

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; authorizing
29 certain counties or municipalities to adopt
30 ordinances granting code enforcement boards or
31 special masters authority to impose certain

1 fines in excess of those authorized by law;
2 specifying limitations; providing requirements;
3 clarifying enforcement of orders imposing
4 certain fines or costs; amending s. 162.12,
5 F.S.; revising prescribed methods for providing
6 certain notices; clarifying the time period for
7 posting certain notices; amending s. 162.23,
8 F.S.; providing an additional exception to
9 requirements to provide reasonable time to
10 correct violations under certain circumstances;
11 amending ss. 125.0103 and 166.043, F.S.;
12 authorizing local governments to enact public
13 service rates for certain activities; providing
14 for inapplicability of county rates for such
15 activities in certain municipalities; providing
16 severability; providing an effective date.

17
18 WHEREAS, Florida's procedures for local government code
19 enforcement are meant to secure speedy compliance with local
20 codes and ordinances while protecting the rights of property
21 owners and the public health, safety, and welfare, and

22 WHEREAS, the procedures set forth in chapter 162,
23 Florida Statutes, contain several alternative methods of code
24 enforcement for local governments to choose from, but the
25 choices are in need of some clarification regarding
26 legislative intent, and

27 WHEREAS, it was intended by the Legislature that the
28 procedure for a special master or hearing officer was to be in
29 all respects the equivalent of the procedure for a code
30 enforcement board, and

31

1 WHEREAS, substantial delay has been encountered in code
2 enforcement proceedings when the owner of a noncomplying
3 property transferred ownership to a third party, with some
4 local governments being required to begin the entire code
5 enforcement process all over again with respect to the new
6 owner, which was not the intent of the Legislature, and

7 WHEREAS, some local governments have been reluctant to
8 use their power to repair unsafe noncomplying property because
9 of concerns about future liability, and

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

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

24 WHEREAS, it is the intent of the Legislature to cure
25 the ambiguities and loopholes in chapter 162, Florida
26 Statutes, just described, NOW, THEREFORE,

27
28 Be It Enacted by the Legislature of the State of Florida:

29
30 Section 1. Subsection (2) of section 125.69, Florida
31 Statutes, 1998 Supplement, is amended to read:

1 125.69 Penalties; enforcement by code inspectors.--

2 (2) The board of county commissioners of each county
3 may designate its agents or employees as code inspectors whose
4 duty it is to assure code compliance. Any person designated
5 as a code inspector may issue citations for violations of
6 county codes and ordinances, respectively, or subsequent
7 amendments thereto, when such code inspector has actual
8 knowledge that a violation has been committed.

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

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

30 (c) If a repeat violation is found subsequent to the
31 issuance of a citation, the code inspector is not required to

1 give the violator a reasonable time to correct the violation
2 and may immediately issue a citation. For purposes of this
3 subsection, the term "repeat violation" means a violation of a
4 provision of a code or ordinance by a person who has
5 previously been found to have violated the same provision
6 within 5 years prior to the violation, notwithstanding the
7 violations occurred at different locations.

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

13 1. Disclose, in writing, the existence and the nature
14 of the proceeding to the prospective transferee.

15 2. Deliver to the prospective transferee a copy of the
16 pleadings, notices, and other materials relating to the county
17 court proceeding received by the transferor.

18 3. Disclose, in writing, to the prospective transferee
19 that the new owner will be responsible for compliance with the
20 applicable code and with orders issued in the county court
21 proceeding.

22 4. File a notice with the code enforcement official of
23 the transfer of the property, with the identity and address of
24 the new owner and copies of the disclosures made to the new
25 owner, within 5 days after the date of the transfer.

26
27 A failure to make the disclosure described in subparagraphs
28 1., 2., and 3. before the transfer creates a rebuttable
29 presumption of fraud. If the property is transferred before
30 the date the violator has been summoned to appear in county
31 court, the proceeding shall not be dismissed but the new owner

1 will be substituted as the party of record and thereafter
2 provided a reasonable period of time to correct the violation
3 before the continuation of proceedings in county court.

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

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

29 (g)(d) The provisions of this subsection shall not
30 apply to the enforcement pursuant to ss. 553.79 and 553.80 of
31 building codes adopted pursuant to s. 553.73 as they apply to

1 construction, provided that a building permit is either not
2 required or has been issued by the county. For the purposes
3 of this paragraph, "building codes" means only those codes
4 adopted pursuant to s. 553.73.

5 ~~(h)(e)~~ The provisions of this subsection may be used
6 by a county in lieu of the provisions of part II of chapter
7 162.

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

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

15 162.03 Applicability.--

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

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

28 (5) "Repeat violation" means a violation of a
29 provision of a code or ordinance by a person who ~~whom the code~~
30 ~~enforcement board~~ has been previously found through a code
31 enforcement board or any other quasi-judicial or judicial

1 process, to have violated or who has admitted violating the
2 same provision within 5 years prior to the violation,
3 notwithstanding the violations occur at different locations.

