

5259--A

2015-2016 Regular Sessions

I N A S S E M B L Y

February 13, 2015

Introduced by M. of A. McDONALD -- read once and referred to the Committee on Local Governments -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general municipal law, in relation to the abatement of public nuisances and demolition and removal of unsafe structures

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Section 78-b of the general municipal law, as added by
2 chapter 115 of the laws of 1980, is amended to read as follows:

3 S 78-b. [Demolition] ABATEMENT OF PUBLIC NUISANCES AND DEMOLITION and
4 removal of unsafe structures. (A) SUMMARY ABATEMENT OF NUISANCE PROPER-
5 TIES AND UNSAFE STRUCTURES:

6 (1) THE GOVERNING BODY OF ANY CITY, TOWN, OR VILLAGE MAY ORDER ANY
7 PROPERTY OWNER TO REMEDIATE ANY PUBLIC NUISANCE CONDITION, AS KNOWN AT
8 COMMON LAW OR IN EQUITY JURISPRUDENCE, FOUND ON THE OWNER'S PROPERTY. IF
9 THE PROPERTY OWNER FAILS TO COMPLY WITH THE ORDER, THE GOVERNING BODY
10 MAY, WITHOUT OBTAINING A COURT ORDER, REMEDIATE THE PUBLIC NUISANCE
11 CONDITION USING LOCAL OFFICIALS AND EMPLOYEES OR BY RETAINING AN INDE-
12 PENDENT CONTRACTOR.

13 (2) THE LOCAL GOVERNMENT MAY PLACE A LIEN ON ANY PROPERTY THAT IS THE
14 SUBJECT OF A MUNICIPAL NUISANCE ABATEMENT PURSUANT TO PARAGRAPH ONE OF
15 THIS SUBDIVISION IN THE AMOUNT OF THE EXPENSES THE LOCAL GOVERNMENT
16 INCURS IN REMEDIATING THE PUBLIC NUISANCE CONDITION. THE LIEN LEVIED
17 PURSUANT TO THIS PARAGRAPH IS ONLY VALID IF THE LOCAL GOVERNMENT SERVES
18 A NOTICE AND ORDER DIRECTING THE PROPERTY OWNER TO REMEDY THE NUISANCE
19 CONDITION WITHIN A REASONABLE TIMEFRAME PRIOR TO UNDERTAKING THE SUMMARY
20 ABATEMENT OF THE NUISANCE CONDITION. THE NOTICE AND ORDER MUST BE SERVED
21 IN ACCORDANCE WITH THE CIVIL PRACTICE LAW AND RULES. THE REQUIREMENT
22 THAT THE NOTICE AND ORDER BE SERVED PRIOR TO THE LOCAL GOVERNMENT'S
23 ABATEMENT OF THE PUBLIC NUISANCE CONDITION MAY BE DISPENSED WITH IF THE
24 NUISANCE CONDITION IS IMMINENTLY DANGEROUS TO THE PUBLIC'S HEALTH AND

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 SAFETY AND MUST BE REMEDIATED IN A TIMEFRAME THAT DOES NOT PERMIT NOTICE
2 TO THE PROPERTY OWNER PRIOR TO REMEDIATION.

3 (3) THE GOVERNING BODY OF ANY CITY, TOWN, OR VILLAGE MAY DELEGATE THE
4 AUTHORITY TO ORDER REMEDIATION OF A PUBLIC NUISANCE AND TO ORDER THE
5 SUMMARY ABATEMENT OF A PUBLIC NUISANCE CONDITION TO A MUNICIPAL DEPART-
6 MENT OR OFFICER.

7 (4) NOTHING CONTAINED IN THIS SECTION IS DEEMED TO PREEMPT LOCAL
8 GOVERNMENTS FROM ABATING PUBLIC NUISANCES PURSUANT TO COMMON LAW JURIS-
9 PRUDENCE OR FROM ADOPTING LOCAL LAWS PROVIDING FOR THE ABATEMENT OF
10 PUBLIC NUISANCES.

11 (B) TAX PAYER RELIEF FOR NEGLECTED AND ABANDONED PROPERTIES.

12 (1) The governing body of any city, town, or village may commence a
13 special proceeding in a court of competent [jurisdiction] JURISDICTION
14 to collect the costs of [demolition] ABATING NUISANCE CONDITIONS OR
15 VIOLATIONS OF THE UNIFORM FIRE PREVENTION AND BUILDING CODE OR LOCAL
16 PROPERTY MAINTENANCE CODES OR THE COSTS OF DEMOLISHING OR REMOVING
17 UNSAFE STRUCTURES, including reasonable and necessary legal expenses
18 incidental to obtaining an order to ABATE OR demolish, from the owner of
19 any [building or structure that may now be or shall hereafter become
20 dangerous or unsafe to the public] PROPERTY WITH A NUISANCE CONDITION OR
21 A UNIFORM CODE OR LOCAL PROPERTY MAINTENANCE CODE VIOLATION OR THE OWNER
22 OF ANY UNSAFE BUILDING OR STRUCTURE. The provisions of article four of
23 the civil practice law and rules shall govern any special proceeding
24 commenced under this section.

25 (2) IF THE VALUE OF A PROPERTY WHICH IS THE SUBJECT OF A PROCEEDING
26 PURSUANT TO PARAGRAPH ONE OF THIS SUBDIVISION IS LESS THAN THE COST OF
27 ABATING THE NUISANCE CONDITION OR CODE VIOLATION OR DEMOLISHING THE
28 UNSAFE STRUCTURE, THEN THE CITY, VILLAGE, OR TOWN MAY, WHEN SEEKING TO
29 RECOVER THE COST OF ABATEMENT OR DEMOLITION, DISREGARD THE CORPORATE
30 FORM OF ANY BUSINESS CORPORATION, LIMITED LIABILITY COMPANY, OR LIMITED
31 LIABILITY PARTNERSHIP WHICH OWNS THE PROPERTY, EITHER IN WHOLE OR IN
32 PART, IF (I) THE ASSETS OF THE BUSINESS CORPORATION, LIMITED LIABILITY
33 COMPANY, OR LIMITED LIABILITY PARTNERSHIP ARE INSUFFICIENT TO COVER THE
34 COST OF ABATEMENT OR DEMOLITION AND (II) THE BUSINESS CORPORATION,
35 LIMITED LIABILITY COMPANY, OR LIMITED LIABILITY PARTNERSHIP EITHER (A)
36 MADE A PROFIT ON THE PROPERTY AT ANY TIME DURING THE FIVE YEARS PRIOR TO
37 THE ABATEMENT OR DEMOLITION OR (B) USED FINANCIAL LOSSES ON THE PROPERTY
38 TO WRITE-OFF CAPITAL GAINS OR INCOME FROM OTHER PROPERTIES THAT THE
39 BUSINESS CORPORATION, LIMITED LIABILITY COMPANY, OR LIMITED LIABILITY
40 PARTNERSHIP OWNS DURING THE FIVE YEARS PRIOR TO THE ABATEMENT OR DEMOLI-
41 TION.

42 S 2. This act shall take effect immediately.