

STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

SENATE BILL 943

By: Shurden

AS INTRODUCED

An Act relating to tax liens; amending 11 O.S. 2001, Section 22-111, which relates to powers of cities and towns; modifying manner of collection of certain costs by county treasurer; establishing statute of limitations for collection of certain obligations; modifying the status of certain liens; modifying method of determination with respect to collecting certain assessments; amending 68 O.S. 2001, Section 3105, as last amended by Section 1, Chapter 181, O.S.L. 2003, which relates to sale of real property for delinquent taxes; providing conditions under which property may be sold by county treasurer for unpaid municipal weed claim or weed tax lien; designating persons who may pay specified claims or liens for certain purposes; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 11 O.S. 2001, Section 22-111, is amended to read as follows:

Section 22-111. A. A municipal governing body may cause property within the municipal limits to be cleaned of trash and weeds or grass to be cut or mowed in accordance with the following procedure:

1. At least ten (10) days' notice shall be given to the owner of the property by mail at the address shown by the current year's tax rolls in the county treasurer's office before the governing body holds a hearing or takes action. The notice shall order the property owner to clean the property of trash, or to cut or mow the weeds or grass on the property, as appropriate, and the notice shall further state that unless such work is performed within ten (10) days of the date of the notice the work shall be done by the municipality and a notice of lien shall be filed with the county

clerk against the property for the costs due and owing the municipality. At the time of mailing of notice to the property owner, the municipality shall obtain a receipt of mailing from the postal service, which receipt shall indicate the date of mailing and the name and address of the mailee. However, if the property owner cannot be located within ten (10) days from the date of mailing by the municipal governing body, notice may be given by posting a copy of the notice on the property or by publication, as defined in Section 1-102 of this title, one time not less than ten (10) days prior to any hearing or action by the municipality. If a municipal governing body anticipates summary abatement of a nuisance in accordance with the provisions of subsection B of this section, the notice, whether by mail, posting or publication, shall state: that any accumulations of trash or excessive weed or grass growth on the owner's property occurring within six (6) months from and after the date of this notice may be summarily abated by the municipal governing body; that the costs of such abatement shall be assessed against the owner; and that a lien may be imposed on the property to secure such payment, all without further prior notice to the property owner;

2. The owner of the property may give written consent to the municipality authorizing the removal of the trash or the mowing of the weeds or grass. By giving written consent, the owner waives the owner's right to a hearing by the municipality;

3. A hearing may be held by the municipal governing body to determine whether the accumulation of trash or the growth of weeds or grass has caused the property to become detrimental to the health, benefit, and welfare of the public and the community or a hazard to traffic, or creates a fire hazard to the danger of property;

4. Upon a finding that the condition of the property constitutes a detriment or hazard, and that the property would be

benefited by the removal of such conditions, the agents of the municipality are granted the right of entry on the property for the removal of trash, mowing of weeds or grass, and performance of the necessary duties as a governmental function of the municipality. Immediately following the cleaning or mowing of the property, the municipal clerk shall file a notice of lien with the county clerk describing the property and the work performed by the municipality, and stating that the municipality claims a lien on the property for the cleaning or mowing costs;

5. The governing body shall determine the actual cost of such cleaning and mowing and any other expenses as may be necessary in connection therewith, including the cost of notice and mailing. The municipal clerk shall forward by mail to the property owner specified in paragraph 1 of this subsection a statement of such actual cost and demanding payment. If the cleaning and mowing are done by the municipality, the cost to the property owner for the cleaning and mowing shall not exceed the actual cost of the labor, maintenance, and equipment required. If the cleaning and mowing are done on a private contract basis, the contract shall be awarded to the lowest and best bidder;

