

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 625 Public Nuisances

SPONSOR(S): State Affairs Committee, Civil Justice Subcommittee, Newton and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 888

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	15 Y, 0 N, As CS	Mawn	Luczynski
2) State Affairs Committee	21 Y, 0 N, As CS	Moehrle	Williamson
3) Judiciary Committee			

SUMMARY ANALYSIS

A nuisance is an activity arising from a person's unreasonable, unwarranted, or unlawful use of his or her own property in a way that injures the rights of another or the public and produces such material annoyance, inconvenience, and discomfort that the law presumes resulting damage. A nuisance may also be something that annoys and disturbs a person in possession of his or her property, making its ordinary use or occupation physically uncomfortable.

A nuisance is either private, affecting an individual or a limited number of individuals, or public, violating public rights, subverting public order, decency, and morals, or generally inconveniencing the public. The Legislature has broad discretion to designate a particular activity a public nuisance, and the state, through its police power, has the authority to abate and enjoin a public nuisance.

The bill:

- Allows sheriffs to sue in the name of the state to enjoin a nuisance.
- Reduces the number of occasions a location must be used by a criminal gang, criminal gang members, or criminal gang associates for criminal gang-related activity before the location is declared a public nuisance from two or more occasions to one or more occasions.
- Provides that any place or premises used on two or more occasions within a six-month period as the site of any specified felony is a public nuisance that may be abated or enjoined.
- Increases a defendant's notice period when nuisance abatement and injunction is sought, requiring a written notice demanding nuisance abatement within 10 days.
- Requires, if the nuisance is not abated after a first written notice, a second written notice demanding nuisance abatement within 15 days, or a longer period if the defendant sends a written response making specified allegations, after which an injunction application may be made.
- Expands incidents for which a place or premises may be declared a nuisance and enjoined by a local government's administrative board to include two or more specified violent felony offenses in a six-month period.
- Creates a rental property exception when a property is declared a nuisance for specified activity but the nuisance was committed by someone other than the property owner and the property owner takes specified remediation measures.

The bill may have a fiscal impact on state and local governments. See Fiscal Comments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Nuisance

A nuisance is an activity arising from a person's unreasonable, unwarranted, or unlawful use of his or her own property in a way that injures the rights of another or the public and produces such material annoyance, inconvenience, and discomfort that the law presumes resulting damage.¹ A nuisance may also be something that annoys and disturbs a person in possession of his or her property, making its ordinary use or occupation physically uncomfortable.²

A nuisance is either private, affecting an individual or a limited number of individuals, or public, violating public rights, subverting public order, decency, and morals, or generally inconveniencing the public.³ The Legislature has broad discretion to designate a particular activity a public nuisance, and the state, through its police power, has the authority to abate and enjoin a public nuisance.⁴

Places and Groups Declared a Nuisance

Under Florida law, a person is guilty of maintaining a nuisance if he or she erects, establishes, continues, maintains, owns, or leases any:

- Building, booth, tent, or place that tends to annoy or injures the health of the community or becomes manifestly injurious to the people's morals and manners;
- House or place of prostitution, assignation, or lewdness;
- Place in which persons illegally engage in games of chance; or
- Place where any law of the state is violated.⁵

The building, erection, place, tent, or booth and the furniture, fixtures, and contents of such premises are also declared a nuisance.⁶

Additionally, a criminal gang,⁷ criminal gang member,⁸ or criminal gang associate⁹ engaging in the commission of criminal gang-related activity¹⁰ is a public nuisance, as is the use of a location two or more times by such a person to engage in criminal gang-related activity.¹¹

¹ Black's Law Dictionary 736 (6th ed. 1996).

² *Id.*

³ *Orlando Sports Stadium, Inc. v. Powell*, 262 So. 2d 881 (Fla. 1972).

⁴ *Powell*, 262 So. 2d at 881.

⁵ S. 823.05(1), F.S.

⁶ *Id.*

⁷ "Criminal gang" means a formal or informal ongoing organization, association, or group that has one of its primary activities the commission of criminal or delinquent acts, and that consists of three or more persons who have a common name or common identifying signs, colors, or symbols, including terrorist organizations and hate groups. S. 874.03(1), F.S.

