

STORAGE NAME: h0163.ca

DATE: February 6, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
COMMUNITY AFFAIRS
ANALYSIS**

BILL #: HB 0163

RELATING TO: Local Government Code Enforcement

SPONSOR(S): Representative Crist

COMPANION BILL(S): SB 0946 (i)

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

- (1) COMMUNITY AFFAIRS
 - (2) REAL PROPERTY & PROBATE
 - (3) JUDICIARY
 - (4)
 - (5)
-

I. SUMMARY:

The bill makes the following changes to current law:

- ◆ Specifies the status of special masters as having the same status of code enforcement boards;
- ◆ Revises the definition of "Repeat violation";
- ◆ Requires owners of property subject to enforcement proceedings to provide disclosure and notice to prospective transferors under certain circumstances;
- ◆ Specifies that certain actions taken by a local government do not create continuing obligations or liabilities under certain circumstances;
- ◆ Creates a rebuttable presumption of notice to owner(s) of property at addresses listed in the tax collector's office for tax notices;
- ◆ Provides for continuation of enforcement proceedings under certain circumstances and provides those procedures;
- ◆ Clarifies enforcement of orders imposing certain fines or costs;
- ◆ Clarifies the time period for posting certain notices; and
- ◆ Provides an additional exception to requirements to provide reasonable time to correct violations under certain circumstances.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Chapter 162, Florida Statutes: Part I, chapter 162, Florida Statutes, is known as the "Local Government Code Enforcement Boards Act" and defines the authority and duties of local government code enforcement boards. Counties and municipalities are authorized to create administrative boards with authority to impose administrative fines and other noncriminal penalties to provide an equitable, expeditious, effective, and inexpensive method of enforcing any county and municipal codes and ordinances where pending or repeated violations exist.

Subsection 162.03, Florida Statutes: This subsection authorizes each county or municipality to create or abolish, by local ordinance, a code enforcement board. In addition, this subsection authorizes a charter county, a noncharter county, or a municipality, to adopt by local ordinance, an alternative code enforcement system which grants code enforcement boards or special masters authority to hold hearings and assess fines against violators of the county or municipal codes and ordinances. The local governing body may appoint one or more code enforcement boards and legal counsel for the code enforcement boards. In the case of municipal code enforcement boards, the members of such boards must be residents of the municipality and in the case of county code enforcement boards, members must be residents of the county. The number of members depends on the population of the county or municipality

Subsection 162.04, Florida Statutes: This subsection defines the terms used in subsections 162.01-13, Florida Statutes.

Subsection 162.06, Florida Statutes: This subsection provides that the code inspector is an authorized agent or employee of a county or municipality who must initiate enforcement proceedings for the violation of a code or ordinance before a code enforcement board. Board members are prohibited from initiating any enforcement proceedings. In a typical case, a code inspector must notify a violator and give reasonable time to correct the violation. If the violation is not corrected within the time limit, the code inspector must notify the board and request a hearing before the board.

The board schedules a hearing in which written notice of such hearing is provided to the violator either by hand delivery or by certified mail, return receipt requested. The board is also authorized, at its discretion, to notice the violator by publication or posting. Should the violation be corrected, but recurs or should the violation not be corrected by the time specified for correction by the code inspector, the case may be presented to the code enforcement board even if the violation has been corrected prior to the board hearing. The fact that the case may be presented to the code enforcement board even if the violation is corrected must be stated in the notice.

If a repeat violation is found, the code inspector is required to notice the violator but is not required to give the violator a reasonable time to correct the violation. Upon notifying the violator, the code inspector must notify an enforcement board and request a hearing. The code enforcement board schedules a hearing and provides notice. The case may be presented to the enforcement board even if the repeat violation has been corrected prior to the board hearing. Once again, this fact must be stated in the notice.

