

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Community Affairs Committee

BILL: SB 1248

INTRODUCER: Senator Norman

SUBJECT: Enforcement of County & Municipal Codes/Ordinances

DATE: March 17, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gizzi	Yeatman	CA	Pre-meeting
2.			JU	
3.			BC	
4.				
5.				
6.				

I. Summary:

This bill amends the notice requirements relating to a municipal or county code violation and allows a code enforcement officer to immediately issue a citation for a code violation if the violator is engaged in violations of an itinerant or transient nature.

The bill also authorizes a municipality or its assignee to foreclose on an abatement assessment lien against real property after a certain specified period and allows the municipality or its assignee to enforce such abatement assessment lien in circuit court by a bill in chancery.

The bill allows a municipality to assign an abatement assessment lien to a private party for consideration under certain circumstances.

This bill substantially amends the following sections of the Florida Statutes: 162.12, 162.21, 173.01, 173.03, and 173.04.

This bill creates section 173.16 of the Florida Statutes.

II. Present Situation:

County and Municipal Code or Ordinance Enforcement

The Local Government Code Enforcement Boards Act, located in Part I, of ch. 162, F.S., allows each county or municipality to create a local government code enforcement board by ordinance.¹ This Act also allows charter and non-charter counties, and municipalities to adopt an alternate code enforcement system that gives code enforcement officials or special magistrates the authority to hold hearings and assess fines against violators of respective codes or ordinances.²

Local Government Code Enforcement Boards.—Depending on the size of the county or municipality, the code enforcement board shall consist of five or seven appointed members, with the ability to appoint up to two alternative members.³ Enforcement board members must be residents of the county or municipality and whenever possible shall include an architect, a businessperson, an engineer, a general contractor, a subcontractor, and a realtor. The local governing body attorney must either serve as counsel to the enforcement board or shall represent the municipality or county by presenting cases before the enforcement board, but cannot serve in both capacities.

Pursuant to s. 162.08, F.S., local government code enforcement boards shall have the power to:

- Adopt rules for the conduct of its hearings.
- Subpoena alleged violators, witnesses, and evidence to its hearings.
- Take testimony under oath.
- Issue orders that have the force of law to command steps necessary to bring a violation into compliance.⁴

Code Enforcement Process.—The county or municipal code inspector⁵ has the authority to initiate code enforcement procedures by notifying the violator and giving him or her reasonable time to correct the violation. If the violation continues to exist after such time period as specified by the code inspector, then the inspector shall notify the code enforcement board and request a hearing. The code enforcement board must provide written notice of the hearing by hand delivery or certified mail to the address listed in the tax collector's office and at any other address provided to the local government by such property owner.⁶

The code inspector does not need to provide the violator reasonable time to remedy the violation if:

- It is a repeat violation;
- The violation presents a serious threat to the public health, safety, and welfare; or

¹ The provisions of this Act are supplemental and do not prohibit a local governing body from enforcing its codes by other means. See s. 162.13, F.S.

² Section 162.03, F.S.

³ See s.162.05, F.S., (if a population of less than 5,000 persons, may appoint 5-member or 7-member boards; if a population equal to or greater than 5,000 persons, must appoint 7-member boards.)

⁴ Section 162.08(1)-(5), F.S.

⁵ Section 162.04(2), F.S., defines the term "code inspector" to mean "any authorized agent or employee of the county or municipality whose duty it is to assure code compliance."

⁶ Section 162.06(2), F.S.

- The violation is irreparable or irreversible in nature.⁷

Each case heard before a code enforcement board shall be presented either by the local government attorney or a member of the local governing body administrative staff.⁸ Testimony shall be taken from both the code inspector and alleged violator, and shall be under oath and recorded.⁹ At the conclusion of the enforcement board hearing, the board shall issue findings of fact and provide an order by motion of the board stating the proper relief granted.¹⁰ If the local government prevails it shall be entitled to recover costs associated with prosecuting the case.¹¹

If a violator fails to abide by an order of the code enforcement board, the board may order the violator to pay a fine for each day that the repeat violation occurs.¹² The amount of the fine shall not exceed the amount of: \$250 per day for the first violation, \$500 per day for repeat violations, and \$500 per irreparable or irreversible violations.¹³ A county or municipality with a population of 5,000 or greater may adopt an order to increase these fines above these limits, however such increased fines shall not exceed: \$1,000 per day for the first violation, \$5,000 per day for repeat violations, and \$15,000 per irreparable or irreversible violations.¹⁴

