

House of Representatives, April 8, 1998. The Committee on Judiciary reported through REP. LAWLOR, 99th DIST., Chairman of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING NUISANCE ABATEMENT AND QUALITY OF LIFE.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (a) For the purposes of this
2 act, a person creates or maintains a public
3 nuisance if such person erects, establishes,
4 maintains, uses, owns or leases any building or
5 place for any of the purposes enumerated in
6 subdivisions (1) to (8), inclusive, of subsection
7 (c) of this section, or for any other illegal
8 purpose.

9 (b) The state may bring an action to abate a
10 public nuisance involving any real property,
11 commercial or residential, including single or
12 multifamily dwellings, provided there have been
13 arrests, seizures or incidences of conduct
14 documented by a law enforcement officer on the
15 property for three or more of the offenses or
16 violations enumerated in subdivisions (1) to (8),
17 inclusive, of subsection (c) of this section
18 within the three hundred sixty-five days preceding
19 commencement of the action and it appears that the
20 illegal conduct constituting a public nuisance is
21 a continuing or ongoing activity.

22 (c) (1) Prostitution under section 53a-82,
23 53a-83, 53a-84, 53a-85, 53a-86, 53a-87, 53a-88 or
24 53a-89 of the general statutes.

25 (2) Promoting an obscene performance or
26 obscene material under section 53a-194, 53a-196,
27 53a-196a or 53a-196b of the general statutes, or
28 child pornography under section 53a-196c or
29 53a-196d of the general statutes.

30 (3) Professional gambling or transmission of
31 gambling information under section 53-278b or
32 53-278d of the general statutes. Nothing in this
33 section shall prevent the state from also
34 proceeding against gambling premises under section
35 53-278e of the general statutes.

36 (4) Offenses for the sale of controlled
37 substances, possession of controlled substances
38 with intent to sell, or maintaining a drug factory
39 under section 21a-277, 21a-278 or 21a-278a of the
40 general statutes, or chronic use of the property
41 by persons possessing controlled substances under
42 section 21a-279 of the general statutes. Nothing
43 in this section shall prevent the state from also
44 proceeding against property under section 21a-259
45 or 54-36h of the general statutes.

46 (5) Illegal liquor sales under chapter 545 of
47 the general statutes.

48 (6) Criminal violations of the zoning laws,
49 under section 8-12 or 8-12a of the general
50 statutes.

51 (7) Violations of the inciting injury to
52 persons or property law under section 53a-179a of
53 the general statutes.

54 (8) Maintaining a motor vehicle chop shop
55 under section 14-149a of the general statutes.

56 Sec. 2. (NEW) (a) The Chief State's Attorney
57 or a deputy chief state's attorney, state's
58 attorney or assistant or deputy assistant state's
59 attorney may file with the court a summons and
60 complaint requesting that the court enter orders
61 to abate any public nuisance as established
62 pursuant to section 1 of this act. The state shall
63 submit with the summons and complaint an affidavit
64 and any other evidence tending to show that a
65 public nuisance within the meaning of this act
66 exists.

67 (b) Such a nuisance proceeding shall be
68 deemed a civil action in equity and venue shall
69 lie in the superior court for the judicial

70 district within which the real property alleged to
71 constitute a public nuisance is located. The
72 summons may be signed by a clerk of the court or
73 his assistant and shall notify the defendant to
74 appear before the court, at a place and time named
75 in the notice, which shall be not less than seven
76 nor more than fourteen days after service.

77 (c) The record owner of the real property,
78 any person claiming an interest of record pursuant
79 to a bona fide mortgage, assignment of lease or
80 rent, lien or security in the property, and any
81 lessee or tenant whose identity is known and whose
82 conduct is alleged to have contributed to the
83 public nuisance shall be made a defendant to the
84 action, except that the state may exempt as a
85 defendant any owner, lienholder, assignee, lessee,
86 tenant or resident who cooperates with the state
87 in making bona fide efforts to abate the nuisance
88 or any tenant or resident who has been factually
89 uninvolved in the conduct contributing to such
90 nuisance. Service shall be made by leaving a copy
91 of the summons and complaint with each defendant,
92 or at his usual place of abode, if it is known.
93 Where the defendant is a corporation, service
94 shall be made by leaving a copy of the summons and
95 complaint with any officer of such corporation or
96 with its designated agent for process. Service of
97 process upon any defendant may be made by an
98 inspector of the Division of Criminal Justice or a
99 local or state police officer.

100 (d) The complaint shall also name as
101 defendant the real property where the public
102 nuisance is alleged to have taken place,
103 describing it both by its street address and in
104 the same manner as described in the municipal land
105 records. In rem jurisdiction shall be obtained
106 over the real property where it is alleged the
107 public nuisance has taken place by posting a copy
108 of the summons and complaint on any outside door
109 to the premises.

