

By Senators Dockery and Alexander

15-985B-03

1 A bill to be entitled
2 An act relating to public nuisances; amending
3 s. 893.138, F.S.; clarifying the uses of
4 property that constitute a public nuisance;
5 providing for closure of property if occupancy
6 of the property materially contributes to the
7 nuisance; providing exceptions; providing that
8 closure of property constituting an unabated
9 nuisance is not a taking; providing an
10 effective date.

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

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14 Section 1. Section 893.138, Florida Statutes, is
15 amended to read:

16 893.138 Local administrative action to abate
17 drug-related, prostitution-related, or stolen-property-related
18 public nuisances and criminal street gang activity.--

19 (1) It is the intent of this section to promote,
20 protect, and improve the health, safety, and welfare of the
21 citizens of the counties and municipalities of this state by
22 authorizing the creation of administrative boards with
23 authority to impose administrative fines and other noncriminal
24 penalties, including, but not limited to, the power to close
25 property for 1 year, in order to abate drug-related,
26 prostitution-related, stolen-property-related and
27 street-gang-related public nuisances on the property provide
28 ~~an equitable, expeditious, effective, and inexpensive method~~
29 ~~of enforcing ordinances in counties and municipalities~~ under
30 circumstances when a pending or repeated violation continues
31 to exist.

1 (2) Any place or premises that has been used:
2 (a) On more than two occasions within a 6-month
3 period, as the site of a violation of s. 796.07;
4 (b) On more than two occasions within a 6-month
5 period, as the site of the unlawful sale, delivery,
6 manufacture, or cultivation of any controlled substance;
7 (c) On one occasion as the site of the unlawful
8 possession of a controlled substance, where such possession
9 constitutes a felony and that has been previously used on more
10 than one occasion as the site of the unlawful sale, delivery,
11 manufacture, or cultivation of any controlled substance;
12 (d) By a criminal street gang for the purpose of
13 conducting a pattern of criminal street gang activity as
14 defined by s. 874.03; or
15 (e) On more than two occasions within a 6-month
16 period, as the site of a violation of s. 812.019 relating to
17 dealing in stolen property
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19 is ~~may be~~ declared to be a public nuisance, and such nuisance
20 may be abated pursuant to the procedures provided in this
21 section.
22 (3) Any county or municipality may, by ordinance,
23 create an administrative board to hear complaints regarding
24 the nuisances described in subsection (2). Any employee,
25 officer, or resident of the county or municipality may bring a
26 complaint before the board after giving not less than 3 days'
27 written notice of such complaint to the owner of the place or
28 premises at his or her last known address. After a hearing in
29 which the board may consider any evidence, including evidence
30 of the general reputation of the place or premises, and at
31 which the owner of the premises shall have an opportunity to

1 present evidence in his or her defense, the board may declare
2 the place or premises to be a public nuisance as described in
3 subsection (2).

4 (4) If the board declares a place or premises to be a
5 public nuisance, it may enter an order requiring the owner of
6 such place or premises to adopt such procedure as may be
7 appropriate under the circumstances to abate any such nuisance
8 or it may enter an order immediately prohibiting:

9 (a) The maintaining of the nuisance;

10 (b) The operating or maintaining of the place or
11 premises, including the closure of the place or premises or
12 any part thereof; or

13 (c) The conduct, operation, or maintenance of any
14 business or activity on the premises which is conducive to
15 such nuisance.

16 (5) An order entered under subsection (4) shall expire
17 after 1 year or at such earlier time as is stated in the
18 order.

19 (6) An order entered under subsection (4) may be
20 enforced pursuant to the procedures contained in s. 120.69.
21 This subsection does not subject a municipality that creates a
22 board under this section, or the board so created, to any
23 other provision of chapter 120.

24 (7) The board may bring a complaint under s. 60.05
25 seeking temporary and permanent injunctive relief against any
26 nuisance described in subsection (2).

27 (8) This section does not restrict the right of any
28 person to proceed under s. 60.05 against any public nuisance.

29 (9) As used in this section, the term "controlled
30 substance" includes any substance sold in lieu of a controlled
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1 substance in violation of s. 817.563 or any imitation
2 controlled substance defined in s. 817.564.

3 (10) The provisions of this section may be
4 supplemented by a county or municipal ordinance. The
5 ordinance may include, but is not limited to, provisions that
6 establish additional penalties for public nuisances, including
7 fines not to exceed \$250 per day; provide for the payment of
8 reasonable costs, including reasonable attorney fees
9 associated with investigations of and hearings on public
10 nuisances; provide for continuing jurisdiction for a period of
11 1 year over any place or premises that has been or is declared
12 to be a public nuisance; establish penalties, including fines
13 not to exceed \$500 per day for recurring public nuisances;
14 provide for the recording of orders on public nuisances so
15 that notice must be given to subsequent purchasers, successors
16 in interest, or assigns of the real property that is the
17 subject of the order; provide that recorded orders on public
18 nuisances may become liens against the real property that is
19 the subject of the order; and provide for the foreclosure of
20 property subject to a lien and the recovery of all costs,
21 including reasonable attorney fees, associated with the
22 recording of orders and foreclosure. No lien created pursuant
23 to the provisions of this section may be foreclosed on real
24 property which is a homestead under s. 4, Art. X of the State
25 Constitution. Where a local government seeks to bring an
26 administrative action, based on a stolen property nuisance,
27 against a property owner operating an establishment where
28 multiple tenants, on one site, conduct their own retail
29 business, the property owner shall not be subject to a lien
30 against his or her property or the prohibition of operation
31 provision if the property owner evicts the business declared

1 to be a nuisance within 90 days after notification by
2 registered mail to the property owner of a second stolen
3 property conviction of the tenant. The total fines imposed
4 pursuant to the authority of this section shall not exceed
5 \$15,000. Nothing contained within this section prohibits a
6 county or municipality from proceeding against a public
7 nuisance by any other means.

8 (11) A place or premises may be closed under paragraph
9 (4)(b) if occupancy of the property materially contributes to
10 the nuisance. If the owner of the place or premises does not
11 reside upon the property, the owner shall be given a
12 reasonable amount of time in which to abate the nuisance
13 before the property is closed. If the nonresident owner abates
14 the nuisance within a reasonable time or commences and
15 diligently pursues legal proceedings to abate the nuisance,
16 the property shall not be closed. The legal proceedings shall
17 be initiated on or before the tenth day after the hearing
18 pursuant to subsection (3). A nonresident owner's opportunity
19 to abate the nuisance or commence proceedings to abate the
20 nuisance may be before or after the hearing pursuant to
21 subsection (3). Closure of property which constitutes an
22 unabated nuisance shall not constitute a taking.

23 Section 2. This act shall take effect upon becoming a
24 law.

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27 SENATE SUMMARY

28 Clarifies the uses of property which constitute a public
29 nuisance. Provides for closure of property if occupancy
30 of the property materially contributes to the nuisance.
31 Provides exceptions to closure if the owner of the
nuisance does not reside upon the property. Declares that
closure of an unabated nuisance is not a taking.