6. If payment is not made within thirty (30) days from the date of the mailing of the statement, the municipal clerk shall forward a certified statement of the amount of the cost to the county treasurer of the county in which the property is located and the same shall be levied on the property and may be collected by the county treasurer as ~~other taxes authorized by law~~ provided in this section. Once certified by the county treasurer, payment may only be made to the county treasurer except as otherwise provided for in this section. Until fully paid, the cost and the interest thereon shall be the personal obligation of the property owner from and after the date the cost is certified to the county treasurer, except such obligation shall have a statute of limitations for collection

of seven (7) years. In addition the cost and the interest thereon shall be a lien against the property from the date the cost is certified to the county treasurer, ~~coequal with the lien of ad valorem taxes and all other taxes and special assessments and prior and superior to all other titles and liens against the property,~~ and the lien shall continue until the cost shall be fully paid. At the time of collection the county treasurer shall collect a fee of Five Dollars (\$5.00) for each parcel of property. The fee shall be deposited to the credit of the general fund of the county. If the county treasurer ~~and the municipality agree that the county treasurer~~ is unable to collect the assessment, the municipality may pursue a civil remedy for collection of the amount owing and interest thereon by an action in personam against the property owner and an action in rem to foreclose its lien against the property. A mineral interest, if severed from the surface interest and not owned by the surface owner, shall not be subject to any tax or judgment lien created pursuant to this section. Upon receiving payment, if any, the municipal clerk shall forward to the county treasurer a notice of such payment and directing discharge of the lien; and

7. The municipality may designate by ordinance an administrative officer or administrative body to carry out the duties of the governing body in subsection A of this section. The property owner shall have a right of appeal to the municipal governing body from any order of the administrative officer or administrative body. Such appeal shall be taken by filing written notice of appeal with the municipal clerk within ten (10) days after the administrative order is rendered.

B. If a notice is given by a municipal governing body to a property owner ordering the property within the municipal limits to be cleaned of trash and weeds or grass to be cut or mowed in accordance with the procedures provided for in subsection A of this section, any subsequent accumulations of trash or excessive weed or

grass growth on the property occurring within a six-month period may be declared to be a nuisance and may be summarily abated without further prior notice to the property owner. At the time of each such summary abatement the municipality shall notify the property owner of the abatement and the costs thereof. The notice shall state that the property owner may request a hearing within ten (10) days after the date of mailing the notice. The notice and hearing shall be as provided for in subsection A of this section. Unless otherwise determined at the hearing the cost of such abatement shall be determined and collected as provided for in paragraphs 5 and 6 of subsection A of this section. This subsection shall not apply if the records of the county clerk show that the property was transferred after notice was given pursuant to subsection A of this section.

C. The municipal governing body may enact ordinances to prohibit owners of property or persons otherwise in possession or control located within the municipal limits from allowing trash to accumulate, or weeds to grow or stand upon the premises and may impose penalties for violation of said ordinances.

D. As used in this section:

1. "Weed" includes but is not limited to poison ivy, poison oak, or poison sumac and all vegetation at any state of maturity which:

- a. exceeds twelve (12) inches in height, except healthy trees, shrubs, or produce for human consumption grown in a tended and cultivated garden unless such trees and shrubbery by their density or location constitute a detriment to the health, benefit and welfare of the public and community or a hazard to traffic or create a fire hazard to the property or otherwise interfere with the mowing of said weeds;

- b. regardless of height, harbors, conceals, or invites deposits or accumulation of refuse or trash;
- c. harbors rodents or vermin;
- d. gives off unpleasant or noxious odors;
- e. constitutes a fire or traffic hazard; or
- f. is dead or diseased.

The term "weed" shall not include tended crops on land zoned for agricultural use which are planted more than one hundred fifty (150) feet from a parcel zoned for other than agricultural use.

2. "Trash" means any refuse, litter, ashes, leaves, debris, paper, combustible materials, rubbish, offal, or waste, or matter of any kind or form which is uncared for, discarded, or abandoned.

3. "Owner" means the owner of record as shown by the most current tax rolls of the county treasurer.

4. "Cleaning" means the removal of trash from property.

