

By Representative Ritter

1 A bill to be entitled
2 An act relating to Broward County; amending
3 chapter 91-355, Laws of Florida, the Broward
4 County Natural Resource Protection Act;
5 clarifying legislative intent to include
6 authority of Board to issue notices to assess a
7 civil penalty for violations of the act;
8 amending provisions relating to enforcement and
9 civil penalties; authorizing the Board of
10 County Commissioners of Broward County to
11 prescribe procedures for the issuance of
12 notices of hearing to assess a civil penalty
13 for violation of ordinances protecting the
14 natural resources of Broward County;
15 identifying certain violations; providing
16 factors to be considered in assessing civil
17 penalties; providing for recovery of costs and
18 attorney's fees; amending provisions relating
19 to issuance of citations; authorizing natural
20 resource enforcement officers to collect civil
21 penalties as prescribed in the code by the
22 Board of County Commissioners; prohibiting the
23 issuance of a citation under certain
24 circumstances; providing for recovery of costs
25 and attorney's fees; amending provisions
26 relating to liens; providing that orders
27 imposing certain costs or requiring corrective
28 actions or mitigation may be recorded by
29 Broward County; providing an effective date.
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31 Be It Enacted by the Legislature of the State of Florida:

1 Section 1. Section 2 of chapter 91-355, Laws of
2 Florida, is amended to read:

3 Section 2. Declaration of legislative intent.--The
4 Legislature finds and declares that the penalty authority of
5 the Board of County Commissioners of Broward County pursuant
6 to chapter 125, Florida Statutes, may be inadequate for the
7 enforcement of county ordinances and regulations the purpose
8 of which is the protection of the natural resources of the
9 county. It is the intent and purpose of this act to clarify
10 the authority of the board to impose and recover civil
11 penalties and damages,and to issue citations and notices of
12 hearing to assess a civil penalty for violations of the
13 Natural Resource Protection Code. These powers are necessary
14 in order to effectively enforce standards that will ensure the
15 protection, enhancement, and restoration of the air, water,
16 soil, natural resources, archaeological resources, and animal
17 and plant life of the county.

18 Section 2. Section 4 of chapter 91-355, Laws of
19 Florida, is amended to read:

20 Section 4. Enforcement; issuance of notice of hearing
21 to assess a civil penalty ~~civil penalties~~--

22 (1) The board may enforce the code and may establish
23 procedures for implementation of the code,including the
24 issuance of citations or notices of hearing to assess a civil
25 penalty for one or more violations of the code,~~and~~ a schedule
26 of violations,and civil penalties, and to establish liability
27 and recover damages for pollution, degradation,or alteration
28 to, or elimination of,the air, water, soil, natural
29 resources, archeological resources, or animal or plant life of
30 the county. ~~The maximum civil penalty that may be levied~~
31 ~~pursuant to the issuance of a citation is \$500.~~

1 (2) Based upon standards set forth in the code, a
2 natural resource enforcement officer shall issue a notice of
3 hearing to assess a civil penalty instead of issuing a
4 citation if there are ~~he has~~ reasonable grounds to believe
5 that a violation of the code occurred. It shall be a violation
6 of the code, for which a notice of hearing to assess a civil
7 penalty shall be issued, for any person:

8 (a) To cause the violation causes substantial
9 pollution or degradation to the air, water, soil, natural
10 resources, archaeological resources, or animal or plant life
11 of the county;

12 (b) To cause pollution which may potentially harm or
13 injure human health or welfare, animal, plant, or aquatic
14 life, or property;

15 (c) To fail to obtain any license or permit required
16 by the code or by rule or regulation;

17 (d) To violate or fail to comply with any rule,
18 regulation, order, license, permit, or certification adopted
19 or issued by the board pursuant to its lawful authority;

20 (e) To knowingly make any false statement,
21 representation, or certification in any application, record,
22 report, plan, or other document filed or required to be
23 maintained under the code; or

24 (f) To falsify, tamper with, or knowingly render
25 inaccurate any monitoring device or method required to be
26 maintained under the code or by any license, permit, rule,
27 regulation, or order issued under the code.

28
29 The board may prescribe other acts, offenses, or practices
30 which shall constitute violations of the code in addition to
31 those identified in this subsection.

