

By: Farias

H.B. No. 2438

Substitute the following for H.B. No. 2438:

By: M. Gonzalez of El Paso

C.S.H.B. No. 2438

A BILL TO BE ENTITLED

AN ACT

relating to the authority of a county to assess costs and fees relating to the abatement of a nuisance on real property against certain persons.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections 343.022(b) and (c), Health and Safety Code, are amended to read as follows:

(b) The abatement procedures must require that written notice be given to:

(1) the owner [~~, lessee, occupant, agent, or person in charge~~] of the premises or an agent of the owner; and

(2) the person responsible for causing a public nuisance on the premises when:

(A) that person is not the owner [~~, lessee, occupant, agent, or person in charge~~] of the premises or an agent of the owner; and

(B) the person responsible can be identified.

(c) The notice must state:

(1) the specific condition that constitutes a nuisance;

(2) that the person receiving notice shall abate the nuisance before the:

(A) 31st day after the date on which the notice is served, if the person has not previously received a notice

1 regarding a nuisance on the premises; or

2 (B) 10th business day after the date on which the  
3 notice is served, if the person has previously received a notice  
4 regarding a nuisance on the premises;

5 (3) that failure to abate the nuisance may result in:

6 (A) abatement by the county;

7 (B) assessment of costs against ~~[to]~~ the person  
8 receiving the notice ~~[responsible for causing the nuisance when~~  
9 ~~that person can be identified]~~; and

10 (C) a lien against the property on which the  
11 nuisance exists~~[, if the person responsible for causing the~~  
12 ~~nuisance has an interest in the property]~~;

13 (4) that if the county seeks to recover abatement  
14 costs, including legal notification and administrative fees, the  
15 county will make an effort to recover costs from the person  
16 responsible for causing the nuisance, if that person can be  
17 identified, before assessing costs against the owner of the  
18 premises;

19 (5) that the county may prohibit or control access to  
20 the premises to prevent a continued or future nuisance described by  
21 Section 343.011(c)(1), (6), (9), or (10); and

22 (6) ~~(5)~~ that the person receiving notice is entitled  
23 to submit a written request for a hearing before the:

24 (A) 31st day after the date on which the notice is  
25 served, if the person has not previously received a notice  
26 regarding a nuisance on the premises; or

27 (B) 10th business day after the date on which the

notice is served, if the person has previously received a notice regarding a nuisance on the premises.

SECTION 2. Section 343.023, Health and Safety Code, is amended by amending Subsection (a) and adding Subsections (g) and (h) to read as follows:

(a) Except as provided by Subsection (g), a [A] county may:

(1) assess against a person receiving notice under Section 343.022:

(A) the cost of abating the nuisance, including management, remediation, storage, transportation, and disposal costs, and damages and other expenses incurred by the county;

(B) the cost of legal notification by publication; and

(C) an administrative fee of not more than \$100 ~~[on the person receiving notice under Section 343.022]~~; or

(2) by resolution or order, assess against the property on which the nuisance exists:

(A) the cost of abating the nuisance;

(B) the cost of legal notification by publication; and

(C) an administrative fee of not more than \$100 ~~[against the property on which the nuisance exists]~~.

(g) Before assessing costs and fees against an owner of the premises under this section, a county must attempt to recover the costs from the person responsible for causing the nuisance if that person can be identified.

(h) The county may file a civil action in district court to

1 recover the costs and fees assessed against a person under this  
2 section and interest on the unpaid costs and fees. The court may  
3 award court costs and reasonable attorney's fees to the prevailing  
4 party.

5       SECTION 3. (a) Sections 343.022(b) and (c), Health and  
6 Safety Code, as amended by this Act, apply only to a notice given on  
7 or after the effective date of this Act. A notice given before the  
8 effective date of this Act is governed by the law as it existed  
9 immediately before the effective date of this Act, and the former  
10 law is continued in effect for that purpose.

11       (b) Section 343.023, Health and Safety Code, as amended by  
12 this Act, applies only to an assessment of costs for which notice  
13 was given on or after the effective date of this Act. An assessment  
14 of costs for which notice was given before the effective date of  
15 this Act is governed by the law as it existed immediately before the  
16 effective date of this Act, and the former law is continued in  
17 effect for that purpose.

18       SECTION 4. This Act takes effect September 1, 2013.