

By the Committee on Community Affairs and Representative  
Crist

1                                   A bill to be entitled  
2           An act relating to local government code  
3           enforcement; amending s. 125.69, F.S.;  
4           providing an exception from certain notice  
5           requirements under certain circumstances;  
6           requiring owners of property subject to an  
7           enforcement proceeding to disclose certain  
8           information prior to transfer of such property;  
9           creating a presumption of fraud under certain  
10          circumstances; authorizing local governing  
11          bodies to make certain repairs under certain  
12          circumstances; providing for absence of  
13          liability for such repairs under certain  
14          circumstances; amending s. 162.03, F.S.;  
15          specifying the status of special masters;  
16          amending s. 162.04, F.S.; revising a  
17          definition; amending s. 162.06, F.S.; requiring  
18          owners of property subject to enforcement  
19          proceedings to provide disclosure and notice to  
20          prospective transferors under certain  
21          circumstances; providing a rebuttable  
22          presumption; providing for continuation of  
23          enforcement proceedings under certain  
24          circumstances; providing procedures; amending  
25          s. 162.09, F.S.; specifying that certain  
26          actions taken by a local government do not  
27          create continuing obligations or liabilities  
28          under certain circumstances; clarifying  
29          enforcement of orders imposing certain fines or  
30          costs; amending s. 162.12, F.S.; revising  
31          prescribed methods for providing certain

1 notices; clarifying the time period for posting  
2 certain notices; amending s. 162.23, F.S.;  
3 providing an additional exception to  
4 requirements to provide reasonable time to  
5 correct violations under certain circumstances;  
6 providing an effective date.

7  
8 WHEREAS, Florida's procedures for local government  
9 code enforcement are meant to secure speedy compliance with  
10 local codes and ordinances while protecting the rights of  
11 property owners and the public health, safety, and welfare,  
12 and

13 WHEREAS, the procedures set forth in chapter 162,  
14 Florida Statutes, contain several alternative methods of code  
15 enforcement for local governments to choose from, but the  
16 choices are in need of some clarification regarding  
17 legislative intent, and

18 WHEREAS, it was intended by the Legislature that the  
19 procedure for a special master or hearing officer was to be in  
20 all respects the equivalent of the procedure for a code  
21 enforcement board, and

22 WHEREAS, substantial delay has been encountered in code  
23 enforcement proceedings when the owner of a noncomplying  
24 property transferred ownership to a third party, with some  
25 local governments being required to begin the entire code  
26 enforcement process all over again with respect to the new  
27 owner, which was not the intent of the Legislature, and

28 WHEREAS, some local governments have been reluctant to  
29 use their power to repair unsafe noncomplying property because  
30 of concerns about future liability, and

31

1           WHEREAS, many local governments find it difficult,  
2 expensive and cumbersome to bring foreclosure actions to  
3 enforce code enforcement liens, and collecting the amount of  
4 those liens as an assessment as part of the annual tax bill  
5 would be more efficient, and

6           WHEREAS, creating a presumption of receipt of a notice  
7 sent by certified mail, return receipt requested, when  
8 properly addressed to the owner, would alleviate the current  
9 problem of violators evading or greatly delaying code  
10 enforcement proceedings by refusing to sign for such notice,  
11 and

12           WHEREAS, some local governments are construing the  
13 posting procedure contained in s. 162.12(2), Florida Statutes,  
14 as mandating that they must prove that the notice so posted  
15 was continuously present for the entire 10-day posting period,  
16 and some violators were frustrating the intent of the posting  
17 provision by removing and secreting the posted notice before  
18 the 10 days had expired, which was not the intent of the  
19 Legislature, and

20           WHEREAS, it is the intent of the Legislature to cure  
21 the ambiguities and loopholes in chapter 162, Florida  
22 Statutes, just described, NOW, THEREFORE,

23  
24 Be It Enacted by the Legislature of the State of Florida:

25  
26           Section 1. Subsection (2) of section 125.69, Florida  
27 Statutes, 1998 Supplement, is amended to read:

28           125.69 Penalties; enforcement by code inspectors.--

29           (2) The board of county commissioners of each county  
30 may designate its agents or employees as code inspectors whose  
31 duty it is to assure code compliance. Any person designated

1 as a code inspector may issue citations for violations of  
2 county codes and ordinances, respectively, or subsequent  
3 amendments thereto, when such code inspector has actual  
4 knowledge that a violation has been committed.

