

By the Committees on Judiciary, 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 amending ss. 125.0103 and 166.043, F.S.;
7 authorizing local governments to enact public
8 service rates for certain activities; providing
9 for inapplicability of county rates for such
10 activities in certain municipalities; providing
11 severability; providing an effective date.

12
13 WHEREAS, Florida's procedures for local government code
14 enforcement are meant to secure speedy compliance with local
15 codes and ordinances while protecting the rights of property
16 owners and the public health, safety, and welfare, and

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

22 WHEREAS, it was intended by the Legislature that the
23 procedure for a special master or hearing officer was to be in
24 all respects the equivalent of the procedure for a code
25 enforcement board, and

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

1 WHEREAS, some local governments have been reluctant to
2 use their power to repair unsafe noncomplying property because
3 of concerns about future liability, and

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

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

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

21
22 Be It Enacted by the Legislature of the State of Florida:

23
24 Section 1. Subsection (2) of section 125.69, Florida
25 Statutes, 1998 Supplement, is amended to read:

26 125.69 Penalties; enforcement by code inspectors.--

27 (2) The board of county commissioners of each county
28 may designate its agents or employees as code inspectors whose
29 duty it is to assure code compliance. Any person designated
30 as a code inspector may issue citations for violations of
31 county codes and ordinances, respectively, or subsequent

1 amendments thereto, when such code inspector has actual
2 knowledge that a violation has been committed.

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

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

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

31

1 within 5 years prior to the violation, notwithstanding the
2 violations occurred at different locations.

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

8 1. Disclose, in writing, the existence and the nature
9 of the proceeding to the prospective transferee.

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

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

31

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 by a code
29 enforcement board, or admitted through any quasi-judicial or
30 judicial process, to have violated the same provision within 5
31

1 years prior to the violation, notwithstanding the violations
2 occur at different locations.

3 Section 4. Subsection (5) is added to section 162.06,
4 Florida Statutes, to read:

5 162.06 Enforcement procedure.--

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

11 (a) Disclose, in writing, the existence and the nature
12 of the proceeding to the prospective transferee.

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

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

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

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

31

1 Section 5. Subsections (1) and (3) of section 162.09,
2 Florida Statutes, are amended to read:
3 162.09 Administrative fines; costs of repair; liens.--
4 (1) An enforcement board, upon notification by the
5 code inspector that an order of the enforcement board has not
6 been complied with by the set time or, upon finding that a
7 repeat violation has been committed, may order the violator to
8 pay a fine in an amount specified in this section for each day
9 the violation continues past the date set by the enforcement
10 board for compliance or, in the case of a repeat violation,
11 for each day the repeat violation continues, beginning with
12 the date the repeat violation is found to have occurred by the
13 code inspector. In addition, if the violation is a violation
14 described in s. 162.06(4), the enforcement board shall notify
15 the local governing body, which may make all reasonable
16 repairs which are required to bring the property into
17 compliance and charge the violator with the reasonable cost of
18 the repairs along with the fine imposed pursuant to this
19 section. Making such repairs does not create a continuing
20 obligation on the part of the local governing body to make
21 further repairs or to maintain the property and does not
22 create any liability against the local governing body for any
23 damages to the property if such repairs were completed in good
24 faith. If a finding of a violation or a repeat violation has
25 been made as provided in this part, a hearing shall not be
26 necessary for issuance of the order imposing the fine. If,
27 after due notice and hearing, a code enforcement board finds a
28 violation to be irreparable or irreversible in nature, it may
29 order the violator to pay a fine as specified in paragraph
30 (2)(a).
31

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

24 Section 6. Subsection (1) and paragraph (b) of
25 subsection (2) of section 162.12, Florida Statutes, are
26 amended to read:

27 162.12 Notices.--

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

30 (a) Certified mail, return receipt requested, provided
31 if such notice is sent under this paragraph to the owner of

1 the property in question at the address listed in the tax
2 collector's office for tax notices, and at any other address
3 provided to the local government by such owner and is returned
4 as unclaimed or refused, notice may be provided by posting as
5 described in subparagraphs (2)(b)1. and 2. and by first class
6 mail directed to the addresses furnished to the local
7 government with a properly executed proof of mailing or
8 affidavit confirming the first class mailing; by
9 (b) Hand delivery by the sheriff or other law
10 enforcement officer, code inspector, or other person
11 designated by the local governing body; ~~or by~~
12 (c) Leaving the notice at the violator's usual place
13 of residence with any person residing therein who is above 15
14 years of age and informing such person of the contents of the
15 notice; or
16 (d) In the case of commercial premises, leaving the
17 notice with the manager or other person in charge.
18 (2) In addition to providing notice as set forth in
19 subsection (1), at the option of the code enforcement board,
20 notice may also be served by publication or posting, as
21 follows:
22 (b)1. In lieu of publication as described in paragraph
23 (a), such notice may be posted ~~for~~ at least 10 days prior to
24 the hearing, or prior to the expiration of any deadline
25 contained in the notice,in at least two locations, one of
26 which shall be the property upon which the violation is
27 alleged to exist and the other of which shall be, in the case
28 of municipalities, at the primary municipal government office,
29 and in the case of counties, at the front door of the
30 courthouse in said county.
31

1 2. Proof of posting shall be by affidavit of the
2 person posting the notice, which affidavit shall include a
3 copy of the notice posted and the date and places of its
4 posting.