110 (e) Where the state's complaint alleges, and
111 its supporting affidavit and any other evidence
112 establish probable cause to believe, that personal
113 property located upon the real property is used to
114 commit or facilitate a public nuisance, the court
115 may authorize the officers serving the summons and
116 complaint to enter onto the real property and make
117 and return to court an inventory of such personal

118 property. Preparation of this inventory may
119 include the taking of photographs, measurements or
120 diagrams or the making of a videotape, if this is
121 reasonably necessary to document the identity and
122 location of the property. The court may also enter
123 an order prohibiting any person from destroying,
124 altering or removing any of the personal property.

125 (f) After in rem jurisdiction is obtained
126 over the property, the state may file upon the
127 municipal land records a notice to the effect that
128 a nuisance proceeding is pending.

129 (g) Each defendant shall file an answer to
130 the state's summons and complaint not later than
131 the initial hearing date. This answer shall not
132 take the form of a general denial but shall
133 address specifically the allegations in the
134 state's complaint.

135 (h) At the initial hearing the court may
136 continue the case for discovery or may schedule
137 the case for an evidentiary hearing. For any
138 defendant who fails to appear the court may enter
139 a default. Following an evidentiary showing by the
140 state in support of the relief requested, which
141 may include affidavits or the testimony of
142 witnesses, the court may enter a judgment upon the
143 default with such orders as appear reasonably
144 necessary to abate the public nuisance. Any
145 defendant against whom a default judgment has been
146 entered shall be sent notice of the judgment by
147 the state and may move to reopen the judgment in
148 accordance with section 52-212 of the general
149 statutes. For any defendant who fails to file an
150 answer to the state's complaint the court may
151 order such sanctions as justice requires,
152 including deeming the allegations in the state's
153 complaint as admitted.

154 (i) At the initial hearing, or at any
155 subsequent hearing date, the court may, upon
156 motion by the state or any defendant, enter such
157 interim orders as justice requires either to abate
158 the public nuisance or to protect the property
159 rights of a defendant.

160 (j) At the evidentiary hearing upon the
161 nuisance complaint, the state shall have the
162 burden of proving by clear and convincing evidence
163 that a public nuisance upon the real property
164 exists. If the state presents clear and convincing
165 evidence that there have been arrests, seizures or

166 incidences of conduct on the property documented
167 by a law enforcement officer for three or more
168 offenses or violations enumerated in subdivisions
169 (1) to (8), inclusive, of subsection (c) of
170 section 1 of this act, within the three hundred
171 sixty-five days preceding commencement of the
172 action, there shall be a rebuttable presumption of
173 a public nuisance. Any defendant may offer
174 evidence by way of an affirmative defense that he
175 has taken reasonable steps to abate the nuisance,
176 but has been unable to abate the nuisance due to
177 operation of law. Where the state has alleged that
178 personal property has been used to commit or
179 facilitate a public nuisance, the state shall have
180 the burden of proving by clear and convincing
181 evidence that the personal property has been used
182 in this manner.

183 Sec. 3. (NEW) (a) In any proceeding to abate
184 a public nuisance, the state may request such
185 remedies or relief as are reasonably necessary to
186 abate the nuisance including, but not limited to,
187 injunctive relief, appointment of a receiver of
188 rents, orders for repairs or alterations to the
189 real property or for an order directing the
190 closing of the property. In any such action the
191 court may enter any orders necessary and proper to
192 abate the nuisance. Where the state applies for a
193 closing order, the court shall balance the rights
194 of innocent tenants or residents against the need
195 for closing, and shall limit the scope of a
196 closing order to minimize dispossession or
197 dislocation of innocent tenants or residents,
198 unless continued occupation of the property
199 constitutes a clear and present danger to public
200 health, safety or welfare, within the meaning of
201 subsection (a) of section 5 of this act. In any
202 case where dispossession or dislocation of
203 innocent tenants or residents is necessary to
204 abate the nuisance, the court may impose the
205 reasonable costs of relocating such tenants or
206 residents upon any defendant. The court shall
207 retain jurisdiction over the case until it appears
208 that the nuisance has been abated permanently.

209 (b) In addition to any other remedies or
210 relief, the state may request that the court
211 impose a civil penalty against any defendant with
212 an interest in the real property, where it appears
213 that such defendant was a principal or an

214 accomplice in the illegal conduct constituting the
215 public nuisance, in an amount not to exceed one
216 thousand dollars for each day the nuisance is
217 found to have existed. Upon recovery, such penalty
218 shall be deposited in the General Fund.

219 (c) Where the state alleges that any
220 defendant with an interest in the real property
221 was a principal or an accomplice in illegal
222 conduct constituting a public nuisance, as defined
223 in subdivisions (1) to (8), inclusive, of section
224 1 of this act, the state may request a penalty in
225 an amount of one thousand dollars for each day the
226 nuisance is found to have existed. Upon recovery,
227 such penalty shall be deposited in the General
228 Fund.

229 (d) In any nuisance proceeding, the state may
230 request that the court make an award to reimburse
231 the state, any municipality, or any law
232 enforcement agency for the reasonable costs of
233 investigation, prosecution and any extraordinary
234 expenses incurred in abating the public nuisance.
235 The state shall submit an affidavit and such other
236 documents as the court directs in support of a
237 request for award of costs.

