

STORAGE NAME: h0363s1.cp

DATE: March 5, 1999

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
CRIME AND PUNISHMENT
ANALYSIS**

BILL #: HB 363

RELATING TO: Local Governments/Buildings/Public Nuisance

SPONSOR(S): Representatives Stafford and others

COMPANION BILL(S): SB 966(I)

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

- (1) COMMUNITY AFFAIRS YEAS 7 NAYS 0
- (2) CRIME AND PUNISHMENT YEAS 4 NAYS 0
- (3) CRIMINAL JUSTICE APPROPRIATIONS
- (4)
- (5)

I. SUMMARY:

This committee substitute clarifies current law and increases local governments' authority to declare that dealing in stolen property in any place or premises is a public nuisance. Current law authorizes the creation of administrative boards to hear complaints and impose fines on those premises found to be a public nuisance.

There appears to be no significant fiscal impact in implementing the provisions of this bill.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Section 893.138, Florida Statutes, 1998 Florida Supplement, authorizes local governments to create administrative boards to hear certain public nuisance complaints and impose administrative fines and other non-criminal penalties against owners of premises that are the site of certain types of illegal activity. Any place may be declared a public nuisance by the local administrative board if it is used twice in a six month period as the site for prostitution, drug dealing, or for a criminal street gang conducting a pattern of criminal street gang activity.

According to the administrative boards, many of the premises declared to be a public nuisance is rental property. The provisions of s. 893.138, Florida Statutes, 1998 Florida Supplements, effectively compels real property owners to be vigilant about preventing or abating activities related to drug-abuse, prostitution, and criminal street gangs .

The fines imposed on premises declared to be a public nuisance may be up to \$500 per day for recurring public nuisances, but the total fines may not exceed \$7,500. Local ordinances may provide for the fines to be recorded as a lien against the property and for the property to be foreclosed to recover the lien and attorney's fees so long as the property is not a homestead.

Current Law Poorly Constructed

Subsection (2) of Section 893.138 is poorly constructed and it begins with a clause that applies to the subsequent paragraphs in the subsection and reads as follows:

Any place or premises that has been used on more than two occasions,
within a 6-month period:

Paragraphs (2)(c) begins: "on one occasion..."
Paragraphs (2)(d) and (2)(e) begin: "Any place or..."

Paragraphs (2)(c),(d)and (e) do not rationally follow the phrase: "Any place or premises that has been used on more than two occasions, within a 6-month period:"

B. EFFECT OF PROPOSED CHANGES:

The committee substitute provides that "any place or premises used for the purpose of dealing in stolen property may be declared to be a public nuisance." Such activity may be abated by local governments by the imposition of fines or injunctive relief. This provision increases the existing list of activities that can cause property to be declared a public nuisance and abated by local governments.

The committee substitute clarifies the statute so that paragraphs (a) through (e) rationally follow 893.138(2)

The committee substitute does not define "stolen property." However, s. 812.012(6), Florida Statutes, defines "stolen property" as "property that has been the subject of any criminally wrongful taking."

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?

Yes. Counties and municipalities may hear additional complaints pertaining to stolen goods activity. In areas, where applicable, owners of places or premises must take necessary steps to abate activity involving stolen property from their property pursuant to s. 893.138, Florida Statutes, 1998 Supplement.

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

Yes. Florida citizens with valid nuisance complaints under s. 893.138, Florida Statutes, 1998 Supplement, are entitled to have their complaints regarding stolen property activity heard by an administrative board where established by any county or municipality for that purpose.

- b. If an agency or program is eliminated or reduced:

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

Not applicable.

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

Not applicable.

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

Not applicable.

2. Lower Taxes:

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

No.

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

No.

- 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?

Yes. It allows the citizens of the state to be proactive in promoting the health and safety of their communities from illegal activities relating to stolen property.

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

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

Not applicable.

- (2) Who makes the decisions?

Not applicable.

- (3) Are private alternatives permitted?

Not applicable.

- (4) Are families required to participate in a program?

Not applicable.

- (5) Are families penalized for not participating in a program?

Not applicable.

- b. Does the bill directly affect the legal rights and obligations between family members?

Not applicable.

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

- (1) parents and guardians?

Not applicable.

- (2) service providers?

Not applicable.

(3) government employees/agencies?

Not applicable.

D. STATUTE(S) AFFECTED:

Section 893.138, Florida Statutes, 1998 Florida Supplement.

E. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 893.138, Florida Statutes, 1998 Florida Supplement to increase county and municipal authority to abate stolen-property related to public nuisances and to further clarify the statute.

Section 2. Provides an effective date of July 1, 1999.

III. 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:

The increased authority to counties and municipalities has little or no impact on the non-recurring effects since participating local governments already have administrative boards to hear nuisance complaints under s. 893.139, Florida Statutes, 1998 Florida Supplement.

2. Recurring Effects:

Indeterminate. It is not known whether or not the committee substitute will significantly increase the case load for complaints under this bill for all counties and municipalities with public nuisance administrative boards. However, the nuisance administrative boards from some large municipalities do not expect a significant case load increase for complaints under this bill. (See Fiscal Comments)

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

The committee substitute allows individuals of the state to be proactive in promoting the health and safety of their communities from illegal activities relating to stolen property.

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

Crime-free neighborhoods will help maintain or increase real property values in communities with nuisance administrative boards. More people may frequent and spend in businesses that abate nuisances as prescribed in s. 893.138, Florida Statutes, 1998 Florida Supplement.

D. FISCAL COMMENTS:

Public nuisance administrative boards from some of the large municipalities do not expect the committee substitute to increase costs. Only an increase of one to two cases per year are anticipated due to this bill. The increase in case load would also result in more fines awarded. The fines may also include the costs of attorney fees and investigative costs.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This committee substitute does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. Counties and municipalities have the option of creating administrative boards pursuant to s. 893.138, Florida Statutes, 1998 Florida Supplement.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The committee substitute does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

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

The committee substitute does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

Standard of Proof

Section 893.138, F.S. does not provide for a standard of proof necessary for demonstrating that property is a public nuisance. The standard used by the St. Petersburg administrative board, as established by local ordinance, is clear and convincing evidence.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On February 17, 1999, the House Committee on Community Affairs adopted one technical amendment to HB 363 as introduced. The catchline in the bill does not reflect the additional nuisance of dealing in stolen property. The amendment adds dealing in stolen property to the catchline for s. 893.138, Florida Statutes. The amendment is traveling with the bill.

On March 9, the Crime and Punishment Committee adopted an amendment and made the bill a committee substitute to make clarifying nonsubstantive changes.

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VII. SIGNATURES:

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