5
6 Evidence that an attempt has been made to hand deliver or mail
7 notice as provided in subsection (1), together with proof of
8 publication or posting as provided in subsection (2), shall be
9 sufficient to show that the notice requirements of this part
10 have been met, without regard to whether or not the alleged
11 violator actually received such notice.

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

14 162.23 Notice to appear.--

15 (2) Prior to issuing a notice to appear, a code
16 enforcement officer shall provide written notice to the person
17 that the person has committed a violation of a code or
18 ordinance and shall establish a reasonable time period within
19 which the person must correct the violation. Such time period
20 shall be no fewer than 5 days and no more than 30 days. If,
21 upon personal investigation, a code enforcement officer finds
22 that the person has not corrected the violation within the
23 prescribed time period, a code enforcement officer may issue a
24 notice to appear to the person who has committed the
25 violation. A code enforcement officer is not required to
26 provide the person with a reasonable time period to correct
27 the violation prior to issuing a notice to appear and may
28 immediately issue a notice to appear if a repeat violation is
29 found, or if the code enforcement officer has reason to
30 believe that the violation presents a serious threat to the
31 public health, safety, or welfare or that the violator is

1 engaged in violations of an itinerant or transient nature, as
2 defined by local code or ordinance within the jurisdiction, or
3 if the violation is irreparable or irreversible.

4 Section 8. Paragraphs (b) and (c) of subsection (1) of
5 section 125.0103, Florida Statutes, 1998 Supplement, are
6 amended to read:

7 125.0103 Ordinances and rules imposing price controls;
8 findings required; procedures.--

9 (1)

10 (b) The provisions of this section shall not prevent
11 the enactment by local governments of public service rates
12 otherwise authorized by law, including water, sewer, solid
13 waste, public transportation, taxicab, or port rates, rates
14 for towing of vehicles from or immobilization of vehicles on
15 private property, or rates for removal and storage of wrecked
16 or disabled vehicles from an accident scene or the removal and
17 storage of vehicles in the event the owner or operator is
18 incapacitated, unavailable, leaves the procurement of wrecker
19 service to the law enforcement officer at the scene, or
20 otherwise does not consent to the removal of the vehicle.

21 (c) Counties must establish maximum fees which may be
22 charged on the towing of vehicles from or immobilization of
23 vehicles on private property, removal and storage of wrecked
24 or disabled vehicles from an accident scene or for the removal
25 and storage of vehicles, in the event the owner or operator is
26 incapacitated, unavailable, leaves the procurement of wrecker
27 service to the law enforcement officer at the scene, or
28 otherwise does not consent to the removal of the vehicle.
29 However, if a municipality chooses to enact an ordinance
30 establishing the maximum fees for the towing or immobilization
31

1 of vehicles as described in paragraph (b), the county's
2 ordinance shall not apply within such municipality.

3 Section 9. Paragraphs (b) and (c) of subsection (1) of
4 section 166.043, Florida Statutes, 1998 Supplement, are
5 amended to read:

6 166.043 Ordinances and rules imposing price controls;
7 findings required; procedures.--

8 (1)

9 (b) The provisions of this section shall not prevent
10 the enactment by local governments of public service rates
11 otherwise authorized by law, including water, sewer, solid
12 waste, public transportation, taxicab, or port rates, rates
13 for towing of vehicles from or immobilization of vehicles on
14 private property, or rates for removal and storage of wrecked
15 or disabled vehicles from an accident scene or the removal and
16 storage of vehicles in the event the owner or operator is
17 incapacitated, unavailable, leaves the procurement of wrecker
18 service to the law enforcement officer at the scene, or
19 otherwise does not consent to the removal of the vehicle.

20 (c) Counties must establish maximum fees which may be
21 charged on the towing of vehicles from or immobilization of
22 vehicles on private property, removal and storage of wrecked
23 or disabled vehicles from an accident scene or for the removal
24 and storage of vehicles, in the event the owner or operator is
25 incapacitated, unavailable, leaves the procurement of wrecker
26 service to the law enforcement officer at the scene, or
27 otherwise does not consent to the removal of the vehicle.
28 However, if a municipality chooses to enact an ordinance
29 establishing the maximum fees for the towing or immobilization
30 of vehicles as described in paragraph (b), the county's

31

1 ordinance established under s. 125.0103 shall not apply within
2 such municipality.

3 Section 10. The provisions of this act are declared to
4 be severable. If any provision of section 8 or section 9 of
5 this act are determined to be invalid, such invalidity shall
6 not affect the validity of the remaining sections of this act,
7 which sections express the primary intent of the Legislature
8 in enacting this act.

9 Section 11. This act shall take effect October 1,
10 1999.

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31