

By Senator Forman

32-953-99

See HB

1 A bill to be entitled
2 An act relating to local government code
3 enforcement; amending s. 162.03, F.S.;
4 specifying the status of special masters;
5 amending s. 162.04, F.S.; revising a
6 definition; amending s. 162.06, F.S.; requiring
7 owners of property subject to enforcement
8 proceedings to provide disclosure and notice to
9 prospective transferors under certain
10 circumstances; providing a rebuttable
11 presumption; providing for continuation of
12 enforcement proceedings under certain
13 circumstances; providing procedures; amending
14 s. 162.09, F.S.; specifying that certain
15 actions taken by a local government do not
16 create continuing obligations or liabilities
17 under certain circumstances; clarifying
18 enforcement of orders imposing certain fines or
19 costs; amending s. 162.12, F.S.; revising
20 prescribed methods for providing certain
21 notices; clarifying the time period for posting
22 certain notices; amending s. 162.23, F.S.;
23 providing an additional exception to
24 requirements to provide reasonable time to
25 correct violations under certain circumstances;
26 providing an effective date.

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28 WHEREAS, Florida's procedures for local government
29 code enforcement are meant to secure speedy compliance with
30 local codes and ordinances while protecting the rights of
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1 property owners and the public health, safety, and welfare,
2 and

3 WHEREAS, the procedures set forth in chapter 162,
4 Florida Statutes, contain several alternative methods of code
5 enforcement for local governments to choose from, but the
6 choices are in need of some clarification regarding
7 legislative intent, and

8 WHEREAS, it was intended by the Legislature that the
9 procedure for a special master or hearing officer was to be in
10 all respects the equivalent of the procedure for a code
11 enforcement board, and

12 WHEREAS, substantial delay has been encountered in code
13 enforcement proceedings when the owner of a noncomplying
14 property transferred ownership to a third party, with some
15 local governments being required to begin the entire code
16 enforcement process all over again with respect to the new
17 owner, which was not the intent of the Legislature, and

18 WHEREAS, some local governments have been reluctant to
19 use their power to repair unsafe noncomplying property
20 because of concerns about future liability, and

21 WHEREAS, many local governments find it difficult,
22 expensive, and cumbersome to bring foreclosure actions to
23 enforce code enforcement liens, and collecting the amount of
24 those liens as an assessment as part of the annual tax bill
25 would be more efficient, and

26 WHEREAS, creating a presumption of receipt of a notice
27 sent by certified mail, return receipt requested, when
28 properly addressed to the owner, would alleviate the current
29 problem of violators evading or greatly delaying code
30 enforcement proceedings by refusing to sign for such notice,
31 and

1 WHEREAS, some local governments are construing the
2 posting procedure contained in s. 162.12(2), Florida Statutes,
3 as mandating that they must prove that the notice so posted
4 was continuously present for the entire 10-day posting period,
5 and some violators were frustrating the intent of the posting
6 provision by removing and secreting the posted notice before
7 the 10 days had expired, which was not the intent of the
8 Legislature, and

9 WHEREAS, it is the intent of the Legislature to cure
10 the ambiguities and loopholes in chapter 162, Florida
11 Statutes, just described, NOW, THEREFORE,

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13 Be It Enacted by the Legislature of the State of Florida:

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15 Section 1. Subsection (2) of section 162.03, Florida
16 Statutes, is amended to read:

17 162.03 Applicability.--

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

28 Section 2. Subsection (5) of section 162.04, Florida
29 Statutes, is amended to read:

30 162.04 Definitions.--As used in ss. 162.01-162.13, the
31 term:

1 (5) "Repeat violation" means a violation of a
2 provision of a code or ordinance by a person ~~who~~ ~~whom~~ ~~the~~ ~~code~~
3 ~~enforcement board~~ has been previously found to have violated
4 the same provision within 5 years prior to the violation,
5 notwithstanding the violations occur at different locations.

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

8 162.06 Enforcement procedure.--

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

14 (a) Disclose the existence and the nature of the
15 proceeding to the prospective purchaser.

16 (b) Deliver to the prospective purchaser a copy of the
17 pleadings, notices, and other materials relating to to the
18 code enforcement proceeding received by the seller.

19 (c) Disclose to the prospective purchaser that the new
20 owner will be responsible for compliance with the applicable
21 code and with orders issued in the code enforcement
22 proceeding.

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

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28 A failure to make the disclosures described in paragraphs (a),
29 (b), and (c) before the transfer creates a rebuttable
30 presumption of fraud. If the property is transferred before
31 the hearing, the proceeding shall not be dismissed, but the

1 new owner shall be provided a reasonable period of time to
2 correct the violation before the hearing is held.

3 Section 4. Subsections (1) and (3) of section 162.09,
4 Florida Statutes, are amended to read:

5 162.09 Administrative fines; costs of repair; liens.--

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

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1 order the violator to pay a fine as specified in paragraph
2 (2)(a).

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

26 Section 5. Subsection (1) and paragraph (b) of
27 subsection (2) of section 162.12, Florida Statutes, are
28 amended to read:

29 162.12 Notices.--

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

1 (a) Certified mail, return receipt requested, provided
2 if such notice is sent under this paragraph to the owner of
3 the property in question at the address listed in the tax
4 collector's office for tax notices, and at any other address
5 provided to the local government by such owner, it shall be
6 presumed that the notice was received by the owner,
7 notwithstanding that the certified mail envelope may be
8 returned by the post office as unclaimed or refused; 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.

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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.

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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 6. 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
2 within the jurisdiction while moving from place to place, or
3 if the violation is irreparable or irreversible.

4 Section 7. This act shall take effect October 1, 1999.

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7 LEGISLATIVE SUMMARY

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9 Provides that special masters have the same status as
10 enforcement boards. Clarifies that violations of the same
11 code provision at different locations constitutes a
12 repeat violation. Specifies disclosure and notice
13 requirements for owners of property subject to
14 enforcement proceedings transferring the property prior
15 to the enforcement hearing. Provides for continuation of
16 such hearings and correction of violations by new owners.
17 Specifies that making of repairs by a local government to
18 bring property into compliance does not create a
19 continuing obligation of the government to make further
20 repairs or maintain the property and does not create any
21 liability against the local government for damages for
22 repairs made in good faith. Revises and clarifies
23 provisions requiring notice. Authorizes code enforcement
24 officers to immediately issue a notice to appear without
25 reasonable time to correct any violations of an itinerant
26 or transient nature. (See bill for details.)
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