⁸ A "criminal gang member" is a person who meets two or more of the following criteria: (1) admits to criminal gang membership; (2) is identified as a criminal gang member by a parent, guardian, or documented reliable informant; (3) adopts the style of dress of a criminal gang; (4) adopts the use of a hand sign or has a tattoo identified as used by a criminal gang; (5) associates with one or more known criminal gang members; (6) is identified as a criminal gang member by physical evidence; (7) has been observed in the company of one or more known criminal gang members four or more times; and (8) has authored any communication indicating responsibility for the commission of any crime by the criminal gang. S. 874.03(3), F.S.

⁹ A "criminal gang associate" is a person who admits to criminal gang association or meets any single defining criterion for criminal gang membership. S. 874.03(2), F.S.

¹⁰ "Criminal gang-related activity" is an activity committed with the intent to benefit, promote, or further the interests of a criminal gang, or to increase one's own standing in a criminal gang; in which the participants are identified as criminal gang members or associates acting individually or collectively to further any criminal purpose; identified as criminal gang activity by a documented reliable informant; or that is identified as criminal gang activity by an information of previously untested reliability and such information is corroborated by independent information. S. 874.03(4), F.S.

¹¹ S. 823.05(2)(b) and (c), F.S.

A massage establishment engaging in illegal practices or unable to immediately present specified identification and documentation for each employee is also a public nuisance.¹²

Nuisance Abatement and Enjoinment

The persons and places identified as a public nuisance may be enjoined.¹³ When any such nuisance exists, the Attorney General, state attorney, city attorney, county attorney, or any citizen of the county where the nuisance exists may bring a nuisance abatement action in the name of the state to enjoin the nuisance, the person maintaining it, and the owner or agent of the premises where the nuisance is located.¹⁴

The person bringing suit may apply for a temporary nuisance injunction after giving the defendant at least three days' written notice of the time and place where such application will occur.¹⁵ A court issuing an injunction must specify what activities are enjoined but may not preclude the operation of a lawful business not conducive to the maintenance of a nuisance.¹⁶

If a nuisance is found to exist at trial, the court must issue a permanent injunction and order the person establishing or maintaining the nuisance to pay the proceedings' costs, which may include a lien on personal property found in the place of the nuisance and, if the property does not bring enough to repay the costs, on the real estate occupied by the nuisance.¹⁷ However, no lien may attach on real property belonging to someone other than the person establishing or maintaining the nuisance unless such person received five days' written notice and failed to start abating the nuisance within that time.¹⁸

Additionally, if a tenant was convicted of an offense involving controlled substances or prostitution, the court may order the tenant to vacate the property within 72 hours so long as the tenant and premises owner are parties to the nuisance abatement action and the order will lead to nuisance abatement.¹⁹

Local Administrative Action

Current law authorizes local administrative boards to impose administrative fines and other noncriminal penalties in order to provide an equitable, expeditious, effective, and inexpensive method of enforcing ordinances in counties and municipalities under circumstances when a pending or repeated violation continues to exist. Any place or premises used in the following manner may be declared a public nuisance:

- On more than two occasions in a six-month period as the site of:
 - Prostitution;
 - The unlawful sale, delivery, manufacture, or cultivation of any controlled substance; or
 - An offense relating to dealing in stolen property;
- On one occasion as the site of the unlawful, felony possession of a controlled substance and previously used on more than one occasion as the site of the unlawful sale, delivery, manufacture, or cultivation of any controlled substance;
- By a criminal gang for the purpose of conducting criminal gang activity; or
- On two or more occasions within a six-month period as the site of a violation of the Florida Drug and Cosmetic Act.²⁰

A county or municipality may, by ordinance, create an administrative board to hear complaints about such nuisances, and any county or municipal employee, officer, or resident may bring a complaint

¹² S. 823.05(3), F.S.

¹³ S. 823.05(1), (2)(b) and (c), and (3), F.S.

¹⁴ S. 60.05(1), F.S.

¹⁵ A nuisance is enjoined when an injunction is issued against it. An injunction is a court order requiring a person to do or stop doing a specific action. S. 60.05(2), F.S.; see Legal Information Institute, Enjoin, <https://www.law.cornell.edu/wex/enjoin> (last visited Jan. 29, 2020); see also Legal Information Institute, Injunction, <https://www.law.cornell.edu/wex/injunction> (last visited Jan. 29, 2020).

