

By the Committee on Comprehensive Planning, Local and Military Affairs; and Senators Forman and Meek

316-1740-99

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 providing an effective date.
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8 WHEREAS, Florida's procedures for local government
9 code enforcement are meant to secure speedy compliance with
10 local codes and ordinances while protecting the rights of
11 property owners and the public health, safety, and welfare,
12 and

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

18 WHEREAS, it was intended by the Legislature that the
19 procedure for a special master or hearing officer was to be in
20 all respects the equivalent of the procedure for a code
21 enforcement board, and

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

28 WHEREAS, some local governments have been reluctant to
29 use their power to repair unsafe noncomplying property because
30 of concerns about future liability, and
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1 WHEREAS, creating a presumption of receipt of a notice
2 sent by certified mail, return receipt requested, when
3 properly addressed to the owner, would alleviate the current
4 problem of violators evading or greatly delaying code
5 enforcement proceedings by refusing to sign for such notice,
6 and

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

15 WHEREAS, it is the intent of the Legislature to cure
16 the ambiguities and loopholes in chapter 162, Florida
17 Statutes, just described, NOW, THEREFORE,

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

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

23 125.69 Penalties; enforcement by code inspectors.--

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

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

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

22 (c) If a repeat violation is found subsequent to the
23 issuance of a citation, the code inspector is not required to
24 give the violator a reasonable time to correct the violation
25 and may immediately issue a citation. For purposes of this
26 subsection, the term "repeat violation" means a violation of a
27 provision of a code or ordinance by a person who has
28 previously been found to have violated the same provision
29 within 5 years prior to the violation at the same property or
30 contiguous property.

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

6 1. Disclose in writing the existence and the nature of
7 the proceeding to the prospective transferee.

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

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

15 4. File a notice with the code enforcement official of
16 the transfer of the property, with the identity and address of
17 the new owner and copies of the disclosures made to the new
18 owner, within 5 days after the date of the transfer.

19
20 A failure to make the disclosure described in subparagraphs
21 1., 2., and 3. before the transfer creates a rebuttable
22 presumption of fraud. If the property is transferred before
23 the date the violator has been summoned to appear in county
24 court, the proceeding shall not be dismissed but the new owner
25 will be substituted as the party of record and thereafter
26 provided a reasonable period of time to correct the violation
27 before the continuation of proceedings in county court.

28 (e) If the code inspector has reason to believe a
29 violation or the condition causing the violation presents a
30 serious threat to the public health, safety, and welfare or if
31 the violation is irreparable or irreversible in nature, or if

1 after attempts under this section to bring a repeat violation
2 into compliance with a provision of a code or ordinance prove
3 unsuccessful, the local governing body may make all reasonable
4 repairs which are required to bring the property into
5 compliance and charge the owner with the reasonable cost of
6 the repairs along with the fine imposed pursuant to this
7 section. Making such repairs does not create a continuing
8 obligation on the part of the local governing body to make
9 further repairs or to maintain the property and does not
10 create any liability against the local governing body for any
11 damages to the property if such repairs were completed in good
12 faith.

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

22 (g)~~(d)~~ The provisions of this subsection shall not
23 apply to the enforcement pursuant to ss. 553.79 and 553.80 of
24 building codes adopted pursuant to s. 553.73 as they apply to
25 construction, provided that a building permit is either not
26 required or has been issued by the county. For the purposes
27 of this paragraph, "building codes" means only those codes
28 adopted pursuant to s. 553.73.

29 (h)~~(e)~~ The provisions of this subsection may be used
30 by a county in lieu of the provisions of part II of chapter
31 162.

1 ~~(i)(f)~~ The provisions of this subsection are
2 additional or supplemental means of enforcing county codes and
3 ordinances. Except as provided in paragraph~~(h)(e)~~, nothing in
4 this subsection shall prohibit a county from enforcing its
5 codes or ordinances by any other means.

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

8 162.03 Applicability.--

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

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

21 162.04 Definitions.--As used in ss. 162.01-162.13, the
22 term:

23 (5) "Repeat violation" means a violation of a
24 provision of a code or ordinance by a person who ~~whom the code~~
25 ~~enforcement board~~ has been previously found to have violated
26 the same provision within 5 years prior to the violation at
27 the same property or contiguous property.

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

30 162.06 Enforcement procedure.--

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1 (5) If the owner of property which is subject to an
2 enforcement proceeding before an enforcement board, special
3 master, or court transfers ownership of such property between
4 the time the initial pleading was served and the time of the
5 hearing, such owner shall:

6 (a) Disclose in writing the existence and the nature
7 of the proceeding to the prospective transferee.

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

11 (c) Disclose in writing to the prospective transferee
12 that the new owner will be responsible for compliance with the
13 applicable code and with orders issued in the code enforcement
14 proceeding.

15 (d) File a notice with the code enforcement official
16 of the transfer of the property, with the identity and address
17 of the new owner and copies of the disclosures made to the new
18 owner, within 5 days after the date of the transfer.