238 (e) Where the court finds that personal
239 property has been used to commit or facilitate a
240 public nuisance, or where the court has entered
241 judgment against a defendant who owns such
242 personal property in default of appearance, the
243 court may direct the state to seize the personal
244 property. Where the personal property is a
245 valuable prize, the court shall order its sale at
246 public auction by the Commissioner of
247 Administrative Services or his designee. The net
248 proceeds of any sale, if any, after deduction of
249 any allowable expenses, shall be deposited in the
250 General Fund. Where it appears that the personal
251 property has no marketable value, constitutes a
252 hazard, or is contraband, the court may order its
253 disposal by destruction.

254 (f) The court may authorize the state or its
255 agents to make any repairs or alterations to the
256 real property to bring it into compliance with
257 applicable state and local building, fire, health,
258 housing or similar codes. The court shall award
259 the state the actual costs of any such repairs or
260 alterations.

261 (g) The court may enter an order authorizing
262 the state to close the real property, where this
263 is necessary to abate a public nuisance. The state
264 shall post a copy of any court order to close the
265 real property on any outside door to the premises.
266 The order shall include a notice that any person
267 who removes, mutilates or defaces the closing
268 order may be punished, upon conviction, by a fine
269 not to exceed two hundred fifty dollars or by
270 imprisonment of fifteen days, or both.

271 (h) At any time after entry of an order
272 closing the real property a defendant with an
273 interest in the property may apply to the court to
274 have the closing order vacated, upon a factual
275 showing credited by the court either that conduct
276 constituting a public nuisance upon the real
277 property has ceased and is unlikely to reoccur,
278 that steps have been taken to prevent a nuisance
279 from continuing and these steps are likely to
280 prove effective, or that closing of the real
281 property is no longer required to prevent a public
282 nuisance. Prior to any decision on a defendant's
283 application to vacate a closing order, a defendant
284 shall afford to the state a reasonable opportunity
285 to inspect the real property to verify that the
286 public nuisance has been abated, and the court
287 shall provide the state with chance to be heard to
288 contest the defendant's factual claims.

289 (i) Where the court vacates a closing order,
290 it may condition its decision on the defendant
291 posting a bond in an amount not to exceed the
292 assessed value of the real property as surety
293 against recurrence of the public nuisance.

294 (j) Where the court finds that real property
295 constitutes a public nuisance and enters a final
296 judgment, that judgment and any orders and relief
297 the court may order shall constitute a lien on the
298 real property, and a copy of the judgment and
299 orders may be filed on the land records in the
300 town where such property is located. At any time
301 after the entry of judgment, a defendant may move
302 the court to modify any order or to remove the
303 lien on the real property. An order may be
304 modified or the lien may be removed, where the
305 defendant makes a factual showing credited by the
306 court that: (1) All court orders have been
307 complied with, that any named persons have ceased
308 any illegal conduct constituting a public nuisance

309 upon the real property and that the nuisance has
310 abated and is unlikely to reoccur; (2) the
311 defendant wishes to sell the real property to an
312 identified bona fide purchaser for value whose
313 proposed use for the real property will not
314 constitute a public nuisance; or (3) the defendant
315 has demolished or razed any buildings, structures
316 or features upon the real property capable of
317 supporting a public nuisance. Prior to any
318 decision on a defendant's application to vacate a
319 final order or remove a lien, the defendant shall
320 afford the state a reasonable opportunity to
321 inspect the real property to verify that the
322 public nuisance has been abated, and the court
323 shall provide the state with an opportunity to be
324 heard to contest the defendant's factual claims.

325 (k) After one hundred eighty days from entry
326 of an order closing real property, where it
327 appears that a nuisance continues to exist upon
328 the property and no defendant has taken
329 substantial steps to abate that nuisance, or it
330 appears that the property is abandoned, the state
331 may apply to the court for an order condemning the
332 real property and ordering transfer of title to
333 the state, or a municipality, or a community
334 action agency, as defined by section 17b-885 of
335 the general statutes, or a charitable
336 organization, within the meaning of subdivision
337 (1) of section 21a-190a of the general statutes.
338 The court shall schedule a hearing and shall order
339 the state to serve notice on any defendant with an
340 interest in the property and on the proposed
341 beneficiary of the condemnation. At the hearing,
342 the state shall have the burden of proving by
343 clear and convincing evidence that the real
344 property is subject to condemnation. The court
345 shall afford to any defendant the opportunity to
346 present evidence to contradict or rebut the
347 state's claim. Where the court finds that the real
348 property is subject to condemnation, it shall
349 inquire of the proposed beneficiary of the
350 condemnation to satisfy itself that the
351 beneficiary is ready, willing and able to take
352 title to the real property subject to any recorded
353 mortgage, lien or encumbrance, and that the
354 beneficiary is prepared to repair or rehabilitate
355 the property, to use it in such a way as to abate
356 any public nuisance, or to demolish or raze any

357 buildings, structures or features upon the
358 property that tend to promote a nuisance. The
359 court may then order condemnation of the real
360 property and enter judgment transferring title to
361 the beneficiary. Where the real property is
362 condemned and transferred to a beneficiary, the
363 court shall also order that the lien filed on the
364 municipal land records pursuant to subsection (j)
365 of this section and subsection (d) of section 6 of
366 this act be removed.