¹⁶ *Id.*

¹⁷ S. 60.05(4), F.S.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ S. 893.138(2), F.S.

before the board after giving the premises' owner at least three days' notice of such complaint at his or her last known address.²¹ After a hearing, the board may declare the premises to be a public nuisance and may enter an order requiring the premises owner to adopt appropriate procedures to abate the nuisance or immediately prohibiting the:

- Maintaining of the nuisance;
- Operating or maintaining of the place or premises; or
- Conduct, operation, or maintenance of any business or activity on the premises which is conducive to such nuisance.²²

Additionally, the board may bring a complaint seeking temporary and permanent injunctive relief against such a nuisance.²³ The administrative action process does not restrict the right of any person to bring a nuisance abatement action to enjoin the nuisance, the person maintaining it, and the owner or agent of the building or ground where the nuisance exists.²⁴ Further, a county or municipal ordinance may include provisions:

- Establishing additional penalties for public nuisance, including fines not exceeding \$250 per day.
- For the payment of reasonable costs, including reasonable attorney fees.
- For continuing jurisdiction over any premises declared a nuisance for up to one year.
- Establishing penalties, including fines not exceeding \$500 a day, for a recurring public nuisance.
- For a recorded public nuisance order to become a lien against the property subject to the order.
- For the foreclosure of property subject to a lien.²⁵
- For the recovery of all costs associated with the recording of orders and foreclosure.

Effect of Proposed Changes

Places and Groups Declared a Nuisance

The bill provides that the use of a location by a criminal gang, criminal gang members, or criminal gang associates for criminal gang-related activity is a public nuisance regardless of the number of times the location is used in that manner, allowing a quicker response to gang-related activity threatening public safety and order. The bill also adds to the list of places declared a nuisance, specifying that any place used on two or more occasions within a six-month period for any of the following violations is a public nuisance:

- Dealing in stolen property.²⁶
- Assault and battery.²⁷
- Burglary.²⁸
- Theft.²⁹
- Robbery by sudden snatching.³⁰

Further, the bill protects the property rights of rental property owners, providing that a rental property declared a nuisance may not be abated or subject to forfeiture under the Florida Contraband Forfeiture Act³¹ if the nuisance was committed by someone other than the property owner and the property owner:

- Begins rehabilitating the property within 30 days after the property is declared a nuisance; and
- Completes the property's rehabilitation within a reasonable time.

²¹ S. 893.138(4), F.S.

²² S. 893.138(4) and (5), F.S.

²³ S. 893.138(8), F.S.

²⁴ S. 893.138(9), F.S.

²⁵ However, no lien may be foreclosed on real property that is a homestead under s. 4, art. X of the Florida Constitution. S. 893.138(11), F.S.

²⁶ See s. 812.019, F.S.

²⁷ See ss. 784.011, 784.021, 784.03, or 784.045, F.S.

²⁸ See s. 810.02, F.S.

²⁹ See s. 812.014, F.S.

³⁰ See s. 812.131, F.S.

³¹ Ss. 932.701-932.7062, F.S. See s. 932.701(1), F.S.

Nuisance Abatement and Enjoinment

The bill allows sheriffs to sue in the name of the state to enjoin a nuisance. The bill increases a defendant's notice periods when nuisance abatement and enjoinment is sought. Specifically, the bill provides that a defendant must be given written notice requiring nuisance abatement within 10 days after the issuance of the notice informing the defendant that an application for temporary injunction may be filed if the nuisance is not timely abated. Before such an injunction may be filed, the defendant must be given a second written notice informing the defendant that an application for a temporary injunction will be filed if the nuisance is not abated within 15 days after the end of the initial 10-day period given in the first notice.³² The bill requires the defendant to be given a second written notice providing the defendant with sufficient time to comply if the defendant responds to the first notice in writing within the initial 10-day period providing proof that:

- Nuisance abatement involves compliance with another state law, and the requirements of such law make nuisance abatement within 10 days impossible; or
- The terms of an executed contract to perform services necessary for nuisance abatement require more than 10 days to complete.