If it is found that the violation in non-compliance of the governing board order is one that presents a serious threat to the public health, safety and welfare or is irreparable or irreversible in nature, then the board shall notify the local governing body which shall make reasonable repairs to bring the property in compliance and charge the violator for all associated costs.¹⁵

A certified copy of the enforcement board order imposing a fine or fine and repair costs may be recorded in public records and constituted as a lien against the property and any other property owned by the violator.¹⁶ Three months after filing the lien, the code enforcement board may authorize the local governing attorney to foreclose on the lien or sue to recover a money judgment on the amount of the lien plus interest.¹⁷ However, the local governing attorney may not foreclose on homestead property or certain real or personal property protected under Article X, section 4, of the Florida Constitution.

All final administrative orders of the code enforcement board may be appealed to the circuit court 30 days after execution of the order. The circuit court reviewing authority shall be limited to the record created before the enforcement board.¹⁸

⁷ Section 162.06(3)-(4), F.S.

⁸ Section 162.07(2), F.S.

⁹ Section 162.07(3), F.S.

¹⁰ Section 162.07(4), F.S.

¹¹ Section 162.07(2), F.S.

¹² Section 162.09(1), F.S.

¹³ Section 162.09(2)(a), F.S.

¹⁴ Section 162.09(2)(b), F.S.

¹⁵ Section 162.09(1), F.S.

¹⁶ Section 162.09(3), F.S.

¹⁷ *Id.*

¹⁸ Section 162.11, F.S.

Notice Requirements.—Section 162.12, F.S., outlines the notice requirements under the Local Government Code Enforcement Boards Act. Pursuant to this section, an alleged violator must be provided notice by:

- Certified mail, return receipt requested, at the address listed in the tax collector’s office *and* at any other address provided to the local government by such owner;
- Hand delivery by the sheriff or other law enforcement officer, code inspector, or person designated by the local governing body;
- Leaving notice at violators usual place of residence with individual over 15 years of age; or
- In the case of commercial premises, leaving the notice with the manager or other person in charge.

The code enforcement board may also provide notice by publication pursuant to the procedures in subsection (2) of s.162.12, F.S.

Supplemental County or Municipal Code or Ordinance Enforcement Procedures.—Part II of ch. 162, F.S., also allows counties and municipalities to designate some of its employees or agents as code enforcement officers that shall be authorized to enforce county or municipal codes or ordinances pursuant to the criteria established in this part. Similar to Part I of ch.162, F.S., Part II allows counties and municipalities to designate enforcement methods and penalties for code violations and outlines notice requirements. Section 162.30, F.S., allows counties and municipalities to enforce code violations by filing a civil action in the county or circuit court.

Foreclosure of Municipal Tax and Special Assessments

Chapter 173, F.S., allows municipalities to foreclose on outstanding taxes, tax certificates, or special assessment liens by a suit in chancery¹⁹ in the county circuit court where the municipality is situated.²⁰ Section 173.03, F.S., states that such suit may be brought any time after one or more of the following events occur:

- Two years after a tax certificate issued by the city or town has expired;
- Two years after a tax imposed by a city or town has become delinquent; or
- One year after a special assessment or installment thereof becomes due and payable.²¹

The suit may also include all or any part of lands in which outstanding tax certificates, taxes, or special assessments issued by the city or town remain delinquent or in default for the respective periods aforesaid, along with any municipal claims and demands against said lands or parts thereof, which may be due and payable at the time the suit is initiated.²²

Notice.—The suit must be commenced by bill in chancery in the name of the city or town as the complainant *in rem*²³ against the lands in which any taxes, tax certificates, and special

¹⁹ Also known as a Court of Equity.

²⁰ The provisions under ch. 173, F.S., are optional procedures which are not mandated upon any municipality of the state. *See* s. 173.13, F.S.

²¹ Section 173.03(1)(a)-(c), F.S.

²² Section 173.03(2), F.S.

²³ The Latin term “*in rem*” means “against a thing,” “involving or determining the status of a thing, and therefore the rights of persons generally with respect to that thing.”

assessments are delinquent. The bill must describe the levy and nonpayment of taxes and special assessments that are delinquent. Section 173.04, F.S., provides that:

At least thirty days prior to the filing of any such bill in chancery, written notice of the intention to file the same shall be sent by registered mail to the last known address of the holder of the record title and to the holder of record of each mortgage or other lien, except judgment liens, upon each tract of land to be included in said bill in chancery.