367 (1) Any person who intentionally violates any
368 court order entered in final judgment of a public
369 nuisance proceeding under this act shall be fined
370 five hundred dollars or be imprisoned not more
371 than six months, or both.

372 Sec. 4. (NEW) (a) Where the real property is
373 a rental property and a lawful dwelling, residence
374 or sleeping place for a person or persons, the
375 court may, upon application by the state, appoint
376 a receiver to manage and operate the property
377 during the pendency of the proceeding. The
378 receiver shall have such powers and duties as the
379 court may direct, including, but not limited to:
380 (1) Collecting and holding all rents due from
381 tenants; (2) leasing or renting any part of the
382 real property; (3) making or authorizing other
383 persons to make repairs necessary to maintain the
384 property; (4) providing for the security of the
385 real property, including the hiring of a guard or
386 watchman; (5) prosecuting or defending suits at
387 law arising from management of the property,
388 including retaining counsel; and (6) spending
389 rents collected from the real property in the
390 exercise of the receiver's powers and duties. The
391 receiver, prior to appointment, shall promise, on
392 oath or affirmation, to discharge his duties
393 faithfully and honestly, and shall file with the
394 clerk of the court a bond with such surety as the
395 court orders as guarantee for the faithful
396 performance of his duties. Following appointment,
397 the receiver shall keep complete written records,
398 including records of all receivership funds on
399 deposit and records itemizing all receipts and
400 expenditures.

401 (b) The receiver's accounts shall be open to
402 inspection by any defendant having an ownership
403 interest in the real property, the state or the
404 court.

405 (c) Upon motion by any defendant having an
406 interest in the real property or the state, or
407 upon its own motion, the court may direct the
408 receiver to render a periodic accounting to the
409 court. A copy of any order to the receiver for a
410 periodic accounting shall be sent to the
411 receiver's surety.

412 (d) A receiver shall act until the conclusion
413 of the nuisance proceeding, or until removed by
414 the court or discharged by his own motion or by a
415 motion by any defendant or the state. Upon the
416 termination of the receivership, the receiver
417 shall render to the court a final accounting of
418 all funds pertaining to the real property on
419 deposit, as well as records of receipts and
420 expenditures. The receiver shall deliver ledgers,
421 records and the receiver's files and notes
422 pertaining to any litigation or claim arising out
423 of management of the real property to any person
424 designated by the court.

425 Sec. 5. (NEW) (a) At any time during the
426 pendency of an action to abate a public nuisance,
427 where it appears that use of the real property
428 constitutes a clear and present danger to the
429 public health, safety or welfare, the state may
430 apply to the court or, if the court is not in
431 session, to any judge of the Superior Court, for
432 an ex parte restraining order directing the
433 defendants to cease and desist from any conduct
434 constituting a nuisance, or to take such steps as
435 will prevent a nuisance from continuing. Where it
436 appears that an order temporarily closing the real
437 property is necessary to prevent a danger to the
438 public health, safety or welfare, the court or
439 judge may enter such an order. The state shall
440 provide an affidavit and any other evidence with
441 its application for a temporary restraining order
442 reciting those facts tending to show that a clear
443 and present danger to the public health, safety or
444 welfare exists. Where the court or judge finds
445 that a clear and present danger to the public
446 health, safety or welfare exists and grants an ex
447 parte order based on the state's application, the
448 court's order shall also specify a place and time
449 at which the defendants may be heard, not later
450 than five business days after entry of the order,
451 and shall direct the state to serve a copy of the
452 application and the temporary restraining order,

453 and the state's supporting affidavit upon each
454 defendant, unless such affidavit is ordered sealed
455 by the court or judge. A copy of the state's
456 application and the temporary restraining order
457 shall be posted on any outside door to the real
458 property.

459 (b) Where the state's application alleges,
460 and its supporting affidavit and any other
461 evidence establish probable cause to believe, that
462 personal property located upon the real property
463 is used to commit or facilitate a public nuisance,
464 the officers serving the temporary restraining
465 order shall enter onto the real property and shall
466 make and return to court an inventory of such
467 personal property. Preparation of this inventory
468 may include the taking of photographs,
469 measurements or diagrams or the making of a
470 videotape, if this is reasonably necessary to
471 document the identity and location of the
472 property.

473 (c) At any hearing on a temporary restraining
474 order, the scope of the hearing shall be limited
475 to whether a clear and present danger to the
476 public health, safety or welfare requiring a
477 restraining order exists. If the order is
478 contested by a defendant, the state shall have the
479 burden of showing by clear and convincing evidence
480 that a danger to public health, safety or welfare
481 exists.