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

26 Section 5. Subsections (1) and (3) of section 162.09,
27 Florida Statutes, are amended to read:

28 162.09 Administrative fines; costs of repair; liens.--

29 (1) An enforcement board, upon notification by the
30 code inspector that an order of the enforcement board has not
31 been complied with by the set time or, upon finding that a

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

25 (3) A certified copy of an order imposing a fine, or a
26 fine plus repair costs, may be recorded in the public records
27 and thereafter shall constitute a lien against the land on
28 which the violation exists and upon any other real or personal
29 property owned by the violator. Upon petition to the circuit
30 court, such order shall be enforceable ~~may be enforced~~ in the
31 same manner as a court judgment by the sheriffs of this state,

1 including execution and levy against the personal property of
2 the violator, but such order shall not be deemed to be a court
3 judgment except for enforcement purposes. A fine imposed
4 pursuant to this part shall continue to accrue until the
5 violator comes into compliance or until judgment is rendered
6 in a suit to foreclose on a lien filed pursuant to this
7 section, whichever occurs first. A lien arising from a fine
8 imposed pursuant to this section runs in favor of the local
9 governing body, and the local governing body may execute a
10 satisfaction or release of lien entered pursuant to this
11 section. After 3 months from the filing of any such lien which
12 remains unpaid, the enforcement board may authorize the local
13 governing body attorney to foreclose on the lien. No lien
14 created pursuant to the provisions of this part may be
15 foreclosed on real property which is a homestead under s. 4,
16 Art. X of the State Constitution.

17 Section 6. Subsection (1) and paragraph (b) of
18 subsection (2) of section 162.12, Florida Statutes, are
19 amended to read:

20 162.12 Notices.--

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

23 (a) Certified mail, return receipt requested, provided
24 if such notice is sent under this paragraph to the owner of
25 the property in question at the address listed in the tax
26 collector's office for tax notices, and at any other address
27 provided to the local government by such owner, it shall be
28 presumed that the notice was received by the owner,
29 notwithstanding that the certified mail envelope may be
30 returned by the post office as unclaimed or refused; by
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1 **(b)** Hand delivery by the sheriff or other law
2 enforcement officer, code inspector, or other person
3 designated by the local governing body; ~~or by~~

4 **(c)** Leaving the notice at the violator's usual place
5 of residence with any person residing therein who is above 15
6 years of age and informing such person of the contents of the
7 notice; or

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

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

14 (b)1. In lieu of publication as described in paragraph
15 (a), such notice may be posted ~~for~~ at least 10 days prior to
16 the hearing, or prior to the expiration of any deadline
17 contained in the notice, in at least two locations, one of
18 which shall be the property upon which the violation is
19 alleged to exist and the other of which shall be, in the case
20 of municipalities, at the primary municipal government office,
21 and in the case of counties, at the front door of the
22 courthouse in said county.

23 2. Proof of posting shall be by affidavit of the
24 person posting the notice, which affidavit shall include a
25 copy of the notice posted and the date and places of its
26 posting.

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28 Evidence that an attempt has been made to hand deliver or mail
29 notice as provided in subsection (1), together with proof of
30 publication or posting as provided in subsection (2), shall be
31 sufficient to show that the notice requirements of this part

1 have been met, without regard to whether or not the alleged
2 violator actually received such notice.

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

5 162.23 Notice to appear.--

6 (2) Prior to issuing a notice to appear, a code
7 enforcement officer shall provide written notice to the person
8 that the person has committed a violation of a code or
9 ordinance and shall establish a reasonable time period within
10 which the person must correct the violation. Such time period
11 shall be no fewer than 5 days and no more than 30 days. If,
12 upon personal investigation, a code enforcement officer finds
13 that the person has not corrected the violation within the
14 prescribed time period, a code enforcement officer may issue a
15 notice to appear to the person who has committed the
16 violation. A code enforcement officer is not required to
17 provide the person with a reasonable time period to correct
18 the violation prior to issuing a notice to appear and may
19 immediately issue a notice to appear if a repeat violation is
20 found, or if the code enforcement officer has reason to
21 believe that the violation presents a serious threat to the
22 public health, safety, or welfare or that the violator is
23 engaged in violations of an itinerant or transient nature, as
24 defined by local code or ordinance within the jurisdiction, or
25 if the violation is irreparable or irreversible.

26 Section 8. This act shall take effect October 1, 1999.
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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
Senate Bill 946

The CS differs from the bill in the following ways:
Section 1 incorporates most provisions from sections 2, 3 and 4 of the bill into chapter 125, F.S.;
Clarifies that violation of the same code provision on contiguous properties constitutes a repeat violation;
Substitutes the terms purchaser with transferee, seller with transferor, violator with owner, and served with issued;
Clarifies that disclosure of code violations from the seller to the buyer must be in writing; and
Clarifies that violations "of an itinerant or transient nature", as presented in section 6 of the bill, are as defined by local code or ordinance.