The notice must:

- Describe, in brief, the particular lot or parcel of land,
- State the amount of the tax certificate or special assessment seeking to be enforced,
- Warn the owner or holder of the lien/mortgage that on or after the prescribed date that a bill in chancery will be filed to enforce such taxes or assessments unless they are paid before such time.²⁴

Notice shall be publicized once a week for at least two consecutive weeks to obtain jurisdiction of such lands and interested parties. The notice must include a description of the land(s) and the amount sought to be recovered and state that all interested parties must appear for the suit on the date specified in the notice, which shall be no less than four weeks after the date of the first publication.²⁵ “Any person not appearing and defending within such time shall be deemed to have confessed said bill,” unless the court enlarges the time that a party may appear at its discretion and for cause shown.²⁶

Affidavits from the tax collector or other officer that show the existence of delinquent taxes, tax certificates and special assessments shall serve as prima facie proof of the facts certified therein.²⁷

Judgment for Complainant.—If the judgment is in favor of the complainant, then the amount awarded shall include: the principal and interest of all taxes, tax certificates and special assessments owed; costs resulting from the suit; and attorney’s fees.²⁸ A judgment for the complainant shall direct the special magistrate to sell the parcels of land separately to the highest and best bidder at public sale at the courthouse door of the county where the suit is pending or at a place within the complainant municipality as directed by the court.²⁹ Prior to the sale of said lands, the special magistrate must advertise the public foreclosure sale and the location thereof. All sales are subject to confirmation by the court, and thereafter shall be delivered to the purchaser.³⁰

The proceeds of the foreclosure sale are distributed by the special magistrate according to the provisions of the final decree. The court may direct the payment of all unpaid state, county, and

²⁴ Section 173.04, F.S.

²⁵ Section 173.04(3), F.S.

²⁶ Section 173.05, F.S.

²⁷ Section 173.06, F.S.

²⁸ Section 173.08, F.S.

²⁹ Section 173.09(1), F.S.

³⁰ Section 173.09(2), F.S.

municipal taxes, and special assessments along with penalties and costs out of the proceeds of such foreclosure sale as part of its judgment or decree. Any surplus proceeds that remain after the payment of the decree, costs, attorney fees and subsequent tax liens are deposited with the clerk of court and disbursed under court order.³¹

Record of Conveyances of Real Estate

Pursuant to s. 695.11, F.S., all instruments that are filed for recording in the Official Records are deemed to be recorded at the time of filing, which shall be indicated by affixing thereon the consecutive official register number. Under Florida law, the sequence of an instrument's official register number also determines the priority of recordation, with the lower number having priority over any instrument with a higher number in the same series. This codifies the common law principal known as "first in time, first in right."³²

*City of Palm Bay v. Wells Fargo Bank, N.A.*³³—In January 2011, the Fifth District Court of Appeal overturned the following ordinance in the City of Palm Bay addressing the priority of its code enforcement liens:

. . . any liens created by its code enforcement board and recorded in the public record shall remain liens coequal with the liens of all state, county, district and municipal taxes, superior in dignity to all other liens, titles and claims until paid, and . . . may be foreclosed pursuant to the procedure set forth in Florida Statutes, Chapter 173.³⁴

The District Court held that the common law principal of "first in time, first in right" shall apply here since the Legislature did not grant code enforcement liens priority over prior recorded mortgages or judgment liens. The court further stated that although municipalities are granted broad home rule powers to enact ordinances under Article VII, section 2(b), of the Florida Constitution, such ordinances may not conflict with state statute.³⁵ The court held that the enacted Palm Bay ordinance conflicted with s. 695.11, F.S., which codifies the "the common law rule of first in time, first in right."³⁶

III. Effect of Proposed Changes:

Section 1 amends s. 162.12, F.S., to amend the notice requirements relating to a municipal or county code violation. Specifically, the bill allows notice to be sent to *either* the address listed in the tax collector's office *or* any other address provided by the property owner in writing to the local government for purposes of receiving notice. Current law requires notice to be sent to both addresses. The bill also states that in instances where said property is owned by a business, notice may be provided by certified mail to the registered agent of the corporation.

³¹ Sections 173.10 and 173.11, F.S.

³² *City of Palm Bay v. Wells Fargo Bank, N.A.*, No. 5D09-1810, 2011 WL 180363 (5th DCA January 2011).

³³ *Id.*

³⁴ *Id.* at *1 referencing Palm Bay enacted ordinance 97-07 (alterations to original) (citations omitted).

³⁵ *Id.*

³⁶ *Id.*

If the notice is not signed as being received within 30 days after the date of mailing, the bill states that notice may be provided by posting under the procedures in subparagraphs (2)(b)1. and 2., of s. 162.12, F.S.

