

STORAGE NAME: h0163s2z.ca

DATE: May 6, 1999

****FINAL ACTION****

****SEE FINAL ACTION STATUS SECTION****

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
COMMUNITY AFFAIRS
FINAL ANALYSIS**

BILL #: CS/CS/2ND ENG HB 163

RELATING TO: Local Government Code Enforcement

SPONSOR(S): Committee on Judiciary; Committee on Community Affairs; Representatives Crist; Bush; Roberts and others

COMPANION BILL(S): CS/SB 0946 (s)

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

- (1) COMMUNITY AFFAIRS YEAS 8 NAYS 0
- (2) REAL PROPERTY & PROBATE YEAS 8 NAYS 0
- (3) JUDICIARY YEAS 9 NAYS 0

I. FINAL ACTION STATUS:

House Bill 163 was prefiled on December 11, 1998. The bill was referred to House Committees on Community Affairs, Real Property & Probate, and Judiciary on December 18, 1998. The bill was considered by the Community Affairs Committee and a committee substitute (CS) was approved unanimously on February 17, 1999. The bill was introduced, referred to the House Committees on Community Affairs, Real Property & Probate, and Judiciary on March 2, 1999. On March 3, 1999, the CS was pending review under Rule 113. The CS was considered by the Committee on Real Property & Probate on March 9, 1999, and was approved favorably with four amendments. The CS was considered by the Judiciary Committee on March 18, 1999, and a CS for the CS was approved. On March 24, 1999, the CS/CS was pending review under Rule 113. On April 8, 1999, the CS/CS was placed on the Special Order Calendar. On April 13, 1999, four floor amendments were offered and three of the amendments were adopted. On April 15, 1999, a fifth amendment was adopted by the House and the CS/CS, as amended, was voted favorably, 118 YEAS and 0 NAYS.

The Senate received the CS/CS, as amended on April 21, 1999, and referred the CS/CS, as amended to the Senate Committee on Comprehensive Planning, Local and Military Affairs. The CS/CS, as amended, was withdrawn from the Committee on Comprehensive Planning and Military Affairs; substituted for CS/SB 946; and was voted favorably, 39 YEAS and 0 NAYS. CS/CS 163 became law on June 17, 1999 as chapter 99-368, Laws of Florida.

II. SUMMARY:

This CS/CS for the bill makes the following changes to current law:

- Provides an exception from certain notice requirements for "repeat violators" under certain circumstances;
- Requires owners of property subject to enforcement proceedings to provide disclosure and notice to prospective transferees under certain circumstances;
- Authorizes local governing bodies to make certain repairs under certain circumstances;
- Revises the definition of "repeat violation";
- Specifies the status of special masters;
- Provides for a rebuttable presumption of fraud;
- Provides for continuation of certain enforcement proceedings under certain circumstances;
- Specifies that certain actions taken by a local government do not create continuing obligations;
- Authorizes certain counties or municipalities to adopt ordinances granting code enforcement boards or special masters authority to impose certain fines in excess of those currently authorized;
- Clarifies enforcement of orders imposing certain fines or costs;
- Revises prescribed methods for providing certain notices;
- Provides an additional exception to requirements to provide reasonable time to correct violations under certain circumstances;
- Authorizes local governments to enact public service rates for certain activities and provides for inapplicability of county rates for such activities in certain municipalities; and
- Provides a severability clause.

This bill does not appear to have a direct fiscal impact on state or local governments.

III. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Section 125.69, Florida Statutes: Provides that violations of county ordinances shall be prosecuted in the same manner as misdemeanors and allows the board of county commissioners of each county to designate an agent or employee as a code inspector whose duty it is to assure compliance with the county's code.

Before issuing a citation, a code inspector must provide notice to the violator that the violator has committed a violation of code or ordinance and must establish a reasonable time period (not less than 30 days) within which the violator must correct the violation. If, after personal investigation, a code inspector finds the violation has not been corrected, the code inspector may issue a citation to the violator. A code inspector is not required to provide the violator with a reasonable time period to correct the violation prior to issuing a citation if the code inspector has reason to believe the violation presents a serious threat to the public health, safety, or welfare, or if the violation is irreparable or irreversible.

A citation must include the following:

- Date and time of issuance;
- Name and address of the person in violation;
- Date of the violation;
- Section of the codes or ordinances alleged in violation;
- Name of the code inspector; and
- Date and time when the violator must appear in county court.

The provisions of s. 125.69, Florida Statutes, do not apply to the enforcement of building codes pursuant to ss. 553.79 and 553.73, Florida Statutes, adopted pursuant to s. 553.73, Florida Statutes, as they apply to construction, provided that a building permit is either not required or has been issued by the county.

