

1 SB29  
2 196784-2  
3 By Senator Ward  
4 RFD: Governmental Affairs  
5 First Read: 05-MAR-19  
6 PFD: 02/11/2019

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4 ENGROSSED

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7 A BILL  
8 TO BE ENTITLED  
9 AN ACT

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

21 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

22 Section 1. This act shall apply only to any Class 8  
23 municipality.

24 Section 2. An abundance of overgrown grass or weeds  
25 within the municipality which is injurious to the general  
26 public health, safety, and general welfare by providing  
27 breeding grounds and shelter for rats, mice, snakes,

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

13 Section 3. For the purposes of this act, the  
14 following words have the following meanings:

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

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

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

25 Section 4. (a) Whenever, in the opinion of the  
26 enforcing official, a public nuisance exists as described in  
27 Section 2, the enforcing official may serve written notice

1 upon the owner of the property on which the nuisance is  
2 located ordering the abatement of the nuisance.

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

12 (c) The enforcing officer may rely upon any  
13 information appearing on record in the office of the county  
14 tax collecting official to establish the identity of an owner  
15 of property and to establish the owner's last known address,  
16 which, if utilized, shall be deemed conclusive and sufficient  
17 proof of the same.

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

22 (e) The enforcing official is authorized, but not  
23 required, to utilize any additional means of providing notice  
24 that the enforcing official deems appropriate. Specifically,  
25 the enforcing official is authorized, but not required, to  
26 provide this additional, optional notice by placement of  
27 notice in a public place or places located within the city, or

1 by publishing notice in a newspaper of general circulation  
2 published in the city as often and for as long as deemed  
3 appropriate. The additional, optional notice provided for in  
4 this section may be provided in whatever form the enforcing  
5 official deems appropriate.

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

18 (g) (1) If the owner desires a hearing before the  
19 administrative official, then the owner may request a hearing  
20 by delivering a written notice to the enforcing official  
21 within five days after the date of service of the notice. If  
22 requested, then the enforcing official's order to abate the  
23 nuisance shall be suspended, and the administrative official  
24 shall hold a hearing at the time and place specified in the  
25 notice previously issued by the enforcing official or at such  
26 other time and place that may be mutually agreed upon by the  
27 administrative official and the owner. The administrative

1 official may continue the hearing from time to time, upon good  
2 cause shown.

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

7 (3) The administrative official shall render a  
8 written decision on the merits of the proposed abatement  
9 within five days of the conclusion of the hearing. The  
10 enforcing official shall notify the owner by personal service  
11 or by first class mail of the written determination of the  
12 administrative official. If the administrative official  
13 determines that a nuisance exists and should be abated, the  
14 written determination of the administrative official shall  
15 inform the owner that the owner must complete the abatement  
16 ordered by the enforcing official within 10 days of the date  
17 of the administrative official's decision, or upon such  
18 additional time, but in no case more than 28 days from the  
19 administrative official's determination. If the administrative  
20 official determines that a nuisance does not exist, then the  
21 enforcing official's notice to abate the nuisance will be null  
22 and void, but such determination shall not bar any subsequent  
23 notice concerning the same property.

24 (h) Any person aggrieved by the decision of the  
25 administrative official at the hearing, within 10 days from  
26 the issuance of the determination by the administrative  
27 official, may appeal to the circuit court upon filing with the

1 clerk of the circuit court notice of the appeal and bond for  
2 security of costs in the form and amount to be approved by the  
3 circuit clerk.

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

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

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

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

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. Notwithstanding Section 8 or any other  
9 law, the procedures for weed abatement in Class 8  
10 municipalities as provided in this act shall supersede all  
11 procedures for weed abatement for Class 8 municipalities as  
12 provided in Article 2, Chapter 67, Subtitle 2, Title 11, Code  
13 of Alabama 1975.

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

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Senate

Read for the first time and referred to the Senate committee on Governmental Affairs.....	05-MAR-19
Read for the second time and placed on the calen- dar 1 amendment.....	09-APR-19
Read for the third time and passed as amended ....	30-APR-19

Yeas 30  
Nays 0  
Abstaining 1

Patrick Harris,  
Secretary.