If the code inspector has reason to believe a violation or the condition causing the violation presents a serious threat to the public health, safety, and welfare or the violation is irreparable or irreversible in nature, the code inspector must make a reasonable effort to notify the violator and is authorized to immediately notify the enforcement board and request a hearing.

Subsection 162.09, Florida Statutes: Authorizes code enforcement boards to impose fines upon violators and repeat violators. The fines are subject to fee limitations (\$250 per day for a first violation, not to exceed \$500 per day for a repeat violation). Additional charges may be imposed to include all costs of repairs. In addition, if a code enforcement board finds the violation irreparable or irreversible, a fine, not to exceed \$5,000 per violation, may be imposed. The amounts of the fines are based upon the gravity of the violation, actions taken to correct the violation, and previous violations committed by the violator. An enforcement board may also reduce a fine imposed under this section.

Certified copies of the order imposing the fine may be recorded in the public records constituting a lien against the land. By petition to a circuit court, the order may be enforced in the same manner as a court judgment by the sheriff, including levy against personal property. However, the order is not deemed to be a court judgment except for enforcement purposes.

These fines shall continue to accrue until the violator comes into compliance or until judgment is rendered in a suit to foreclose on a lien filed under this part (whichever occurs first). Three months after the lien has been filed, if it remains unpaid, the enforcement board may authorize the local governing body attorney to foreclose on the lien. No lien created under the provisions of this part may be foreclosed on real property which is a homestead, in accordance s. 4, Art. X of the State Constitution.

Subsection 162.12, Florida Statutes: Requires notice of violations be provided to alleged violators by certified mail, return receipt requested; by hand delivery by the sheriff or other law enforcement officer, code inspector, or other designated person; or by leaving the notice at the violator's usual place of residence with any person residing at the residence, subject to certain restrictions.

Notice may be by publication or posting. Published notice must be published once a week for 4 consecutive weeks in a newspaper of general circulation in the county where the code enforcement board is located. The newspaper must meet the requirements of chapter 50, Florida Statutes, for legal and official advertisements and proof of publication must be made in accordance to subsections 50.041 and 50.051, Florida Statutes. Posted notices must be posted for at least ten days in at least two specific locations, the property where the alleged violation exists and, in the case of municipalities, the primary municipal government office, or in the case of counties, at the front door of the courthouse. Proof of posting must be by affidavit of the person posting the notice and must include the date and places of posting.

Notice by publication or posting may run concurrently with or may follow, an attempt or attempts to notice by hand delivery or by certified mail, return receipt requested. Evidence that an attempt to notice by hand or certified mail, along with proof of publication or posting is sufficient to show that the notice requirements have been met.

Subsection 162.23, Florida Statutes: Authorizes code enforcement officers to issue a notice to appear at any hearing conducted by a county court if the officer, based upon personal investigation, has reasonable cause to believe that the person has violated a code or ordinance. A notice to appear is a written order issued by a code enforcement officer in lieu of physical arrest. The person alleged to be in violation is required to appear in a designated court or governmental office at a specified date and time. However, if a person issued a notice to appear refuses to sign the notice, the code enforcement officer does not have arrest authority.

Before issuing a notice to appear, a code enforcement officer must provide a written notice to the person that the person has committed a violation of a code or ordinance. A reasonable time period must be established for the person to correct the violation. The time period must not be less than five days and no more than thirty days. If after personal investigation, the code enforcement officer finds that the person has not corrected the violation within the specified time period, a code enforcement officer may issue a notice to appear to the person who committed the violation. A code enforcement officer is not required to provide a period of time to correct the violation and may immediately issue a notice to appear if a repeat violation is found or if the officer has reason to believe that the violation presents a serious threat to the public health, safety, or welfare, or if the violation is irreparable or irreversible.