The provisions of s. 125.69, Florida Statutes, **may be used by a county in lieu of the provisions of part II of chapter 162, Florida Statutes.** These provisions are an additional and supplemental means of enforcing county codes and ordinances and do not prohibit a county from enforcing its codes or ordinances by any other means.

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.

Section 162.03, Florida Statutes: Authorizes each county or municipality to create or abolish, by local ordinance, a code enforcement board. In addition, this section 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.

Section 162.04, Florida Statutes: Defines the terms used in sections 162.01-.13, Florida Statutes.

Section 162.06, Florida Statutes: 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 give notice to 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, and 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.

Section 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 amount 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.

A certified copy of the order imposing the fine may be recorded in the public records, which constitutes 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.

Section 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 with ss. 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.

Section 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.

Paragraphs 125.0103(1)(b)-(c), Florida Statutes, 1998, Supplement: Authorizes county ordinances and rules imposing price controls and procedures. Provides that the provisions of this section do not prevent the enactment by local governments of public service rates otherwise authorized by law, including water, sewer, solid waste, public transportation, taxicab, or port rates. Requires counties to establish maximum fees which may be charged on the towing of vehicles under specified circumstances.

Paragraphs 166.043(1)(b)-(c), Florida Statutes, 1998, Supplement: Authorizes municipal ordinances and rules imposing price controls and procedures. Provides that the provisions of this section do not prevent the enactment by local governments of public service rates otherwise authorized by law, including water, sewer, solid waste, public transportation, taxicab, or port rates. Requires counties to establish maximum fees which may be charged on the towing of vehicles under specified circumstances.

Case Law: In *City of Gainesville v. Englert*, 716 So. 2d 817 (Fla. 1st DCA 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 s. 162.09(3), Florida Statutes, specifically authorizes the enforcement method sought by the city.

B. EFFECT OF PROPOSED CHANGES:

CS/CS/HB 163, Second Engrossed, provides for the following:

- Provides an exception from certain notice requirements under certain circumstances relating to repeat violators;
- Requires owners of property subject to a code enforcement proceeding to disclose certain information prior to transfer of such property;
- Creates a presumption of fraud under certain circumstances;
- Authorizes local governing bodies to make certain repairs under certain circumstances;
- Provides for absence of liability for such repairs under certain circumstances;
- Specifies the status of special masters;
- Revises the definition of "repeat violator";

- Requires owners of property subject to code enforcement proceedings to provide disclosure and notice to prospective transferors under certain circumstances;
- Provides for continuation of enforcement proceedings under certain circumstances;
- Specifies that certain code enforcement actions taken by a local government do not create continuing obligations or liabilities under certain circumstances;
- 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;
- Provides requirements for granting code enforcement boards or special masters authority to impose certain fines in excess of those authorized by law;
- Clarifies enforcement of orders imposing certain fines and costs;
- Revises prescribed methods for providing certain notices;
- Clarifies the time period for posting certain notices;
- Provides an additional exception to requirements to provide reasonable time to correct violations under certain circumstances;
- Authorizes counties to enact public service rates for certain activities; and
- Authorizes municipalities to enact public service rates for certain activities.

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?

New responsibilities are contained in the following sections of the CS/CS:

Sections 1 and 4: Require the owner of a property, which is subject to an enforcement proceeding before an enforcement board, special master, or court, who transfers ownership of the property, to do the following:

Disclose the existence and nature of the proceeding to the prospective transferee;

Deliver to the prospective transferee a copy of the pleadings, notices, and other materials relating to the code enforcement proceeding;

Disclose to the prospective transferee that the new owner will be responsible for compliance with the applicable code and with orders issued in the code enforcement proceeding; and

File a notice with the code enforcement official of the transfer of the property within 5 days of the transfer of the property.

[Note: These sections apply to s. 162.06 and s. 125.69, Florida Statutes.]

Section 5: Authorizes counties or municipalities having a population equal to or greater than 50,000 to adopt, by a certain vote, an ordinance that gives code enforcement boards or special masters, the authority to impose fines in excess of certain limits, subject to certain limits. Authorizes additional fines to cover all costs incurred by the local government in enforcing its codes and all costs of repairs made in pursuant to subsection (1) of this section. Requires ordinance imposing such fines to include certain criteria for imposition of fines. Authorizes the certified copy of an order imposing a fine or a fine plus costs, to be recorded in the public records.

Authorizes, upon petition to the circuit court, such orders are enforceable in the same manner as a court judgment by the sheriff, including execution and levy against the personal property of the violator.

[Note: This section applies to s. 162.08, Florida Statutes.]

Section 6: Authorizes hand delivery of notice to the manager or other person in charge at commercial properties.

[Note: This section applies to s. 162.06, Florida Statutes.]

Section 7: Authorizes a code enforcement officer not to provide a reasonable time period to correct a violation prior to issuing a notice to appear when the officer has reason to believe that the violation is irreparable or irreversible and that the violator is engaged in violations of an itinerant or transient nature within the jurisdiction.

