien may attach to property owned by someone other than the person maintaining the nuisance from five days to 15 days.

This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.