482 (d) Any person who intentionally violates a
483 temporary restraining order issued pursuant to
484 this section shall be fined not more than one
485 thousand dollars or imprisoned not more than six
486 months, or both, in addition to any other
487 punishment prescribed by law.

488 (e) At any time, a defendant may apply to the
489 court to have a temporary restraining order
490 vacated, upon a factual showing credited by the
491 court either that conduct constituting a public
492 nuisance upon the real property has ceased and is
493 unlikely to reoccur, that steps have been taken to
494 prevent a nuisance from continuing and these steps
495 are likely to prove effective, or that closing of
496 the real property is no longer required to prevent
497 a danger to public health, safety or welfare.
498 Prior to any decision on a defendant's application
499 to vacate a temporary restraining order, a
500 defendant shall afford to the state a reasonable

501 opportunity to inspect the real property to verify
502 that a danger to public health, safety or welfare
503 no longer exists, and the court shall provide the
504 state with an opportunity to be heard to contest
505 the defendant's factual claims.

506 (f) Where the court vacates a temporary
507 restraining order during the pendency of a public
508 nuisance action, its order shall include a
509 provision authorizing the state to enter onto the
510 real property, periodically and without notice,
511 for the purpose of ascertaining whether a public
512 nuisance has resumed.

513 (g) Where the court vacates a temporary
514 restraining order, it may condition its decision
515 on the defendant posting a bond in an amount not
516 to exceed the assessed value of the real property
517 as surety against recurrence of a clear and
518 present danger to the public health, safety and
519 welfare upon the real property.

520 Sec. 6. (NEW) (a) The state may use an
521 inspector of the Division of Criminal Justice or a
522 state or municipal police officer to assist in the
523 enforcement of any court order in a public
524 nuisance proceeding.

525 (b) In any public nuisance proceeding, the
526 conduct and liability of any officer, agent or
527 employee of a defendant shall be imputed to such
528 defendant, including a corporate entity.

529 (c) In any public nuisance proceeding, an
530 order by the court closing the real property shall
531 not be deemed to pass dominion, title, possession
532 or control over the real property to the state.

533 (d) In any public nuisance proceeding, any
534 monetary penalty imposed by the court on a
535 defendant with an ownership interest in the real
536 property and any award of costs to the state shall
537 constitute a lien on the real property, and may be
538 recorded as such on the land records in the town
539 where the property is located. In addition, the
540 state may, at its election, bring suit against a
541 defendant to collect any monetary penalty or award
542 of costs.

543 Sec. 7. (NEW) Availability to the state of
544 other remedies at law or equity shall not prevent
545 the granting of relief under this act.

546 Sec. 8. This act shall take effect from its
547 passage.

548 JUD COMMITTEE VOTE: YEA 39 NAY 0 JFS

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"THE FOLLOWING FISCAL IMPACT STATEMENT AND BILL ANALYSIS ARE PREPARED FOR THE BENEFIT OF MEMBERS OF THE GENERAL ASSEMBLY, SOLELY FOR PURPOSES OF INFORMATION, SUMMARIZATION AND EXPLANATION AND DO NOT REPRESENT THE INTENT OF THE GENERAL ASSEMBLY OR EITHER HOUSE THEREOF FOR ANY PURPOSE."

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FISCAL IMPACT STATEMENT - BILL NUMBER SHB 5073

STATE IMPACT	Cost, Revenue Gain, Minimal Cost, Can Be Absorbed, see explanation below
MUNICIPAL IMPACT	Minimal Cost, Revenue Gain, Potential Avoidance of Grand List Reductions, see explanation below
STATE AGENCY(S)	Judicial Department, Department of Criminal Justice, Department of Administrative Services, Criminal Justice Agencies

EXPLANATION OF ESTIMATES:

STATE AND MUNICIPAL IMPACT: The bill would result in a cost to the Division of Criminal Justice in order to handle the proceedings specified in the bill. The Division would require additional staff resources including a prosecutor, paralegal and secretary. The agency has indicated that the Office of Policy and Management has made a grant of \$143,000 available to the agency to accomplish this. It should be noted that these costs and those associated with state and local police can be reimbursed from civil penalty proceeds under the bill. Net proceeds to the state would be deposited in the General Fund. The bill would also result in a cost to the Judicial Department for additional court hearings and procedures. Without additional funding, these costs can be absorbed by diverting resources from other cases.

The bill also establishes various criminal penalties relating to the bill's procedures. This would result in

additional costs for the criminal justice system that can be absorbed within normal budgetary resources.

To the extent that the bill's remedies or relief are successful in abating public nuisances on real property thus avoiding subsequent deterioration, abandonment or demolition, potential municipal grand list reductions could be avoided.