[Note: This section applies only to s. 162.23, Florida Statutes.]

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

No

- B. If an agency or program is eliminated or reduced:
An agency or program is not eliminated or reduced.

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

N/A

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

N/A

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

N/A

2. Lower Taxes:

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

No

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

Indeterminate.

Sections 8 and 9: Provides that the provisions of ss. 125.0103 and 166.043, Florida Statutes, 1998 Supplement, does not prevent local governments (counties and municipalities) from enacting ordinances regulating public service rates otherwise authorized by law, including rates for towing of vehicles from or immobilization of vehicles on private property, or rates for removal and storage of wrecked or disabled vehicles from an accident scene or the removal and storage of vehicles in the event the owner or operator is incapacitated, unavailable, leaves the procurement of wrecker service to the law enforcement officer at the scene, or otherwise does not consent to the removal of the vehicle. Provides that local governments (counties and municipalities) must establish maximum rates for such services.

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?

No

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

No

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?

This bill requires owners of property subject to enforcement proceedings to provide disclosure 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:

This bill does not purport 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?

No

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:

This bill does not create or change a program providing services to families or children.

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Sections 162.03, 162.04, .162.06, 162.09, 162.12, 162.23, 125.69 Florida Statutes, and sections 125.0103 and 166.043, Florida Statutes, 1998 Supplement.

E. SECTION-BY-SECTION ANALYSIS:

This bill provides eight 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;
- The procedures provided in chapter 162, Florida Statutes, contain several alternative methods of code enforcement for local governments to choose from, but the choices are in need of some clarification regarding legislative intent;
- It was intended by the Legislature that the procedure for a special master or hearing officer was to be in all respects the equivalent of the procedure for a code enforcement board;
- 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;
- The acknowledgment of the reluctance of local governments to use their power to repair unsafe, noncomplying property for concerns about future liability;
- 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 s. 125.69, Florida Statutes, as follows:

- Provides that a code enforcement officer is not required to give a repeat violator a reasonable time to correct the violation and may immediately issue a citation.
- Clarifies the definition of “repeat violation” to mean a violation by a person who has previously been found to have violated the same provision of the code within 5 years prior to the current violation, *notwithstanding the violations occurred at different locations*.
- Requires 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 transferee;
 - Deliver to the prospective transferee a copy of the pleadings, notices, and other materials relating to the code enforcement proceeding received by the seller.
 - Disclose to the prospective transferee 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.
- Creates a rebuttable presumption of fraud when disclosure fails to occur before the transfer.
- Provides 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, and 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.

Section 2: Amends s. 162.03(2), Florida Statutes, authorizing “special masters” to have the same status as an enforcement board under this chapter, except in s. 162.05, Florida Statutes, and if the context permits.

Section 3: Clarifies s. 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 within 5 years prior to the current violation, *notwithstanding the violations occurred at different locations*.

Section 4: Creates s. 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 transferee;
- Deliver to the prospective transferee a copy of the pleadings, notices, and other materials relating to the code enforcement proceeding received by the seller;
- Disclose to the prospective transferee that the new owner will be responsible for compliance with the applicable code and with orders issued in the code enforcement proceeding; and

- 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.

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

[Note: The bill as filed applied the above-listed requirements to sellers and purchasers of the property only.]

Allows, 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 occurs.

Section 5: Amends s. 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. Providing 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.

Creates s. 162.09(2)(d), Florida Statutes, authorizing a county or municipality having a population equal to or greater than 50,000 to adopt, by a vote of at least a majority plus one of the entire governing body of the county or municipality, an ordinance that gives code enforcement boards or special masters or both, authority to impose fines in excess of the authorized limits, subject to the following limitations:

- Fines are not to exceed \$1,000 per day per violation for the first violation;
- Fines are not to exceed \$5,000 per day per violation for a repeat violation;
- Fines are not to exceed \$15,000 per violation if the code enforcement board or special master finds the violation to be irreparable or irreversible in nature.

Authorizes the code enforcement board or special master to impose additional fines to cover all costs incurred by the local government in enforcing its codes and all costs of all reasonable repairs made by the county or municipality which are required to bring the property into compliance. Any ordinance imposing such fines must include criteria to be considered by the code enforcement board or special master in determining the amount of the fines.

[Note: This language is identical to HB 1005.]

Amends s. 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 6: Amends s. 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 s. 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 7: Amends s. 162.23(2), Florida Statutes, adding an additional exception to the requirement for reasonable time to correct the violation prior to issuing a notice to appear, to include violators engaged in violations of an itinerant or transient nature within the jurisdiction.

