STORAGE NAME: h0331.ca
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HOUSE OF REPRESENTATIVES
COMMITTEE ON
COMMUNITY AFFAIRS
ANALYSIS

BILL #: HB 331

RELATING TO: Local Government Code Enforcement

SPONSOR(S): Representative Greenstein

TIED BILL(S): None

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

(1) COMMUNITY AFFAIRS (PRC)
(2) JUDICIARY (CJC)
(3)
(4)
(5)

I. SUMMARY:

This bill authorizes local government code enforcement boards to sue for money judgments resulting from a lien being placed on property.

This bill provides that in an action for a money judgment on a lien, the prevailing party is entitled to recover all costs.

This bill allows the code enforcement board to post notices at the main county governmental center.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1.	Less Government	Yes []	No []	N/A [X]
2.	Lower Taxes	Yes []	No []	N/A [X]
3.	Individual Freedom	Yes []	No []	N/A [X]
4.	Personal Responsibility	Yes [X]	No []	N/A []
5.	Family Empowerment	Yes []	No []	N/A [X]

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Part I, chapter 162, F.S., is known as the “Local Government Code Enforcement Boards Act”. This act 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 county and municipal codes and ordinances where pending or repeated violations exist.

Section 162.09, F.S., authorizes code enforcement boards to impose limited fines and reasonable cost of repairs upon code violators. Certified copies of the order imposing the fine may be recorded in the public records, thereby 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. After three months from the filing of a lien, the local government attorney may foreclose on the lien.

Currently, code enforcement boards do not have the authority to create an independent cause of action to collect a fine pursuant to Chapter 162, F.S. See *City of Tampa v. Braxton*, 616 So. 2d 554 (Fla. 2d DCA 1993). Since there is no statutory provision allowing enforcement of a lien by way of a money judgment, the relief is not available. *Goodman v. County Court in Broward County, FL*, 711 So. 2d 587, 589 (Fla. 4th DCA 1998).

Local governments face an additional problem when dealing with the enforcement of code enforcement board liens. Many properties found to be in code violation and assessed fines are homestead properties. There is a constitutional prohibition against *foreclosing* an enforcement lien against homestead property. *Miskin v. City of Fort Lauderdale*, 661 So. 2d 415, 416 (Fla. 4th DCA 1995). The boards maintain that in some situations, there is little ability to enforce compliance with the code. However, if the homestead property loses its homestead status, the local government can enforce the order as a lien against the property. *Id.*

Section 162.10, F.S., provides that in an action to foreclose on a lien, the prevailing party is entitled to recover all costs, including a reasonable attorney’s fee, that it incurs in the foreclosure.

Section 162.12, F.S., requires that all notices be provided to alleged violators in a specified manner. In addition, the code enforcement board may, at its option, serve notice by publication or posting the notice at the property with the alleged violation and at the primary municipal government office or at the front door of the county courthouse.

C. EFFECT OF PROPOSED CHANGES:

This bill grants an additional cause of action to local government code enforcement boards to enforce a lien. Rather than being limited to foreclosing on a lien, this bill allows the local government attorney to sue to recover a money judgment for the amount of the lien plus accrued interest. This bill also provides to code enforcement boards an additional mechanism for the enforcement of liens against owners of homestead property. Since there is a constitutional prohibition against enforcing this type of lien on homestead property, often, there is little that can be done. *However, this bill subjects owners of homestead property to a potential suit to recover a money judgment for the amount of the lien.*

This bill provides that in an action for a money judgment on a lien, the prevailing party is entitled to recover all costs.

This bill allows the code enforcement board to post notices at the main county governmental center rather than at the front door of the courthouse.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Amends section 162.09(3), F.S., to permit code enforcement boards to institute actions for money judgments three months after filing a lien if the lien remains unpaid.

Section 2: Amends section 162.10, F.S., to permit code enforcement boards to collect attorney fees and costs in their actions for money judgments.

Section 3: Amends section 162.12, F.S., to allow code enforcement boards to serve notice of a violation by posting notices at the main county governmental center.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Code enforcement boards can maintain separate actions for money judgments which may potentially increase revenues for local governments. One reason for the potential increase is that the code enforcement board may seek a money judgment against the owner of homestead property; whereas, currently, the enforcement of the lien against homestead property could only occur if the property lost its homestead status.

2. Expenditures:

There may be an increase in expenditures if there is an increase in actions for money judgments. However, if local governments are successful, they are entitled to recoup all costs.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Owners of homestead property are subject to a lawsuit for collection of fines owed to code enforcement boards. In addition, this bill increases the expenses of violators by awarding attorneys fees and costs to the code enforcement boards for suing the violators.

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority that counties or municipalities have to raise the revenue in the aggregate.

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

The bill does not reduce the tax authority that counties or municipalities have to raise revenue in the aggregate.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

The Florida Association of Counties supports this bill.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Three amendments are being offered by Representative Greenstein which provide for the following:

Amendment #1 is a technical amendment. For consistency, the reference in section 162.09(3), F.S., which states that a fine imposed continues to accrue until judgment is rendered in a foreclosure suit, is removed. The amended section provides that the fine imposed continues to accrue until judgment is rendered in a suit filed to this subsection.

Amendment #2 is a substantive amendment in that it allows code enforcement boards to have the option to have a cause of action for *both* foreclosure and money judgment. This amendment conforms the House bill to the Senate bill.

Amendment #3 is a technical amendment. For consistency, the reference in section 162.10, F.S., which states that a lien continues for no longer than twenty years unless within that period an action to foreclose is commenced, is removed. The amended section provides that the lien be no longer than twenty years unless within that period an action pursuant to section 162.09(3), F.S., is commenced.

VII. SIGNATURES:

COMMITTEE ON COMMUNITY AFFAIRS:

Prepared by:	Staff Director:
Laura L. Jacobs	Joan Highsmith-Smith