

By the Committees on Community Affairs, Real Property & Probate and Representatives Carlton, Stafford and Feeney

1 A bill to be entitled
 2 An act relating to public nuisances; amending
 3 s. 893.138, F.S.; providing legislative intent;
 4 providing that counties and municipalities may
 5 impose additional penalties by ordinance on the
 6 owner of a place declared to be a public
 7 nuisance; providing an effective date.
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 9 Be It Enacted by the Legislature of the State of Florida:
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 11 Section 1. Section 893.138, Florida Statutes, 1996
 12 Supplement, to read:
 13 893.138 Local administrative action to abate
 14 drug-related or prostitution-related public nuisances and
 15 criminal street gang activity.--
 16 (1) It is the intent of this section to promote,
 17 protect, and improve the health, safety, and welfare of the
 18 citizens of the counties and municipalities of this state by
 19 authorizing the creation of administrative boards with
 20 authority to impose administrative fines and other noncriminal
 21 penalties in order to provide an equitable, expeditious,
 22 effective, and inexpensive method of enforcing ordinances in
 23 counties and municipalities under circumstances when a pending
 24 or repeated violation continues to exist.
 25 (2)~~(1)~~ Any place or premises that has been used on
 26 more than two occasions, within a 6-month period:
 27 (a) As the site of a violation of s. 796.07;
 28 (b) As the site of the unlawful sale, delivery,
 29 manufacture, or cultivation of any controlled substance;
 30 (c) On one occasion as the site of the unlawful
 31 possession of a controlled substance, where such possession

1 constitutes a felony and that has been previously used on more
2 than one occasion as the site of the unlawful sale, delivery,
3 manufacture, or cultivation of any controlled substance; or

4 (d) Any place or building used by a criminal street
5 gang for the purpose of conducting a pattern of criminal
6 street gang activity

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8 may be declared to be a public nuisance, and such nuisance may
9 be abated pursuant to the procedures provided in this section.

10 (3)~~(2)~~ Any county or municipality may, by ordinance,
11 create an administrative board to hear complaints regarding
12 the nuisances described in subsection(2)~~(1)~~. Any employee,
13 officer, or resident of the county or municipality may bring a
14 complaint before the board after giving not less than 3 days'
15 written notice of such complaint to the owner of the place or
16 premises at his last known address. After a hearing in which
17 the board may consider any evidence, including evidence of the
18 general reputation of the place or premises, and at which the
19 owner of the premises shall have an opportunity to present
20 evidence in his defense, the board may declare the place or
21 premises to be a public nuisance as described in subsection
22 (2)~~(1)~~.

23 (4)~~(3)~~ If the board declares a place or premises to be
24 a public nuisance, it may enter an order requiring the owner
25 of such place or premises to adopt such procedure as may be
26 appropriate under the circumstances to abate any such nuisance
27 or it may enter an order immediately prohibiting:

28 (a) The maintaining of the nuisance;

29 (b) The operating or maintaining of the place or
30 premises, including the closure of the place or premises or
31 any part thereof; or

1 (c) The conduct, operation, or maintenance of any
2 business or activity on the premises which is conducive to
3 such nuisance.

4 ~~(5)(4)~~ An order entered under subsection~~(4)(3)~~ shall
5 expire after 1 year or at such earlier time as is stated in
6 the order.

7 ~~(6)(5)~~ An order entered under subsection~~(4)(3)~~ may
8 be enforced pursuant to the procedures contained in s. 120.69.
9 This subsection does not subject a municipality that creates a
10 board under this section, or the board so created, to any
11 other provision of chapter 120.

12 ~~(7)(6)~~ The board may bring a complaint under s. 60.05
13 seeking temporary and permanent injunctive relief against any
14 nuisance described in subsection~~(2)(1)~~.

15 ~~(8)(7)~~ This section does not restrict the right of any
16 person to proceed under s. 60.05 against any public nuisance.

17 ~~(9)(8)~~ As used in this section, the term "controlled
18 substance" includes any substance sold in lieu of a controlled
19 substance in violation of s. 817.563 or any imitation
20 controlled substance defined in s. 817.564.

21 (10) The provisions of this section may be
22 supplemented by a county or municipal ordinance. The
23 ordinance may include, but is not limited to, provisions that
24 establish additional penalties for public nuisances, including
25 finest not to exceed \$250 per day; provide for the payment of
26 reasonable costs, including reasonable attorney fees
27 associated with investigations of and hearings on public
28 nuisances; provide for continuing jurisdiction for a period of
29 1 year over any place or premises that has been or is declared
30 to be a public nuisance; establish penalties, including fines
31 not to exceed \$500 per day for recurring public nuisances;

1 provide for the recording of orders on public nuisances so
2 that notice must be given to subsequent purchasers, successors
3 in interest, or assigns of the real property that is the
4 subject of the order; provide that recorded orders on public
5 nuisances may become liens against the real property that is
6 the subject of the order; and provide for the foreclosure of
7 property subject to a lien and the recovery of all costs,
8 including reasonable attorney fees, associated with the
9 recording of orders and foreclosure. No lien created pursuant
10 to the provisions of this section may be foreclosed on real
11 property which is a homestead under s. 4, Art. X of the State
12 Constitution. The total fines imposed pursuant to the
13 authority of this section shall not exceed \$5,000. Nothing
14 contained within this section prohibits a county or
15 municipality from proceeding against a public nuisance by any
16 other means.

17 Section 2. This act shall take effect October 1, 1997.
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