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OLR BILL ANALYSIS

sHB 5073

AN ACT CONCERNING NUISANCE ABATEMENT AND QUALITY OF LIFE

SUMMARY: This bill authorizes the chief state's attorney, a state's attorney, or a deputy or assistant state's attorney to bring an action to abate certain public nuisances involving any real property and establishes abatement procedures. Under the bill, a public nuisance is created whenever a person erects, establishes, maintains, uses, owns, or leases any building or place for any illegal activity, including those activities enumerated in the bill. But the state's authority to abate a nuisance applies only when the offenses listed in the bill have been committed.

Under existing law unchanged by the bill, municipalities may define, prohibit, and abate all nuisances and their causes and all things detrimental to the health, morals, safety, convenience, and welfare of the people living within their boundaries. The municipalities may make the owner of any property where a nuisance exists incur the expense of stopping it.

The bill specifies that the availability of other legal or equitable remedies does not prevent courts from granting the relief it authorizes.

EFFECTIVE DATE: Upon passage

FURTHER EXPLANATION

Public Nuisance (Sec. 1)

The bill authorizes the state to bring an action to abate a public nuisance on commercial or residential property, including multifamily dwellings. The court retains jurisdiction over the case until the nuisance appears permanently abated. The state cannot bring the action unless, within the year preceding the action, there have been at least three arrests, seizures, or police-documented incidents involving the following offenses and the illegal activity appears to be ongoing:

1. prostitution;
2. promoting obscene performances or material, or child pornography;
3. illegal professional gambling or gambling information transmission;
4. selling, possessing with intent to sell, and producing illegal drugs, or chronic use of the property by people possessing illegal drugs;
5. illegally selling liquor;
6. criminally violating zoning laws;
7. inciting injury to people or property; and
8. running a vehicle chop shop.

The bill provides that its provisions do not prohibit the state from bringing any other action against property where illegal gambling or drug use occurs.

Defendants in a Nuisance Abatement Action (Secs. 2 (c), (d), and (f))

People. The state must bring an action for abatement against (1) the property owner of record; (2) any person claiming interest in the property, including a bona fide mortgagee, lease or rent assignee, and lien or security holder; and (3) any lessee or tenant whose identity is known and whose conduct is alleged to have contributed to the nuisance. But the state can exempt any owner, lienholder, assignee, lessee, tenant or resident who cooperates with the state in making bona fide efforts to stop the nuisance or any tenant or

resident who has not been involved in the public nuisance.

Property. The state must also name the real property where the nuisance allegedly exists as a defendant and describe it (1) by its street address and (2) as it appears in municipal land records. It establishes that in proceedings against property jurisdiction must be obtained by posting a copy of the summons and complaint on any outside door of the premises. After in rem jurisdiction is obtained, the state's attorney can file a notice that a nuisance complaint is proceeding on the property's municipal records.

Legal Procedures (Secs. 2 (a) to (j))

The bill allows the state to file a summons and complaint asking a court to order the nuisance to stop. The state must file an affidavit and any evidence that shows the nuisance exists.

The bill sets numerous procedural requirements and makes other procedures permissible. Specifically, it:

1. makes the nuisance proceeding a civil action in equity;
2. gives venue to the court located in the judicial district where the real property is located;
3. permits a court clerk or his assistant to sign the summons;
4. requires the summons to notify the defendant to show up at the court at a specified place and time between seven and 14 days after service;
5. requires service to be made by leaving a copy of the summons and complaint with each defendant, or where he usually lives, if known;
6. allows service on any corporate defendant to be made by leaving a summons and complaint copy with any corporation officer or designated agent for process;

7. allows a Division of Criminal Justice inspector or a local or state police officer to serve process;
8. requires defendants to file an answer to the complaint that specifically address the complaint's allegations by the initial hearing date;
9. allows the court to enter any sanctions against a defendant who does not file an answer to the complaint, including deeming that he admits the state's allegations;
10. allows the court to permit discovery at the initial hearing or to schedule the case for an evidentiary hearing;
11. allows the court to enter a default judgment against any defendant who does not show up for a hearing;
12. allows the court to enter a default judgment that sets reasonable measures to stop the nuisance after the state presents evidence, by affidavit or testimony, in support of the relief sought;
13. requires the court to send any defendant against whom a default judgment has been entered notice (a) of the judgment and (b) that he may move to reopen the case within four months upon a showing of reasonable cause or that a good defense existed at the time of the action and that he was prevented from appearing by mistake, accident, or some other reasonable cause;
14. allows the court to enter interim orders to stop the nuisance or protect a defendant's property rights;
15. requires the state to prove by clear and convincing evidence that a public nuisance exists in an evidentiary hearing;
16. establishes a rebuttable presumption that a public nuisance exists if the state presents

clear and convincing evidence of three or more police-documented arrests, seizures or incidences of illegal conduct on the property within the year preceding the action;

17. allows a defendant to enter as an affirmative defense evidence that he took reasonable steps to stop the nuisance, but that existing law prevented him from being successful in stopping it; and
18. requires the state to prove by clear and convincing evidence that personal property has been used to commit or help commit a public nuisance.