Section 2 amends s. 162.21, F.S., to allow a code enforcement officer to immediately issue a citation for a code violation if the violator is engaged in violations of an itinerant or transient nature.

Section 3 amends s. 173.01, F.S., to authorize a municipality or its assignee to foreclose on an abatement assessment lien against real property.

Section 4 amends s. 173.03, F.S., to allow a municipality or its assignee to enforce an abatement assessment lien by filing suit in chancery in circuit court one year from the date the assessment lien is recorded in the public records of the county where the property is located or upon conclusion of any administrative or judicial proceeding challenging the lien, whichever is later.

Section 5 amends s. 173.04, F.S., to authorize a municipality or its assignee to enforce an abatement assessment lien in circuit court by a bill of chancery.

Section 6 creates s. 173.16, F.S., to allow a municipality to assign³⁷ an abatement assessment lien that it has imposed against real property to a private party for consideration³⁸ if the lien has been recorded in the official records of the county where the property is located.

The bill describes an abatement assessment lien as a lien for the assessment of costs to abate conditions on property that pose a threat to the public health, safety, and welfare.

Section 7 provides that this act shall take effect July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

³⁷ The term "assignment" means "the transfer of rights or property," the term "assignment of rights" means "the transfer of rights, esp. contractual rights from one party to another." See BLACK'S LAW DICTIONARY 47 (2d ed. 2001).

³⁸ The term "consideration" means "something of value received by a promisor from a promise." See BLACK'S LAW DICTIONARY 131 (2d ed. 2001).

D. Other Constitutional Issues:

This bill authorizes a municipality or its assignee to foreclose on an abatement assessment lien against real property. However, the bill does not provide an exemption from this amendment for homestead property under Article X, section 4, of the Florida Constitution.

Article X, section 4, of the Florida Constitution, addresses homestead exemptions; subsection (a) provides that:

There shall be exempt from forced sale under process of any court, and no judgment, decree or execution shall be a lien thereon, except for the payment of taxes and assessments thereon, obligations contracted for the purchase, improvement or repair thereof, or obligations contracted for house, field or other labor performed on the realty . . .

Since this is not a lien for the nonpayment of “taxes or assessments thereon,” nor is it an “improvement, repair, or labor on the property” that the homestead owner “contracted” for, the provisions of this bill may violate Article X, Section 4, of the Florida Constitution.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Property owners who are in violation of a municipal or county code will no longer be given reasonable time to remedy prior to issuing a citation of a code violation if the violation is of “an itinerant or transient nature.”

Property owners whose property is subject to a municipal abatement assessment lien, as established in this bill, may be subject to foreclosure and suit in the circuit court by a bill in chancery.

Private parties will be authorized to take assignment of the rights to a municipal abatement assessment lien for consideration, so long as the lien has been recorded in the official records in the county where the property is located.

C. Government Sector Impact:

Municipalities or its assignees will be authorized to foreclose on property subject to an abatement assessment lien and will be permitted to enforce such lien in a circuit court by a bill in chancery.

Municipalities will be able to assign the rights of its abatement assessment liens to private parties for consideration if the lien has been recorded in the official records in the county where the property is located.

VI. Technical Deficiencies:

The term “abatement assessment lien” is currently not defined in Florida Statutes and other references to the term “abatement” in Florida Statutes are inconsistent with the intent of this bill. For these reasons, the sponsor may want to consider defining the term “abatement assessment lien” as it is used in this bill.

Assuming that the term “assessment” in “abatement assessment lien” refers to the amount in costs that a municipality incurs in abating the conditions on the real property that pose a threat to the public health, safety, and welfare (as stated on lines 233-238 of the bill), then the sponsor may want to consider revising the use of such term herein to avoid confusion with the general use of the term “assessment” as it is used in Florida Statutes for the tax assessment value of real property.

VII. Related Issues:

Section 173.09, F.S., addresses the sale of real property foreclosed upon for the nonpayment of taxes, tax certificates, and special assessments. This section requires the special magistrate to sell such parcels separately to the highest and best bidder.³⁹

The sponsor may want to amend the assignment provisions in section 6 of the bill to require any sales under the assignment to a private party to be granted to the highest and best bidder.

The sponsor may also want to state that any assignment that assigns an interest in the abatement assessment lien to a private party in exchange for labor on the property shall be assigned to the lowest and best bidder.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes: (Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

³⁹ Section 173.09(1), F.S.