

STORAGE NAME: h1005.jud

DATE: March 25, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
JUDICIARY
ANALYSIS**

BILL #: HB 1005

RELATING TO: Money Judgments Enforcements

SPONSOR(S): Rep. Greenstein

COMPANION BILL(S): SB 2150(s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) JUDICIARY
 - (2) COMMUNITY AFFAIRS
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

The bill authorizes code enforcement boards to sue for a money judgment in the amount of a code enforcement infraction or repair for the amount of the lien plus accrued interest.

It also provides that in these actions for money judgment, the prevailing party is entitled to costs and attorneys fees incurred in the action.

The bill has an effective date of July 1, 1999.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Code enforcement boards are currently permitted to impose fines and enter a lien against the land on which the violation exists and upon any other real or personal property owned by the violator. The boards do not have the authority to create an independent cause of action to collect a fine pursuant to Chapter 162, F.S. See *City of Tampa v. Braxton*, 616 So.2d 554 (Fla. 2 DCA 1993).

Many properties found to be in code violation and assessed fines are homestead properties; and the board may not foreclose its enforcement lien against homestead property. *Miskin v. City of Fort Lauderdale*, 661 So.2d 415 (Fla. 4 DCA 1995). The boards maintain that in some of these situations, there is little ability to enforce compliance with the code.

B. EFFECT OF PROPOSED CHANGES:

The proposed changes to Section 162.09 (3), F.S., would permit code enforcement boards to institute actions for money judgments three months after filing a lien if the lien remains unpaid. The changes to Section 162.10, F.S. will permit code enforcement boards to collect attorneys fees and costs in their actions for money judgments.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

The bill will create more disputes.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Code enforcement boards will now be able to maintain separate actions for money judgments; owners of homestead property will be subject to a lawsuit over the collection of their fines owed to code enforcement boards.

(3) any entitlement to a government service or benefit?

No

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

Possibly. An increase in the number of legal actions filed by code enforcement boards will increase the costs of maintaining the local judicial system, which are currently payable by counties; this increase must be met by a decrease in another area of spending or an increase in taxes.

- b. Does the bill require or authorize an increase in any fees?

Yes. The bill authorizes the award of costs and reasonable attorneys fees to prevailing parties.

- c. Does the bill reduce total taxes, both rates and revenues?

No

- d. Does the bill reduce total fees, both rates and revenues?

No

- e. Does the bill authorize any fee or tax increase by any local government?

No

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

Yes. In addition to filing a lien, local government will now be able to sue for a money judgment.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Sections 162.09 and 162.10, F.S.

E. SECTION-BY-SECTION ANALYSIS:

See II. b. above

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

N/A

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

N/A

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PAGE 6

V. COMMENTS:

While the change to Section 621.09(3), F.S. to permit actions for money judgment will not necessarily result in any additional assets of the violators being available to satisfy the lien, the boards maintain that service of process will have the practical effect of having some of the violators enter court appearances, thus providing another opportunity for the boards to request compliance from the violators. The change to Section 162.10, F.S., will increase the expenses of violators by awarding attorneys fees and costs to the code boards for suing the violators.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON JUDICIARY:

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