Personal Property used to Commit Nuisance (Sec. 2 (e))

The bill allows the court to authorize the officers serving the summons and complaint to enter the property and return an inventory of personal property to the court if the complaint alleges and supporting evidence establishes probable cause that the property contains personal property used to commit or help commit a public nuisance. The inventory can include photographs, measurements, diagrams, or videotapes if it is reasonably necessary to document the identity and location of the property. The court can enter an order barring anyone from destroying, altering, or removing any personal property used to commit the nuisance.

Remedies (Sec. 3)

The bill authorizes the state to request the court to impose any remedies or relief reasonably necessary to abate the nuisance including, injunctive relief, an order to close the property, civil penalties, property repairs and alterations, and costs. The court may enter any order necessary and proper to abate the nuisance.

Closings (Sec. 3 (a) and (g)). The court may authorize the state to close real property if a closing is necessary to abate the nuisance. But before ordering a property closed, the court must balance the right of any innocent tenants or residents against the need for the closing. The court must minimize the dispossession or dislocation of innocent occupants unless continued occupation constitutes a clear and present danger to

public health, safety, or welfare. If the court does order the property closed, it may impose the cost of relocating innocent occupants on the defendant.

The court must include in the closure order a notice that its removal, mutilation, or defacement is punishable by 15 days imprisonment, a fine of up to \$250, or both. The state must post the court order on the outside door of the premises.

Civil Penalties (Secs. 3 (b) and (c)). The court may impose a civil penalty against any defendant with an interest in the real property if it appears that the defendant was a principal or an accomplice in the nuisance activities. The penalty is up to \$1,000 a day for each day the nuisance exists and, if collected, must be deposited in the General Fund (see COMMENT).

Repairs or Alterations (Sec. 3 (f)). The court may authorize the state or its agents to make repairs or alterations to the property in an attempt to bring it into compliance with applicable state and local building, fire, health, housing, or similar codes. The court must award the state the cost of making these repairs and alterations.

Costs (Sec. 3 (d)). The court may order that the defendant reimburse the state, or any municipality or law enforcement agency for reasonable investigation and prosecution costs and any extraordinary expenses incurred in abating the nuisance. The state must give the court any documents that it directs in support of any request for an award, including an affidavit.

Remedy for Residential Rental Property (Sec. 4)

The bill authorizes the court to appoint a receiver to manage and operate residential rental property that is the subject of a nuisance action. The receiver must have any powers and duties the court directs, including to:

1. collect and hold all rents;
2. lease or rent any part of the property;
3. authorize or make necessary repairs;

4. secure the property, including hiring a guard or watchman;
5. prosecute or defend suits arising from property management, including by hiring an attorney; and
6. spend rent collected from the property to exercise his powers and duties.

Prior to appointment, the receiver must promise under oath or affirmation to discharge his duties faithfully and honestly and must post a bond with surety as directed by the court to guarantee the faithful performance of such duties. The receiver must keep complete written records, including records of all receivership funds on deposit and records itemizing all receipts and expenditures. The receiver's accounts must be open to the defendants with a property interest, the state, and the court. The court, upon its own motion or that of a defendant with a property interest, may order the receiver to make a periodic accounting to the court. The court must send a copy of any order for such an accounting to the receiver's surety.

A receiver must act until the nuisance proceedings end, the court removes him, or he is discharged by his own motion or that of the defendant or the state. Once the receivership is terminated, the receiver must give the court a final accounting of all funds on deposit pertaining to the property and records of receipts and expenditures. The receiver must deliver to any person the court designates ledgers, records, and the receiver's files and notes on any litigation or claim arising out of property management.

Vacating an Order to Close (Sec. 3 (h))

The bill authorizes a defendant with an interest in property that has been closed to apply at any time for an order to vacate the closing. The defendant must show, in a manner credited by the court, that the nuisance activity has ceased and is unlikely to reoccur, that steps have been taken that are likely to prevent a nuisance from continuing, or that closing the property is no longer required to prevent the nuisance. Before the court acts on the defendant's application, the defendant must give the state a reasonable

opportunity to inspect the real property and the court must give the state the opportunity to contest the defendant's claim.

The court may condition any order to vacate the closing on the defendant posting a bond against the recurrence of the nuisance. The bond may be valued at up to the assessed value of the property.

Transferring Title of Closed Property (Sec. 3 (k))

The state may apply for an order condemning and transferring the title to closed property if, within 180 days after the court enters its order, it appears that the property is abandoned or that the nuisance still exists and that the defendant has not taken substantial steps to stop it. The title may be transferred to the state, a municipality, community action agency, or charitable organization.

The court must schedule a hearing and order the state to give notice to any defendant with a property interest and the proposed beneficiary. The state has the burden of proving by clear and convincing evidence that the property is subject to condemnation. The court must give any defendant the opportunity to rebut the state's claim.

If the court finds that the property is subject to condemnation, it must then determine if the beneficiary is ready, willing, and able to take title subject to any recorded mortgage, lien, or encumbrance. The court must also determine that the beneficiary is prepared to repair or rehabilitate the property, use it in a way to stop the nuisance, or to demolish or raze any buildings, structures, or features that promote a nuisance.