The second notice must specify the location and the time when the application for the temporary injunction will be filed and:

- Describe the building, booth, tent, or place that is an alleged nuisance;
- State the activities that led to the nuisance allegations;
- State the actions necessary to abate the alleged nuisance; and
- State that costs will be assessed if nuisance abatement is not completed and if the court determines that the nuisance exists.

If the nuisance is not timely abated as provided in the second notice, an application for a temporary injunction must be filed as indicated in the notice.

The initial and second written notice must be sent by personal service to the premises owner at his or her address as it appears on the latest tax assessment roll or to the tenant of such address or, if the owner's address cannot be found, to the location of the alleged nuisance where it must also be displayed prominently and conspicuously.

Local Administrative Action

The bill provides that any place or premises may be declared a public nuisance if it is on more than two occasions within a six-month period the site of any combination of the following violations:

- Murder;³³
- Attempted felony murder;³⁴
- Aggravated battery with a deadly weapon;³⁵ or
- Aggravated assault without intent to kill.³⁶

As under current law, any county or municipal employee, officer, or resident may bring a complaint before an administrative board created to hear such a complaint after giving the premises' owner at least three days' notice of such complaint at his or her last known address. After a hearing, the board may declare the premises to be a public nuisance and may enter an order requiring the premises owner to adopt appropriate procedures to abate the nuisance or immediately prohibiting the:

- Maintaining of the nuisance;
- Operating or maintaining of the place or premises; or
- Conducting, operating, or maintaining any business or activity on the premises, which is conducive to such nuisance.

³² The notice periods provided in the bill do not take into account that nuisance abatement may involve compliance with another law or the formation of a contract for services, the requirements or terms of which make nuisance abatement impossible within 25 days.

³³ See s. 782.04, F.S.

³⁴ See s. 782.051, F.S.

³⁵ See s. 784.045(1)(a)2., F.S.

³⁶ See s. 784.021(1)(a), F.S.

Additionally, the board retains its ability to bring a complaint seeking temporary and permanent injunctive relief against such a nuisance, and the administrative action process does not restrict the right of any person to bring a nuisance abatement action to enjoin the nuisance, the person maintaining it, and the owner or agent of the building or ground where the nuisance exists.³⁷ However, the bill protects the property rights of rental property owners, providing that a rental property declared a nuisance under this section may not be abated or subject to forfeiture under the Florida Contraband Forfeiture Act if the nuisance was committed by someone other than the property owner and the property owner:

- Begins rehabilitating the property within 30 days after the property is declared a nuisance; and
- Completes the property's rehabilitation within a reasonable time.

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 criminal gang-related activity declared a nuisance; massage establishments engaged in prohibited activity; may be abated and enjoined.

Section 3: Amends s. 893.138, F.S., relating to local administrative action to abate drug-related, prostitution-related, or stolen-property-related public nuisances and criminal gang activity.

Section 4: Provides an effective date of July 1, 2020.

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 as the bill provides additional activities and properties that may be enjoined as a public nuisance. State and local governments may incur additional expenses from legal proceedings related to nuisance abatement.

³⁷ However, the bill does not provide an exception for a rental property declared a nuisance under this section if the nuisance was committed by someone other than the property owner.

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:

The bill neither requires nor provides authority for agency rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 29, 2020, the Civil Justice Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment:

- Extended the time frame for nuisance abatement if the defendant responds to the first ten-day abatement notice alleging and providing proof that:
 - Nuisance abatement involves compliance with another law and such compliance makes nuisance abatement within ten days impossible; or
 - The terms of an executed contract for nuisance abatement services require more than ten days to complete.
- Changed references in a nuisance abatement notice from the “declared” nuisance to the “alleged” nuisance.
- Extended rental property protection to a rental property declared a nuisance for specified activity when the nuisance was not committed by the property owner and the property owner takes specified remediation measures.
- Made conforming changes.

On February 13, 2020, the State Affairs Committee adopted an amendment and reported the bill favorably as a committee substitute. The amendment added sheriffs to the list of parties able to sue in the name of the state to enjoin a nuisance.

The analysis is drafted to the committee substitute as approved by the State Affairs Committee.