

STORAGE NAME: h0639a.lgva.doc
DATE: March 20, 2001

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
LOCAL GOVERNMENT & VETERANS AFFAIRS
ANALYSIS**

BILL #: HB 639
RELATING TO: Local Government Code Enforcement
SPONSOR(S): Representative(s) Weissman, Greenstein and others
TIED BILL(S): None

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

- (1) LOCAL GOVERNMENT & VETERANS AFFAIRS
 - (2) COUNCIL FOR SMARTER GOVERNMENT
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

This bill authorizes local government code enforcement boards to sue for money judgments on liens against homestead property.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

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" 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 non-criminal 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. However, s. 4(a), Art. X of the State Constitution precludes the execution of liens on homestead property, except for payment of taxes and assessments.

Chapter 2000-125, L.O.F., amended s. 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. However, such actions may only be pursued on fines levied after 10/1/00. In addition, the law precluded such action against "real property or personal property which is covered under s. 4(a), Art. X of the State Constitution." This is a reference to homestead property and up to \$1,000 in personal property.

Until chapter 2000-125, L.O.F., there was no independent cause of action to collect a fine pursuant to chapter 162, F.S. See *City of Tampa v. Braxton*, 616 So. 2d 554, 555-556 (Fla. 2d DCA 1993) (chapter 162, F.S., does not permit a code enforcement board to collect a fine by action at law; the chapter only permits an action to enforce a lien). See also *Goodman v. County Court in Broward County, FL*, 711 So. 2d 587, 589 (Fla. 4th DCA 1998) (explaining that *City of Tampa* held that since chapter 162, F.S., contained no provision allowing enforcement of a lien by way of a money judgment, that relief was not available). Local governments now have the option to institute actions for money judgment as long as the fines are not arising from homestead property or the protected \$1,000 personal property.

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. See *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. Chapter 2000-125, L.O.F., did not alleviate this problem.

C. EFFECT OF PROPOSED CHANGES:

This bill amends s. 162.09(3), F.S., to remove the prohibition against exercising the option, by local government code enforcement boards, to sue for money judgments on liens against homestead property. Local government code enforcement board attorneys are authorized to sue for money judgments on liens against homestead property.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Amends s. 162.09(3), F.S., to remove the prohibition against exercising the option, by local government code enforcement boards, to sue for money judgments on liens against homestead property.

Section 2: Provides an effective date of upon becoming a law.

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:

To the extent that code enforcement boards exercise the option to sue for money judgments on liens against homestead property, code violators are likely to be compelled to pay the fines levied against them, thus increasing local government revenues.

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 costs.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent that code enforcement boards exercise the option to sue for money judgments on liens against homestead property, code violators are likely to be compelled to pay the fines levied against them.

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 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:

During the 2000 Legislative Session, there was an attempt to correct the inability of local governments to enforce compliance with local codes by homestead property owners. In its original and committee substitute versions, HB 331 granted 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 allowed the local government attorney to sue to recover a money judgment for the amount of the lien plus accrued interest. *It also provided 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 subjected owners of homestead property to a potential suit to recover a money judgment for the amount of the lien.

Concerns were raised in House floor debate when the bill was on third reading. To address some of the concerns, an amendment was introduced by Representatives Eggelton, Greenstein, and Pruitt. This amendment limited the money judgment option by providing that the option does not apply to fines arising from code violations on real or personal property covered by s. 4, Art. X of the Constitution. In effect, this amendment removed from the committee substitute the ability of local governments to subject owners of homestead property to a potential lawsuit.

There is debate regarding the provision that was adopted by the House on third reading, which is the subject this proposal seeks to remove. A plain reading of the prohibition against pursuing

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money judgments is confusing. Money judgments are against persons, not property. Such a reading appears to nullify the intent of the provisions of s. 162.09, F.S., which was to limit the money judgment option in those situations where fines accrue from code violations on homestead property. However, it appears that local governments are interpreting this provision as a prohibition and are not exercising the money judgment option.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON LOCAL GOVERNMENT & VETERANS AFFAIRS:

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