After the hearing, the court may order the property condemned and transfer title to the beneficiary. The court must also order that the lien filed on the municipal land records be removed.

Public Nuisance Judgment Constitutes a Lien (Sec. 3 (j))

The court's final judgment that a public nuisance exists plus any order or relief it enters constitutes a

lien on the property and may be filed on the land records in the town where the property is located.

Modifying a Court Order or Removing a Lien (Sec. 3 (j))

A defendant may ask the court to modify an order or remove a lien at any time after final judgment. The court may grant the motion if it finds, by sufficient evidence that:

1. all court orders have been complied with, all named parties have stopped engaging in nuisance activities, and the nuisance has abated and is unlikely to reoccur;
2. the defendant wishes to sell the property to a bona fide purchaser for value who intends to use it in a way that does not constitute a nuisance; or
3. the defendant has torn down any buildings, structures, or features capable of supporting a nuisance on the property.

Before granting the defendant's motion, the defendant must allow the state a reasonable opportunity to verify that the nuisance has stopped and the court must give the state an opportunity to contest the defendant's claims.

Enforcement and Violating a Final Judgment (Sec. 3(1) and 6(a))

The bill authorizes the state to use a Division of Criminal Justice Inspector or a state or municipal police officer to assist in enforcing any public nuisance court order. Any person who intentionally violates a final judgment must be imprisoned for up to six months, fined \$500, or both.

Exparte Restraining Order (Sec. 5)

The bill authorizes the state, during the pendency of a public nuisance abatement action, to seek an exparte restraining order (order for one party), and a court or judge to grant it, where it appears that use of the property constitutes a clear and present danger to public health, safety, and welfare. The application

maybe made to the court, or if not in session, to any Superior Court judge.

The bill requires the state to provide an affidavit and any other evidence reciting the facts tending to show that a clear and present danger exists.

A court order granting the restraining order must specify a place and time for the defendant to be heard on the matter within five business days after the order is entered. The court must direct the state to serve a copy of the order upon each dependent, as well as a copy of the supporting affidavit, unless court or judge orders the affidavit sealed. The bill also requires that a copy of the application and order be posted on any outside door to the property.

The bill requires officers servicing the order on the defendant to enter onto the property and make and return to court an inventory of personal property whenever the state's application alleges, and its supporting affidavit and any other evidence establishes, probable cause to believe that personal property located there is used to commit or facilitate a public nuisance. The inventory may include photographs, measurements, diagrams, or a videotape if reasonably necessary to document the property's identity and location (5 (c)).

The hearing's scope is limited to whether a clear and present danger to the public health, safety, or welfare requiring a restraining order exists. If contested, the state has the burden of showing by clear and convincing evidence that a danger to public health, safety, or welfare exists (5 (c)).

Anyone intentionally violating a temporary restraining order is subject to imprisonment for up to six months, a fine of up to \$1,000, or both (5 (d)).

Application to Vacate Temporary Restraining Order (Sec. 6 (e) (f) and (g))

The bill allows defendants to apply at any time to have a temporary restraining order vacated. The court may vacate the order upon a factual showing accepted by the court either that:

1. conduct constituting a public nuisance has ceased and is unlikely to recur, steps have been taken to prevent a nuisance from continuing, and these steps are likely to prove effective; or
2. closing of the property is no longer required to prevent a danger to public health, safety, or welfare.

Before the court can make a decision, the defendant must give the state a reasonable chance to verify that a danger to public health, safety, or welfare no longer exists, and the court must give the state a chance to contest the defendant's claims.

The bill requires that any court order vacating a temporary restraining order include a provision authorizing the state to enter into the property, periodically and without notice, to determine whether a public nuisance has resumed. The bill authorizes the court to condition its decision to vacate on the defendant's posting a bond in an amount up to the property's assessed value as surety against a recurrence of a clear and present danger to the public health, safety, and welfare.

Public Nuisance Proceedings (Sec. 6)

In any public nuisance proceeding:

1. the conduct and liability of the defendant's officers, agents, and employees are imputed to the defendant, including a corporation;
2. a court order closing the property cannot be deemed to pass title, possession, or control of the property to the state; and
3. any monetary penalty and award of costs to the state constitutes a lien on the property, and may be recorded on the land records in the town where the property is located. In addition, the state may sue the defendant to collect the penalty and costs.

COMMENT

Civil Penalties

The bill contains two, almost identical, subsections on the imposition of civil penalties when a defendant is a principal or accomplice in nuisance activities. Subsection (b) of Section 3 allows the state to ask for civil penalties when the defendant is involved in "illegal conduct constituting the public nuisance." As pointed out in the summary, public nuisance is broadly defined, but the state's authority to abate is limited to eight specific types of illegal conduct. Subsection (c) of Section 3 allows the state to ask for civil penalties in the cases it is authorized to bring.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute
Yea 39 Nay 0