Case Law: In *City of Gainesville v. Englert*, 716 So. 2d 817 (Fla. 1st Dist. 1998), the city appealed a final judgment of a trial court which had dismissed the city's petition for an order authorizing the city to enforce the city's code enforcement board's order in the same manner as a court judgment, as authorized in s. 162.09(3), Florida Statutes. The trial court concluded that the city's only available enforcement method was an action to foreclose a lien. The trial court's ruling was reversed and remanded for further proceedings because subsection 162.09(3), Florida Statutes, specifically authorizes the enforcement method sought by the city.

B. EFFECT OF PROPOSED CHANGES:

The bill provides that special masters have the same status as enforcement boards. The bill clarifies that violations of the same code provision at different locations constitutes a repeat violation. The bill specifies disclosure and notice requirements for owners of property subject to enforcement proceedings transferring the property prior to the enforcement hearing. The bill provides for continuation of such hearings and correction of violations by new owners.

The bill specifies that making of repairs by a local government to bring property into compliance does not create a continuing obligation of the government to make further repairs or maintain the property. The bill also specifies that the making of repairs by a local government does not create liability against the local government for damages for repairs made in good faith.

The bill revises and clarifies provisions requiring notice. The bill authorizes code enforcement officers to immediately issue a notice to appear without reasonable time to correct any violations of an itinerant or transient nature.

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?

No

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

No

(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?

N/A

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

N/A

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

N/A

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

N/A

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

N/A

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?

N/A .

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

Yes. This bill requires owners of property subject to enforcement proceedings to provide disclosure and notice to prospective transferors under certain circumstances. This bill requires the owners of property subject to enforcement proceedings to file a notice with the code enforcement official of the transfer of the property, with the identity and address of the new owner and copies of the disclosures made to the owner within 5 days after the date of the transfer.

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 162.03, .04, .06, .09, .12, and .23, Florida Statutes.

E. SECTION-BY-SECTION ANALYSIS:

This bill provides nine WHEREAS clauses expressing the following:

- ◆ The intent of code enforcement procedures is to secure speedy compliance with local codes and ordinances while protecting the rights of property owners and the public health, safety, and welfare; and
- ◆ The intent of the Legislature that the procedures for a special master or hearing officer was to be equivalent in all respects to the procedure for a code enforcement board; and
- ◆ The acknowledgment of the substantial delays in code enforcement proceedings when owners of noncomplying property transfer ownership of the property to a third party requiring the code enforcement process to begin anew; and
- ◆ The acknowledgment of the reluctance of local governments to use their power to repair unsafe, noncomplying property for concerns about future liability; and
- ◆ The acknowledgment of the difficult, expensive, and cumbersome process local governments must undergo to bring foreclosure actions to enforce code enforcement liens, and the acknowledgment that collection of the liens as an assessment, and, therefore, part of the annual tax bill, would be more efficient; and
- ◆ The acknowledgment that clarification is needed for the several alternative methods of code enforcement contained in chapter 162, Florida Statutes; and
- ◆ The acknowledgment that creating a presumption of receipt of a notice sent by certified mail, return receipt requested, if properly addressed to the owner, greatly alleviates the current problem of violators evading or greatly delaying code enforcement proceedings by refusing to sign such notices; and
- ◆ The clarification that local governments are not required to prove that the posted notice was continuously present for the entire 10-day posting period, thus circumventing the actions of certain violators from frustrating the intent of posting by removing and secreting the posted notice before the 10 days had expired.

Section 1: Amends subsection 162.03(2), Florida Statutes, authorizing “special masters” to have the same status as an enforcement board under this chapter, except where references are made to fines, liens, hearings, etc., where such authority is only granted to enforcement boards.

Section 2: Clarifies subsection 162.04(5), Florida Statutes, clarifying the definition of “Repeat violation” to be a person who has previously been found to have violated the same provision of the code with 5 years prior to the current violation, notwithstanding the violation occurred at different locations.