5 (a) Prior to issuing a citation, a code inspector  
6 shall provide notice to the violator that the violator has  
7 committed a violation of a code or ordinance and shall  
8 establish a reasonable time period within which the violator  
9 must correct the violation. Such time period shall be no more  
10 than 30 days. If, upon personal investigation, a code  
11 inspector finds that the violator has not corrected the  
12 violation within the time period, a code inspector may issue a  
13 citation to the violator. A code inspector does not have to  
14 provide the violator with a reasonable time period to correct  
15 the violation prior to issuing a citation and may immediately  
16 issue a citation if the code inspector has reason to believe  
17 that the violation presents a serious threat to the public  
18 health, safety, or welfare, or if the violation is irreparable  
19 or irreversible.

20 (b) A citation issued by a code inspector shall state  
21 the date and time of issuance, name and address of the person  
22 in violation, date of the violation, section of the codes or  
23 ordinances, or subsequent amendments thereto, violated, name  
24 of the code inspector, and date and time when the violator  
25 shall appear in county court.

26 (c) If a repeat violation is found subsequent to the  
27 issuance of a citation, the code inspector is not required to  
28 give the violator a reasonable time to correct the violation  
29 and may immediately issue a citation. For purposes of this  
30 subsection, the term "repeat violation" means a violation of a  
31 provision of a code or ordinance by a person who has

1 previously been found to have violated the same provision  
2 within 5 years prior to the violation, notwithstanding the  
3 violations occurred at different locations.

4 (d) If the owner of property which is subject to an  
5 enforcement proceeding before county court transfers ownership  
6 of such property between the time the initial citation or  
7 citations are served and the date the violator has been  
8 summoned to appear in county court, such owner shall:

9 1. Disclose the existence and the nature of the  
10 proceeding to the prospective transferee.

11 2. Deliver to the prospective transferee a copy of the  
12 pleadings, notices, and other materials relating to the county  
13 court proceeding received by the transferor.

14 3. Disclose to the prospective transferee that the new  
15 owner will be responsible for compliance with the applicable  
16 code and with orders issued in the county court proceeding.

17 4. File a notice with the code enforcement official of  
18 the transfer of the property, with the identity and address of  
19 the new owner and copies of the disclosures made to the new  
20 owner, within 5 days after the date of the transfer.

21  
22 A failure to make the disclosure described in subparagraphs  
23 1., 2., and 3. before the transfer creates a rebuttable  
24 presumption of fraud. If the property is transferred before  
25 the date the violator has been summoned to appear in county  
26 court, the proceeding shall not be dismissed but the new owner  
27 will be substituted as the party of record and thereafter  
28 provided a reasonable period of time to correct the violation  
29 before the continuation of proceedings in county court.

30 (e) If the code inspector has reason to believe a  
31 violation or the condition causing the violation presents a

1 serious threat to the public health, safety, and welfare or if  
2 the violation is irreparable or irreversible in nature, or if  
3 after attempts under this section to bring a repeat violation  
4 into compliance with a provision of a code or ordinance prove  
5 unsuccessful, the local governing body may make all reasonable  
6 repairs which are required to bring the property into  
7 compliance and charge the violator with the reasonable cost of  
8 the repairs along with the fine imposed pursuant to this  
9 section. Making such repairs does not create a continuing  
10 obligation on the part of the local governing body to make  
11 further repairs or to maintain the property and does not  
12 create any liability against the local governing body for any  
13 damages to the property if such repairs were completed in good  
14 faith.

15 (f)~~(e)~~ Nothing in this subsection shall be construed  
16 to authorize any person designated as a code inspector to  
17 perform any function or duties of a law enforcement officer  
18 other than as specified in this subsection. A code inspector  
19 shall not make physical arrests or take any person into  
20 custody and shall be exempt from requirements relating to the  
21 Special Risk Class of the Florida Retirement System, bonding,  
22 and the Criminal Justice Standards and Training Commission, as  
23 defined and provided by general law.

24 (g)~~(d)~~ The provisions of this subsection shall not  
25 apply to the enforcement pursuant to ss. 553.79 and 553.80 of  
26 building codes adopted pursuant to s. 553.73 as they apply to  
27 construction, provided that a building permit is either not  
28 required or has been issued by the county. For the purposes  
29 of this paragraph, "building codes" means only those codes  
30 adopted pursuant to s. 553.73.

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1           (h)~~(e)~~ The provisions of this subsection may be used  
2 by a county in lieu of the provisions of part II of chapter  
3 162.