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

6 162.06 Enforcement procedure.--

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

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

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

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

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

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

1 Section 5. Subsections (1) and (3) of section 162.09,
2 Florida Statutes, are amended, and paragraph (d) is added to
3 subsection (2) of said section, to read:

4 162.09 Administrative fines; costs of repair; liens.--

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

1 (2)(a) A fine imposed pursuant to this section shall
2 not exceed \$250 per day for a first violation and shall not
3 exceed \$500 per day for a repeat violation, and, in addition,
4 may include all costs of repairs pursuant to subsection (1).
5 However, if a code enforcement board finds the violation to be
6 irreparable or irreversible in nature, it may impose a fine
7 not to exceed \$5,000 per violation.

8 (b) In determining the amount of the fine, if any, the
9 enforcement board shall consider the following factors:

- 10 1. The gravity of the violation;
- 11 2. Any actions taken by the violator to correct the
12 violation; and
- 13 3. Any previous violations committed by the violator.

14 (c) An enforcement board may reduce a fine imposed
15 pursuant to this section.

16 (d) A county or a municipality having a population
17 equal to or greater than 50,000 may adopt, by a vote of at
18 least a majority plus one of the entire governing body of the
19 county or municipality, an ordinance that gives code
20 enforcement boards or special masters, or both, authority to
21 impose fines in excess of the limits set forth in paragraph
22 (a). Such fines shall not exceed \$1,000 per day per violation
23 for a first violation, \$5,000 per day per violation for a
24 repeat violation, and up to \$15,000 per violation if the code
25 enforcement board or special master finds the violation to be
26 irreparable or irreversible in nature. In addition to such
27 fines, a code enforcement board or special master may impose
28 additional fines to cover all costs incurred by the local
29 government in enforcing its codes and all costs of repairs
30 pursuant to subsection (1). Any ordinance imposing such fines
31 shall include criteria to be considered by the code

1 enforcement board or special master in determining the amount
2 of the fines, including, but not limited to, those factors set
3 forth in paragraph (b).

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

27 Section 6. Subsection (1) and paragraph (b) of
28 subsection (2) of section 162.12, Florida Statutes, are
29 amended to read:

30 162.12 Notices.--
31

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

3 (a) Certified mail, return receipt requested, provided
4 if such notice is sent under this paragraph to the owner of
5 the property in question at the address listed in the tax
6 collector's office for tax notices, and at any other address
7 provided to the local government by such owner and is returned
8 as unclaimed or refused, notice may be provided by posting as
9 described in subparagraphs (2)(b)1. and 2. and by first class
10 mail directed to the addresses furnished to the local
11 government with a properly executed proof of mailing or
12 affidavit confirming the first class mailing; by

13 (b) Hand delivery by the sheriff or other law
14 enforcement officer, code inspector, or other person
15 designated by the local governing body; ~~or by~~

16 (c) Leaving the notice at the violator's usual place
17 of residence with any person residing therein who is above 15
18 years of age and informing such person of the contents of the
19 notice; or

20 (d) In the case of commercial premises, leaving the
21 notice with the manager or other person in charge.

22 (2) In addition to providing notice as set forth in
23 subsection (1), at the option of the code enforcement board,
24 notice may also be served by publication or posting, as
25 follows:

26 (b)1. In lieu of publication as described in paragraph
27 (a), such notice may be posted ~~for~~ at least 10 days prior to
28 the hearing, or prior to the expiration of any deadline
29 contained in the notice, in at least two locations, one of
30 which shall be the property upon which the violation is
31 alleged to exist and the other of which shall be, in the case

1 of municipalities, at the primary municipal government office,
2 and in the case of counties, at the front door of the
3 courthouse in said county.

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

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

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

17 162.23 Notice to appear.--

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

1 found, or if the code enforcement officer has reason to
2 believe that the violation presents a serious threat to the
3 public health, safety, or welfare or that the violator is
4 engaged in violations of an itinerant or transient nature, as
5 defined by local code or ordinance within the jurisdiction, or
6 if the violation is irreparable or irreversible.

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

10 125.0103 Ordinances and rules imposing price controls;
11 findings required; procedures.--

12 (1)

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

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

1 the vehicle. However, if a municipality chooses to enact an
2 ordinance establishing the maximum fees for the towing or
3 immobilization of vehicles as described in paragraph (b), the
4 county's ordinance shall not apply within such municipality.

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

8 166.043 Ordinances and rules imposing price controls;
9 findings required; procedures.--

10 (1)

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

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

1 immobilization of vehicles as described in paragraph (b), the
2 county's ordinance established under s. 125.0103 shall not
3 apply within such municipality.

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

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