Section 3: Creates subsection 162.06(5), requiring the owner of a property subject to an enforcement proceeding who transfers ownership of the property between the time the initial pleading was served and the time of the hearing to do the following:

- ◆ Disclose the existence and the nature of the proceeding to the prospective purchaser.
- ◆ Deliver to the prospective purchaser a copy of the pleadings, notices, and other materials relating to the code enforcement proceeding received by the seller.
- ◆ Disclose to the prospective purchaser that the new owner will be responsible for compliance with the applicable code and with orders issued in the code enforcement proceeding.
- ◆ File a notice with the code enforcement official of the transfer of the property, including the identity and address of the new owner and copies of the disclosures made to the new owner, within 5 days after the date of the transfer.

Creating a rebuttable presumption of fraud when disclosure fails to occur before the transfer.

Allowing, in situations where the property is transferred before the hearing, that the proceeding is not to be dismissed, however, the new owner must be provided a reasonable time period to correct the violation before the hearing is made.

Section 4: Amends subsection 162.09(1), Florida Statutes, clarifying that there is no continuing obligation on the part of a local governing body to make further repairs or to maintain property it has repaired to bring the property into compliance. Clarifying that repairing the property does not create a liability against the local governing body for damage to the property if the repairs were made in good faith.

Amends subsection 162.09(3), Florida Statutes, expanding and clarifying the current authorization of recording fines in the public records as liens, to authorizing fines plus repair costs to be recorded in the public records as liens. Requiring orders issued upon a petition to the circuit court to be enforceable in the same manner as a court judgment by the sheriffs of the state, including execution and levy against the personal property of the violator.

Section 5: Amends subsection 162.12(1), Florida Statutes, providing that if an individual either refuses to accept delivery of the certified, return receipt requested mail, or fails to claim the certified, return receipt requested mail after being notified by the post office, then no further attempts are necessary if the notice is sent to the address listed in the tax collector's office for tax notices, and at any other address provided to the local government by such owner. Creating an additional method of delivery of notice in the case of commercial premises, by leaving the notice with the manager or other person in charge.

Amends paragraph 162.12(2)(b), Florida Statutes, deleting the requirement for a property to be posted for at least ten days (requiring an inspector to make daily inspection to determine if the notice remains posted and if missing, re-post, beginning the 10-day period anew) and requiring the property to be posted at least 10 days prior to any deadline contained in the notice.

Section 6: Amends subsection 162.23(2), Florida Statutes, adding an additional exception to the requirement for reasonable time to correct the violation prior to issuing

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a notice to appear, to include violators engaged in violations of an itinerant or transient nature within the jurisdiction while moving from place to place.

[Note: Current exceptions include: violations which present a serious threat to the public health, safety, or welfare or if the violation is a repeat violation.]

Section 7: Provides an effective date of October 1, 1999.

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:

This bill does not require municipalities or counties to spend money or to take action that requires a significant expenditure of money.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill is not anticipated to reduce the authority of municipalities or counties to raise total aggregate revenues.

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

This bill does not reduce the total aggregate municipality/county percentage share of a state tax.

V. COMMENTS:

Florida Association of Code Enforcement: The Florida Association of Code Enforcement supports this bill.

Building Officials Association of Florida: The Building Officials Association of Florida supports this bill.

Florida League of Cities: The League of Cities supports this bill.

Florida Association of Counties: The Florida Association of Counties supports this bill.

Note: HB 479 by Representative Levine amends s. 162.09(2), Florida Statutes, by adding a paragraph (d) to the subsection. HB 479 authorizes certain counties or municipalities to adopt ordinances granting code enforcement boards or special masters authority to impose certain fines in excess of those authorized by law and specifies the limitations and requirements. This bill does not address the subject matter of HB 479.

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VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Sponsor may want to amend the bill to replace the words "seller" with transferor and "purchaser" with "transferee" in order to capture all transfers of property including, but not limited to sale of the property.

VII. SIGNATURES:

COMMITTEE ON COMMUNITY AFFAIRS:

Prepared by:

Staff Director:

Tonya Sue Chavis, Esq.

Joan Highsmith-Smith