4           (i)~~(f)~~ The provisions of this subsection are  
5 additional or supplemental means of enforcing county codes and  
6 ordinances. Except as provided in paragraph(h)~~(e)~~, nothing in  
7 this subsection shall prohibit a county from enforcing its  
8 codes or ordinances by any other means.

9           Section 2. Subsection (2) of section 162.03, Florida  
10 Statutes, is amended to read:

11           162.03 Applicability.--

12           (2) A charter county, a noncharter county, or a  
13 municipality may, by ordinance, adopt an alternate code  
14 enforcement system which gives code enforcement boards or  
15 special masters designated by the local governing body, or  
16 both, the authority to hold hearings and assess fines against  
17 violators of the respective county or municipal codes and  
18 ordinances. A special master shall have the same status as an  
19 enforcement board under this chapter. References in this  
20 chapter to an enforcement board, except in s. 162.05, shall  
21 include a special master if the context permits.

22           Section 3. Subsection (5) of section 162.04, Florida  
23 Statutes, is amended to read:

24           162.04 Definitions.--As used in ss. 162.01-162.13, the  
25 term:

26           (5) "Repeat violation" means a violation of a  
27 provision of a code or ordinance by a person who ~~whom the code~~  
28 ~~enforcement board~~ has been previously found to have violated  
29 the same provision within 5 years prior to the violation,  
30 notwithstanding the violations occur at different locations.  
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1           Section 4. Subsection (5) is added to section 162.06,  
2 Florida Statutes, to read:

3           162.06 Enforcement procedure.--

4           (5) If the owner of property which is subject to an  
5 enforcement proceeding before an enforcement board, special  
6 master, or court transfers ownership of such property between  
7 the time the initial pleading was served and the time of the  
8 hearing, such owner shall:

9           (a) Disclose the existence and the nature of the  
10 proceeding to the prospective transferee.

11           (b) Deliver to the prospective transferee a copy of  
12 the pleadings, notices, and other materials relating to the  
13 code enforcement proceeding received by the transferor.

14           (c) Disclose to the prospective transferee that the  
15 new owner will be responsible for compliance with the  
16 applicable code and with orders issued in the code enforcement  
17 proceeding.

18           (d) File a notice with the code enforcement official  
19 of the transfer of the property, with the identity and address  
20 of the new owner and copies of the disclosures made to the new  
21 owner, within 5 days after the date of the transfer.

22  
23 A failure to make the disclosures described in paragraphs (a),  
24 (b), and (c) before the transfer creates a rebuttable  
25 presumption of fraud. If the property is transferred before  
26 the hearing, the proceeding shall not be dismissed, but the  
27 new owner shall be provided a reasonable period of time to  
28 correct the violation before the hearing is held.

29           Section 5. Subsections (1) and (3) of section 162.09,  
30 Florida Statutes, are amended to read:

31           162.09 Administrative fines; costs of repair; liens.--



1           (1) An enforcement board, upon notification by the  
2 code inspector that an order of the enforcement board has not  
3 been complied with by the set time or, upon finding that a  
4 repeat violation has been committed, may order the violator to  
5 pay a fine in an amount specified in this section for each day  
6 the violation continues past the date set by the enforcement  
7 board for compliance or, in the case of a repeat violation,  
8 for each day the repeat violation continues, beginning with  
9 the date the repeat violation is found to have occurred by the  
10 code inspector. In addition, if the violation is a violation  
11 described in s. 162.06(4), the enforcement board shall notify  
12 the local governing body, which may make all reasonable  
13 repairs which are required to bring the property into  
14 compliance and charge the violator with the reasonable cost of  
15 the repairs along with the fine imposed pursuant to this  
16 section. Making such repairs does not create a continuing  
17 obligation on the part of the local governing body to make  
18 further repairs or to maintain the property and does not  
19 create any liability against the local governing body for any  
20 damages to the property if such repairs were completed in good  
21 faith. If a finding of a violation or a repeat violation has  
22 been made as provided in this part, a hearing shall not be  
23 necessary for issuance of the order imposing the fine. If,  
24 after due notice and hearing, a code enforcement board finds a  
25 violation to be irreparable or irreversible in nature, it may  
26 order the violator to pay a fine as specified in paragraph  
27 (2)(a).

