ONE HUNDRED FIRST LEGISLATURE - FIRST SESSION - 2009
COMMITTEE STATEMENT
LB338

Hearing Date: Tuesday January 27, 2009
Committee On: Urban Affairs
Introducer: Friend
One Liner: Change weed height requirements for cities and villages

Roll Call Vote - Final Committee Action:
Advanced to General File with amendment(s)

Vote Results:

Aye:	5	Senators Cook, Friend, Lathrop, Rogert, White
Nay:		
Absent:	1	Senator McGill
Present Not Voting:	1	Senator Coash

Proponents:	**Representing:**
Senator Friend	Introducer
Chris Anderson	City of Central City
Gary Krumland	League of Ne Municipalities
Rodney Storm	City of Blair

Opponents:	**Representing:**
Katie Zulkoski	Eastern NE Development Council

Neutral:	**Representing:**
Russell Shultz	City of Lincoln

Summary of purpose and/or changes:

This legislation deals with nuisances in first and second class cities and villages proposing to change weed height requirements as prescribed.

LB 338 proposes to amend the law governing first and second class cities and villages to reduce the height at which grasses and weeds may be permitted to grow before they can be legally considered to be a nuisance. Sections 16-230 and 17-563 (the sections of statutes being amended) currently provide that these municipalities may require a property owner to keep the property free of any weeds, grasses or worthless vegetation that are twelve inches or more in height. Each city or village may (by ordinance) declare it to be a nuisance to permit or maintain the growth of such vegetation to a height of more than twelve inches.

This bill would amend these sections to lower the maximum height of such weeds or vegetation from twelve inches to six inches. Under this bill, a city of village may (by ordinance) declare it to be a nuisance to permit or maintain the growth of such vegetation to a height of six inches or more.

When vegetation is permitted to reach such a height as to be considered a legal nuisance, the city or village sends notice to the owner and begins the process of nuisance abatement. If the owner fails to mow the vegetation, the city or village may have the work done, the costs to be paid by the owner. If unpaid for more than two months, the city or village may either assess and levy the costs and expenses upon the property (in the same manner as other special assessments), or recover the costs in a civil action.

The problem that necessitates this legislation is the length of time the necessarily arises between the determination that

a nuisance exists and the time when action can be taken to eliminate it. By the time the vegetation is mowed, several more weeks can pass and the vegetation grows additional inches thereby allowing the nuisance to continue and even worsen. Lowering the permissible height of the vegetation from twelve inches to six inches will allow the city or village to address the nuisance in a timely manner and maintain a more decorous appearance to the neighborhood.

It should be remembered that the weed height requirement is not mandatory: it merely specifies the limit of municipal authority. The city or village can set the maximum height at any level above six inches, but never any lower.

It should also be remembered that a first class city can impose these height requirements upon property within two miles of city limits (the maximum permissible limit for the exercise of extraterritorial zoning jurisdiction). The same option is not granted second class cities and village.

Explanation of amendments:

The committee amendments aim to address the problem raised by the bill and generally seek to address them in the same fashion, the changes are sufficiently different so as to require a white copy amendment (all the original provisions of the bill are stricken and replaced by the amendment).

New section 1 of the amendment brings into the bill a proposed amendment to section 15-268 (relating to primary class cities, i.e. Lincoln). This section also deals with the destruction and removal of weeds and worthless vegetation. The change proposed in this committee amendment is to permit primary class cities to provide notice to the owner of a property of the requirement to remove the weeds or vegetation by conspicuously posting notice of that fact on the lots or lands upon which the nuisance exists. This method is optional and it is a method which is already available to first and second class cities and villages. This addition of this provision was requested by the neutral testifier at the hearing on the bill.

Section 2 deals with amendments to section 16-230 which governs the authority for first class cities.

In subdivision (1), the phrase "within two miles of the corporate limits of the city" is replaced by the phrase within the city extraterritorial zoning jurisdiction. While the extraterritorial zoning jurisdiction of a first class city can extend to a maximum of two miles from the corporate limits of a city, the actual area within which a city exercises such jurisdiction is defined by the city by ordinance and, for a number reasons, may not extend to the maximum allowable limit. This change recognizes that fact and avoids the implication that jurisdiction here must extend to two miles regardless of the defined extent of jurisdiction as established by the city.

A new subsection (c) is added to subdivision (5), the definitional subdivision for this statute. This change only applies to first class cities (since only first class cities have the statutory authority to extend this nuisance abatement power into their extraterritorial zoning jurisdiction). It provides that the term "weeds, grasses, and worthless vegetation" does not include "vegetation applied or grown on a lot or piece of ground" expressly for the purpose of weed or erosion control." This recognizes that larger pieces of vacant ground or ground under development will exist in this area and that vegetation there might grow to "nuisance" heights, but that recognition must be given to the fact that such vegetation might have the commendable purpose of avoiding erosion or discouraging weeds until development is completed, the property is inhabited, and grass is planted. Such a circumstance does not constitute a nuisance. This provision would not permit weeds to grow unchecked: such would still be subject to the general nuisance provisions. It would only apply where particular strains of vegetation are intentionally planted for the stated purposes of weed or erosion control.

A new subdivision (6) is added which provides for a modified version of the original bill: intent to provide for more aggressive weed control by allowing for city action when the weeds grew beyond six inches in height rather than prohibiting action until the weeds were more than twelve inches in height.

While generally retaining the twelve inch limit for first offenses of the height restriction during a single growing season, it authorizes that limit to be reduced to eight inches (within city limits) if, within the same calendar year, the city has acted (pursuant to subdivision (4) of the section, the current law) to have weeds or grasses on the same property removed and had to seek recovery of the costs and expenses of the work from the owner. Thus, if the city has the work done once during a growing season and must recover the costs from the owner, subsequent action by the city in the same year can be undertaken when the growth exceeds eight inches in height.

The reduced limit would not apply unless the city is forced to do the mowing and must seek recovery of the costs from the owner. Application of this authority is optional for the city and must be exercised by ordinance.

Section 3 of the committee amendment deals with section 17-563 which governs the nuisance abatement authority for second class cities and villages. The substantive changes here are identical to those described above with regard to the new subsection (6) added to section 16-230.

Mike Friend, Chairperson