Section 8: Amends s. 125.0103(1)(b) and (c), Florida Statutes, 1998 Supplement, authorizing counties to enact public service rates for towing of vehicles. This rate does not apply within the jurisdiction of municipalities which enact an ordinance establishing the maximum fees for the towing or immobilization of vehicles.

Section 9: Amends s. 166.043(1)(b) and (c), Florida Statutes, 1998 Supplement, authorizing municipalities to enact public service rates for towing of vehicles.

Section 10: Provides for severability.

Section 11: Provides an effective date of October 1, 1999.

IV. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None

2. Recurring Effects:

None

3. Long Run Effects Other Than Normal Growth:

None

4. Total Revenues and Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None

2. Recurring Effects:

None

3. Long Run Effects Other Than Normal Growth:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

4. Direct Private Sector Costs:

None

5. Direct Private Sector Benefits:

None

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

None

D. FISCAL COMMENTS:

None

V. 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 percentage of a state tax shared with counties or municipalities.

VI. COMMENTS:

Comments on the bill, as introduced:

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.

Judiciary Committee Staff Comments:

Section 162.12, F.S., concerns notice to alleged violators of various codes. Currently, the statute requires notice to the violator 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 violators place of residence with any person over the age of 15 and informing that person of the contents.

At the option of code enforcement boards, notice may additionally be served by publication or posting. Thus, the current statute is calculated to afford the person with actual notice and an opportunity to be heard. The proposed amendment creates a presumption that a notice mailed certified, return receipt requested to the current address listed in the tax collector's office, whether or not returned as unclaimed or refused, can by itself constitute notice. This presumption of notice is not currently included in Rule 1.070 of the Florida Rules of Civil Procedure, governing process in civil actions, and has thus not been endorsed by the Florida Supreme Court as meeting the minimum requirements for due process notice. Indeed, in a recent case concerning a permit for a retention pond, the Fifth District Court of Appeal held that principles of due process entitled the property owner to actual notice and an opportunity to be heard, which was not afforded by posting of the notice of intent to grant the permit on

the water management bulletin board. See Leeberg v. Southwest Florida Water Management District, 1998 WL 736870, 23 Fla. Weekly D2373. The presumption of notice proposed by this legislation may fail to meet minimum due process standards and could fail the actual notice test. It may be possible to create a presumption which would better serve the actual notice test by following the returned certified mail by a first class letter to the address provided, and a brief affidavit or proof of mailing.

VII. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Community Affairs Committee: On February 17, 1999, the Committee on Community Affairs adopted the following amendments and approved a committee substitute. The committee substitute differs from HB 163 as follows:

Amendment 1: Replaces the word "purchaser" with "transferee" throughout the bill.

Amendment 2: Replaces the word "seller" with "transferor."

Amendment 4: Removes redundant language.

Amendment 5: Amends s. 125.69, Florida Statutes, clarifying the definition of "Repeat violation." 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 provide certain notice to prospective transferees and code enforcement officials. Creating a rebuttable presumption of fraud when disclosure fails to occur before the transfer. 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.

Amendment 6: Technical amendment for bill drafting purposes.

Real Property and Probate Committee: On March 9, 1999, the Committee on Real Property and Probate adopted 4 amendments to CS/HB 163. The following amendments were adopted:

Amendment 1: Changed the word "served" to "issued" -- a citation is "issued", not "served".

Amendment 2: Provided that certain disclosures must be "in writing".

Amendment 3: Changed the word "violator" to "owner" -- thus the property owner would be charged with the costs of any government repairs.

Amendment 4: Removed an inapplicable "Whereas" clause.

Judiciary Committee: On March 18, 1999, the Judiciary Committee adopted three amendments to CS/HB 163 and approved a CS for CS/HB 163. The following amendments were adopted:

Amendment 1: Clarifies that repeat offenders are those previously found by a code enforcement board or admitted through any quasi-judicial or judicial process to have violated the same provision within a 5 year period.

Amendment 2: Clarifies that due process notice may be satisfied when a certified letter is returned without delivery, by posting of the premises and first class mailing with proof thereof.

Amendment 3: Permits local governments to set rates for towing vehicles, the removal and storage of wrecked or disabled vehicles and other similar situations involving a vehicle and provides that county rates shall not apply within municipalities enacting rates hereunder.

Floor Amendments: On April 13, 1999, the House failed to adopt Amendment 1, deleting from the bill authorization for local governments to set rates for towing vehicles. The House adopted Amendment 2, authorizing 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 (this language was contained in HB 1005 by Representative Levine.) Amendment 2 also contains a severability clause.

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VIII. SIGNATURES:

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Tonya Sue Chavis, Esq.

Joan Highsmith-Smith

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Prepared by:

Staff Director:

J. Marleen Ahearn, Ph.D., J.D.

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AS FURTHER REVISED BY THE COMMITTEE ON JUDICIARY:

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