28           (3) A certified copy of an order imposing a fine, or a  
29 fine plus repair costs, may be recorded in the public records  
30 and thereafter shall constitute a lien against the land on  
31 which the violation exists and upon any other real or personal

1 property owned by the violator. Upon petition to the circuit  
2 court, such order shall be enforceable ~~may be enforced~~ in the  
3 same manner as a court judgment by the sheriffs of this state,  
4 including execution and levy against the personal property of  
5 the violator, but such order shall not be deemed to be a court  
6 judgment except for enforcement purposes. A fine imposed  
7 pursuant to this part shall continue to accrue until the  
8 violator comes into compliance or until judgment is rendered  
9 in a suit to foreclose on a lien filed pursuant to this  
10 section, whichever occurs first. A lien arising from a fine  
11 imposed pursuant to this section runs in favor of the local  
12 governing body, and the local governing body may execute a  
13 satisfaction or release of lien entered pursuant to this  
14 section. After 3 months from the filing of any such lien which  
15 remains unpaid, the enforcement board may authorize the local  
16 governing body attorney to foreclose on the lien. No lien  
17 created pursuant to the provisions of this part may be  
18 foreclosed on real property which is a homestead under s. 4,  
19 Art. X of the State Constitution.

20 Section 6. Subsection (1) and paragraph (b) of  
21 subsection (2) of section 162.12, Florida Statutes, are  
22 amended to read:

23 162.12 Notices.--

24 (1) All notices required by this part shall be  
25 provided to the alleged violator by:

26 (a) Certified mail, return receipt requested, provided  
27 if such notice is sent under this paragraph to the owner of  
28 the property in question at the address listed in the tax  
29 collector's office for tax notices, and at any other address  
30 provided to the local government by such owner, it shall be  
31 presumed that the notice was received by the owner,

1 notwithstanding that the certified mail envelope may be  
2 returned by the post office as unclaimed or refused; by  
3 (b) Hand delivery by the sheriff or other law  
4 enforcement officer, code inspector, or other person  
5 designated by the local governing body; ~~or by~~  
6 (c) Leaving the notice at the violator's usual place  
7 of residence with any person residing therein who is above 15  
8 years of age and informing such person of the contents of the  
9 notice; or  
10 (d) In the case of commercial premises, leaving the  
11 notice with the manager or other person in charge.  
12 (2) In addition to providing notice as set forth in  
13 subsection (1), at the option of the code enforcement board,  
14 notice may also be served by publication or posting, as  
15 follows:  
16 (b)1. In lieu of publication as described in paragraph  
17 (a), such notice may be posted ~~for~~ at least 10 days prior to  
18 the hearing, or prior to the expiration of any deadline  
19 contained in the notice,in at least two locations, one of  
20 which shall be the property upon which the violation is  
21 alleged to exist and the other of which shall be, in the case  
22 of municipalities, at the primary municipal government office,  
23 and in the case of counties, at the front door of the  
24 courthouse in said county.  
25 2. Proof of posting shall be by affidavit of the  
26 person posting the notice, which affidavit shall include a  
27 copy of the notice posted and the date and places of its  
28 posting.  
29  
30 Evidence that an attempt has been made to hand deliver or mail  
31 notice as provided in subsection (1), together with proof of

1 publication or posting as provided in subsection (2), shall be  
2 sufficient to show that the notice requirements of this part  
3 have been met, without regard to whether or not the alleged  
4 violator actually received such notice.

5 Section 7. Subsection (2) of section 162.23, Florida  
6 Statutes, is amended to read:

7 162.23 Notice to appear.--

8 (2) Prior to issuing a notice to appear, a code  
9 enforcement officer shall provide written notice to the person  
10 that the person has committed a violation of a code or  
11 ordinance and shall establish a reasonable time period within  
12 which the person must correct the violation. Such time period  
13 shall be no fewer than 5 days and no more than 30 days. If,  
14 upon personal investigation, a code enforcement officer finds  
15 that the person has not corrected the violation within the  
16 prescribed time period, a code enforcement officer may issue a  
17 notice to appear to the person who has committed the  
18 violation. A code enforcement officer is not required to  
19 provide the person with a reasonable time period to correct  
20 the violation prior to issuing a notice to appear and may  
21 immediately issue a notice to appear if a repeat violation is  
22 found, or if the code enforcement officer has reason to  
23 believe that the violation presents a serious threat to the  
24 public health, safety, or welfare or that the violator is  
25 engaged in violations of an itinerant or transient nature, as  
26 defined by local code or ordinance within the jurisdiction, or  
27 if the violation is irreparable or irreversible.

28 Section 8. This act shall take effect October 1, 1999.  
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31