

SESSION OF 2019

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2238

As Amended by House Committee on Local
Government

Brief*

HB 2238, as amended, would create the Sedgwick County Urban Area Nuisance Act (Act). The bill would grant Sedgwick County certain nuisance abatement and removal authority and establish a process under which that authority could be utilized.

Abatement Powers

The Board of County Commissioners (Board) would be authorized to order the removal or abatement of any nuisance from any lot or parcel within the unincorporated area of Sedgwick County and would be authorized to order the repair or demolition of any structure or the removal or abatement of any other type of nuisance.

The bill would require the order to provide that costs of the abatement or removal be paid by the owner of the property on which the nuisance is located.

Designation as a Nuisance

The Board would make a determination that a nuisance is a menace and dangerous to the health of inhabitants of the county *via* a resolution when the Board, or agency designated by the Board, files with the clerk of Sedgwick County a statement in writing describing and declaring such nuisance.

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

Nuisance Abatement Order

The bill would require Sedgwick County to first obtain a conviction for a county code violation resulting from a nuisance within the 12-month period prior to the issuance of any abatement order or commencement of any nuisance abatement process.

The bill would allow the Board to order the owner of the property on which a nuisance is located to remove and abate within a specified amount of time that could not be less than 10 days. The bill would require the governing body or its representative to grant extensions in the amount of time specified in the order if the owner or agent of the owner (agent) demonstrates that due diligence is being exercised in abating the nuisance.

The bill would require the order to state the recipient could request a hearing before the governing body or its designated representative before the expiration of the initial waiting period or any extensions.

Notification

The bill would require the order to be served on the owner or agent by certified mail, return receipt requested, or by personal service. If the property is unoccupied and the owner is a nonresident, the order could be served by certified mail, return receipt requested, to the last known address of the owner.

If the owner or agent fails to accept delivery or produce a receipt of the notice ordering the abatement or removal of a nuisance in the preceding 24-month period, then the governing body could provide notice for any additional orders to abate or remove a nuisance *via* methods including, but not limited to, door hangers, conspicuously posting said notice of order on the property, personal notification, telephone communication, or first class mail. If the property is

unoccupied and the owner is a nonresident, the bill would require further notices be given by telephone or first class mail.

If the county abates or removes a nuisance, the bill would require the county to notify the owner or agent by certified mail, return receipt requested, of the total cost incurred by the county of the abatement or removal. The bill would require the notice to state payment would be due within 30 days of receipt of said notice.

If the owner or agent fails to comply with the requirements of the order, the bill would authorize the Board to proceed to repair or demolish any structure and have things described in the order removed and abated from the lot or parcel.

Cost Associated with Removal of a Nuisance

If the cost of the removal or abatement is not paid within the 30-day period, the bill would require the cost to be assessed against the lot or parcel of land on which the nuisance was located. The bill would require that the county clerk, at the time of certifying other county taxes, certify the costs and extend the same on the tax roll of the county against said lot or parcel to be collected by the county treasurer.

The bill would further require the county to subtract from the total cost of the removal or abatement the value of said removed or abated property. If the value is greater than the cost of the abatement or removal, the county would be required to pay the owner the difference. If the value is contested, the property owner could request a hearing before the governing body or its representative prior to the 30 days following receipt of the notices of costs due.

Removal of a Motor Vehicle

The bill would also give Sedgwick County the authority to remove and abate a motor vehicle determined to be a nuisance from a property not open to use by the public. Removal of such a motor vehicle must comply with procedures for impoundment, notice, and public auction provided in current law.

Following any sale by public auction of such a vehicle, the purchaser could file proof with the Division of Vehicles (Division), and the bill would require the Division to issue a certificate of title to the purchaser. If no responsible bid is received, the bill would authorize Sedgwick County to file proof with the Division and would require the Division to issue a certificate of title to the county.

A person whose motor vehicle has been disposed of in this manner would be eligible for a refund of the motor vehicle tax imposed by current law, in the manner prescribed by current law.

Agricultural Exemptions

The bill would state nothing in the Act would apply to land, structures, machinery, equipment, or motor vehicles used for agricultural purposes.

Background

The bill was introduced by the House Committee on Local Government by Representative Curtis on behalf of Sedgwick County Board of Commissioners.

At the House Committee hearing, a representative of the Metropolitan Area Building and Construction Department (Department) testified in favor of the bill. The representative of the Department stated counties do not have nuisance

abatement powers, and the bill would give Sedgwick County a means to protect the health and safety of residents in the unincorporated areas of the county.

Testimony in opposition to the bill was provided by a representative of the Kansas Livestock Association (KLA). The representative generally stated concerns regarding private property rights, especially with regards to agricultural production near areas of urban growth. The representative also offered three suggested amendments to the bill. Written-only opponent testimony was provided by two private citizens.

No other testimony was provided.

The House Committee amended the bill to:

- Remove a Board's authority to order the draining of any pond or ponds of water;
- Require the county to subtract from the cost of the removal or abatement the value of the property removed or abated, and provide for a specified remedy if the value of such property is greater than its removal or abatement cost;
- Provide the property owner could request a hearing before the governing body or its designated representative if the value of the property is contested; and
- Specify that nothing in the Act would apply to certain property used for agricultural purposes.

According to the fiscal note prepared by the Division of the Budget on the bill as introduced, the Kansas Association of Counties stated any increased costs associated with enactment of the bill would be offset with additional revenues from nuisance abatements.