1 (3) Depending upon the evidence presented at the
2 hearing and the seriousness of the violation, the hearing
3 examiner may assess a civil penalty in an amount that may not
4 exceed \$15,000 for each violation. Each day during any portion
5 of which a violation occurs constitutes a separate violation.
6 In determining the civil penalty to be assessed against a
7 violator, the hearing examiner shall consider the following
8 factors:

9 (a) The extent of environmental damage and potential
10 future environmental harm;

11 (b) The extent of any damage or risk of potential harm
12 or injury to human health or welfare, animal, plant, or
13 aquatic life, or property;

14 (c) The violator's cooperation in taking remedial
15 action to correct the violation and any environmental damage
16 and/or to perform other mitigation prior to hearing;

17 (d) The extent of deviation from the requirements of
18 the code;

19 (e) The violator's history of noncompliance;

20 (f) Whether the violator knew or should have known
21 that it was not complying with the code; and

22 (g) Such other issues as may be relevant to the
23 determination of an appropriate civil penalty, recovery of
24 damages by the county, including administrative and legal
25 costs, and attorney's fees.

26
27 In any case brought pursuant to a notice of hearing issued
28 under this section or the code, the hearing officer shall
29 include an award of the reasonable administrative costs
30 incurred in the investigation and prosecution of the
31 violation. The hearing officer, after weighing the factors in

1 paragraphs (c)-(g), may also include in the order an award of
2 reasonable attorney's fees.

3 ~~(4)(3)~~ The county may designate certain of its
4 employees as natural resource enforcement officers. The
5 training and qualifications for that designation shall be
6 determined by the county. Designation as a natural resource
7 enforcement officer does not provide the natural resource
8 enforcement officer with the power of arrest or subject the
9 natural resource enforcement officer to the provisions of
10 sections 943.085-943.255, Florida Statutes.

11 Section 3. Subsections (1) and (4) of section 5 of
12 chapter 91-355, Laws of Florida, are amended, and subsection
13 (5) is added to said section, to read:

14 Section 5. Enforcement;issuance and amount of
15 citations.--

16 (1) A natural resource enforcement officer designated
17 by the county may issue a citation in accordance with the
18 schedule of violations for which the issuance of a citation is
19 appropriate and collect civil penalties as set forth in the
20 code, if, based upon personal investigation, the natural
21 resource enforcement officer has reasonable and probable
22 grounds to believe that a violation has occurred.

23 (4) Before issuing a citation, a natural resource
24 enforcement officer must provide notice₁ to the person₁ that
25 the person has committed a violation of the code and must
26 establish a reasonable time period within which the person
27 must correct the violation. If, upon personal investigation, a
28 natural resource enforcement officer finds that the person has
29 not corrected the violation within the specified time period,
30 the natural resource enforcement officer may issue a citation
31 to the person who committed the violation. A natural resource

1 enforcement officer need not provide the person with a
2 reasonable time within which to correct the violation before
3 issuing the citation, and may immediately issue the citation,
4 if the natural resource enforcement officer has reason to
5 believe that the violation ~~presents a serious threat to the~~
6 ~~public health, safety, or welfare~~ or if the violation is
7 irreparable or irreversible, or a prior warning has been
8 issued. A natural resource enforcement officer shall not issue
9 a citation for any violation for which the issuance of a
10 notice of hearing to assess a civil penalty is more
11 appropriate, or is required by this act or the code.

12 (5) The maximum civil penalty that may be levied
13 pursuant to the issuance of a citation is \$500 for each
14 violation. Each day during any portion of which a violation
15 occurs constitutes a separate violation. In any case in which
16 a hearing is requested to contest the issuance of a citation
17 under the code and the hearing officer determines the person
18 cited violated the code, the hearing officer shall include an
19 award of the reasonable administrative costs incurred in the
20 investigation and prosecution of the violation. The hearing
21 officer, after weighing the factors in paragraphs (c)-(g) of
22 section 4(3), may also include in the order an award of
23 reasonable attorney's fees.

24 Section 4. Section 8 of chapter 91-355, Laws of
25 Florida, is amended to read:

26 Section 8. Liens.--A certified copy of an order
27 imposing a civil penalty, administrative costs, legal costs,
28 including reasonable attorney's fees, or any required
29 corrective actions or mitigation may be recorded by the county
30 in the public records and thereafter constitutes a lien
31 against the real and personal property of the violator. The

1 order may be enforced in the same manner as a court judgment
2 by the sheriffs of this state, including levy against the
3 personal property of the violator, but is not a court judgment
4 except for enforcement purposes. Three months after the filing
5 of a lien which remains unpaid, the county may foreclose or
6 otherwise execute on the lien.

7 Section 5. This act shall take effect upon becoming a
8 law, provided that the amendments to chapter 91-355, Laws of
9 Florida, shall apply only to those citations or notices of
10 hearing to assess a civil penalty issued after the effective
11 date of this act.

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