E. The provisions of this section shall not apply to any property zoned and used for agricultural purposes or to railroad property under the jurisdiction of the Oklahoma Corporation Commission. However, a municipal governing body may cause the removal of weeds or trash from property zoned and used for agricultural purposes pursuant to the provisions of this section but only if such weeds or trash pose a hazard to traffic and are located in, or within ten (10) yards of, the public right-of-way at intersections.

SECTION 2. AMENDATORY 68 O.S. 2001, Section 3105, as last amended by Section 1, Chapter 181, O.S.L. 2003 (68 O.S. Supp. 2004, Section 3105), is amended to read as follows:

Section 3105. A. The county treasurer shall in all cases, except those provided for in ~~subsection~~ subsections B and C of this section, where taxes are a lien upon real property and are unpaid on the first day of April of any year proceed, as hereinafter provided, to advertise and sell such real estate for such taxes, special

assessments and costs, and shall not be bound before so doing to proceed to collect by sale all personal taxes on personal property which are by law made a lien on realty, but shall include such personal tax with that due on the realty, and shall sell the realty for all of the taxes and special assessments.

B. No property shall be sold by the county treasurer by tax deed for any unpaid municipal weed claim or weed tax lien allowable under Section 22-111 of Title 11 of the Oklahoma Statutes, except when the ad valorem taxes remain unpaid on the first day of April for any year and then weed tax liens shall be sold together with the delinquent ad valorem taxes as provided by law. No person, except the title owner of record on file with the county treasurer or the county treasurer's agent, or the owner's heir or assignee, shall pay any weed claim or weed tax lien against any real property for the purpose of attempting to obtain any right, title or interest to such property, except as provided in this subsection for a purchaser of delinquent ad valorem taxes together with a weed tax lien.

C. In counties with a population in excess of one hundred thousand (100,000) persons according to the most recent federal decennial census, the county treasurer shall not conduct a tax sale of such real estate where taxes are a lien upon real property if the following conditions are met:

1. The real property contains a single-family residential dwelling;

2. The individual residing on the property is sixty-five (65) years of age or older or has been classified as totally disabled, as defined in subsection € D of this section, and such individual owes the taxes due on the real property;

3. The real property is not currently being used as rental property;

4. The individual living on the property has an annual income that does not exceed the HHS Poverty Guidelines as established each

year by the United States Department of Health and Human Services that are published in the Federal Register and in effect at the time that the proposed tax sale is to take place; and

5. The fair market value of the real property as reflected on the tax rolls in the office of the county assessor does not exceed One Hundred Twenty-five Thousand Dollars (\$125,000.00).

~~C.~~ D. As used in this section, a person who is "totally disabled" means a person who is unable to engage in any substantial gainful activity by reason of a medically determined physical or mental impairment which can be expected to last for a continuous period of twelve (12) months or more. Proof of disability may be established by certification by an agency of state government, an insurance company, or as may be required by the county treasurer. Eligibility to receive disability benefits pursuant to a total disability under the Federal Social Security Act shall constitute proof of disability for purposes of this section.

~~D.~~ E. It shall be the duty of the individual owning property subject to the provisions of ~~subsection~~ subsections B and C of this section to make application to the county treasurer for an exemption from a tax sale no later than sixty (60) days prior to the date the property is scheduled to be sold. It shall also be the duty of the individual to provide evidence to the county treasurer that the individual meets the financial requirements outlined in paragraph 4 of subsection ~~B C~~ and all other requirements of this section to qualify for the exemption. Any individual claiming the exemption provided in this section shall establish eligibility for the exemption each year the exemption is claimed.

~~E.~~ F. Taxes, interest and penalties will continue to accrue while the exemption is claimed. The exemption from sale of property described in this section shall no longer be applicable and the county treasurer shall proceed with the sale of such real estate if any of the conditions prescribed in this section are no longer met.

~~F.~~ G. Every notice of tax sale or tax resale shall contain language approved by the Office of the State Auditor and Inspector informing the taxpayer of the provisions of this section.

SECTION 3. This act shall become effective November 1, 2005.

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