

STORAGE NAME: h0479.ca

DATE: February 9, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
COMMUNITY AFFAIRS
ANALYSIS**

BILL #: HB 479

RELATING TO: County and Municipal Code Enforcement

SPONSOR(S): Representative Levine

COMPANION BILL(S): SB 1300 (s)

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

- (1) COMMUNITY AFFAIRS
 - (2) JUDICIARY
 - (3) CRIME & PUNISHMENT
 - (4) TRANSPORTATION & ECONOMIC DEVELOPMENT APPROPRIATIONS
 - (5)
-

I. SUMMARY:

The bill makes the following changes to current law:

- ◆ Authorizes counties or municipalities with populations over 50,000 to adopt ordinances granting code enforcement boards or special masters authority to impose fines for code violations in excess of those currently authorized;
- ◆ Specifies limitations for the imposition of the fines; and
- ◆ Allows for the creation of additional criteria to be utilized when determining the amount of the higher fines.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

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.

Subsection 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 amounts 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.

Certified copies of the order imposing the fine may be recorded in the public records constituting 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 a 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.

B. EFFECT OF PROPOSED CHANGES:

The bill authorizes counties or municipalities with populations greater than 50,000 to adopt ordinances granting code enforcement boards or special masters authority to impose certain fines in excess of those authorized by law. The vote of the governing body to adopt the ordinance authorizing the increased fines must be by a majority plus one of the entire governing body. The bill specifies the limitations of the fines and allows for the creation of additional criteria for determining the amount of the higher fines.

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?

Counties and/or municipalities with populations of 50,000 or greater are authorized to adopt an ordinance authorizing code enforcement boards and/or special masters to impose the following fines: 1) fines not to exceed \$1,000 per day per violation for first violations; 2) fines not to exceed \$5,000 per day per violation for a repeat violation; 3) \$15,000 for each violation which is irreparable or irreversible in nature.

Eligible counties' or municipalities' code enforcement boards or special masters are authorized to impose additional fines to cover the costs incurred by the local government in enforcing its codes and all reasonable costs of repairs.

Eligible counties' or municipalities' code enforcement boards or special masters are authorized, when determining the amount of the fines, to consider additional, nonstatutorily listed factors when determining amounts.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

See previous comments.

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

N/A

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?

N/A

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

N/A

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

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

N/A

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

An increase in certain fines may result. Counties or municipalities having populations of or greater than 50,000 **may adopt** (by majority plus 1 vote of the governing body), an ordinance to grant authority to enforcement boards or special masters (or both) authority to impose fines in excess of the current limits. These fines must not exceed \$1,000 per day per violation for a first violation, \$5,000 per day per violation for a repeat violation, and up to \$15,000 per violation for violations that are irreparable or irreversible in nature. In addition to the fines, the code enforcement board or special master may impose additional fines to cover all costs incurred by the local government in enforcing its codes and all costs of repairs as authorized by ss. 162.09(1), Florida Statutes.

Any ordinance imposing such fines must include the following criteria: The gravity of the violation; any actions taken by the violator to correct the violation; and any previous violations committed by the violator. Additional factors may be included in the code or ordinance.

c. Does the bill reduce total taxes, both rates and revenues?

N/A

d. Does the bill reduce total fees, both rates and revenues?

N/A

e. Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

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

N/A

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

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

N/A

5. Family Empowerment:

- a. If the bill purports 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?

N/A

- 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?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Section 162.09, Florida Statutes

E. SECTION-BY-SECTION ANALYSIS:

Section 1: Creates paragraph 162.09(2)(d), authorizing counties or municipalities having a population equal to or greater than 50,000 to adopt an ordinance that gives code enforcement boards and/or special masters authority to impose fines in excess of the currently established limits. The ordinance authorizing the fines must be adopted by a vote of at least a majority plus one of the entire governing body of the county or municipality. The fines are limited to the following:

- ◆ \$1,000 per day per violation for a first violation;
- ◆ \$5,000 per day per violation for a repeat violation; and
- ◆ Up to \$15,000 per violation if the violation is irreparable or irreversible in nature.

In addition to the fines, a code enforcement board or special master may impose additional fines to cover all costs incurred by the local government to enforce the code and all reasonable costs of repairs made to bring the property into compliance with the code.

Any ordinance adopted by the governing body must include criteria to be considered by the code enforcement board or special master in determining the amount of the fines. These factors must include those factors listed in paragraph 162.09(2) (b), Florida Statutes.

[Note: 162.09(2)(b), Florida Statutes, provides the following factors: 1) The gravity of the violation; 2) Any actions taken by the violator to correct the violation; and 3) Any previous violations committed by the violator.]

Section 2: Provides an effective date of October 1, 1999.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

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

N/A

D. FISCAL COMMENTS:

N/A

IV. 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 total aggregate municipality/county percentage share of a state tax.

V. COMMENTS:

Florida Association of Code Enforcement: The Florida Association of Code Enforcement (FACE) takes no official position on this bill. According to the FACE, there have been no comments or complaints relayed to FACE regarding the current schedule of fines.

Building Officials Association of Florida: The Building Officials Association of Florida supports this bill.

Florida League of Cities: The Florida League of Cities supports this bill.

Florida Association of Counties: The Florida Association of Counties supports this bill.

Note: On February 17, 1999, the Committee on Community Affairs adopted a Committee Substitute (CS), to HB 163 by Rep. Crist. CS/HB 163 amends s. 162.09, Florida Statutes. This bill clarifies 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. In addition, HB 163 expands and clarifies 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. The bill requires 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

STORAGE NAME: h0479.ca

DATE: February 9, 1999

PAGE 9

execution and levy against the personal property of the violator. This bill does not address the subject matter of HB 163.

Note: This bill addresses fines imposed by code enforcement boards and special masters under s. 162.09, Florida Statutes. These types of fines are also imposed under s. 125.69, Florida Statutes, by county courts. This bill does not address the s. 125.69, Florida Statute, penalties for code violations.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None

VII. SIGNATURES:

COMMITTEE ON COMMUNITY AFFAIRS:

Prepared by:

Staff Director:

Tonya Sue Chavis, Esq.

Joan Highsmith-Smith