

By the Committee on Comprehensive Planning; and Senators
Dockery and Alexander

316-2491-03

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.

11
12 Be It Enacted by the Legislature of the State of Florida:

13
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 and
28 provide an equitable, expeditious, effective, and inexpensive
29 method of enforcing ordinances in counties and municipalities
30 under circumstances when a pending or repeated violation
31 continues 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
18
19 may be declared to be a public nuisance, and such nuisance may
20 be abated pursuant to the procedures provided in this section.
21 (3) Any county or municipality may, by ordinance,
22 create an administrative board to hear complaints regarding
23 the nuisances described in subsection (2). Any employee,
24 officer, or resident of the county or municipality may bring a
25 complaint before the board after giving not less than 3 days'
26 written notice of such complaint to the owner of the place or
27 premises at his or her last known address. After a hearing in
28 which the board may consider any evidence, including evidence
29 of the general reputation of the place or premises, and at
30 which the owner of the premises shall have an opportunity to
31 present evidence in his or her defense, the board may declare

1 the place or premises to be a public nuisance as described in
2 subsection (2).

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

8 (a) The maintaining of the nuisance;

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

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

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

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

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

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

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

1 (10) The provisions of this section may be
2 supplemented by a county or municipal ordinance. The
3 ordinance may include, but is not limited to, provisions that
4 establish additional penalties for public nuisances, including
5 fines not to exceed \$250 per day; provide for the payment of
6 reasonable costs, including reasonable attorney fees
7 associated with investigations of and hearings on public
8 nuisances; provide for continuing jurisdiction for a period of
9 1 year over any place or premises that has been or is declared
10 to be a public nuisance; establish penalties, including fines
11 not to exceed \$500 per day for recurring public nuisances;
12 provide for the recording of orders on public nuisances so
13 that notice must be given to subsequent purchasers, successors
14 in interest, or assigns of the real property that is the
15 subject of the order; provide that recorded orders on public
16 nuisances may become liens against the real property that is
17 the subject of the order; and provide for the foreclosure of
18 property subject to a lien and the recovery of all costs,
19 including reasonable attorney fees, associated with the
20 recording of orders and foreclosure. No lien created pursuant
21 to the provisions of this section may be foreclosed on real
22 property which is a homestead under s. 4, Art. X of the State
23 Constitution. Where a local government seeks to bring an
24 administrative action, based on a stolen property nuisance,
25 against a property owner operating an establishment where
26 multiple tenants, on one site, conduct their own retail
27 business, the property owner shall not be subject to a lien
28 against his or her property or the prohibition of operation
29 provision if the property owner evicts the business declared
30 to be a nuisance within 90 days after notification by
31 registered mail to the property owner of a second stolen

1 property conviction of the tenant. The total fines imposed
2 pursuant to the authority of this section shall not exceed
3 \$15,000. Nothing contained within this section prohibits a
4 county or municipality from proceeding against a public
5 nuisance by any other means.

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

21 Section 2. This act shall take effect upon becoming a
22 law.

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24 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
25 COMMITTEE SUBSTITUTE FOR
26 Senate Bill 2118

27 The committee substitute reinserts existing intent language
28 that states a nuisance abatement board has authority to impose
29 administrative fines and other noncriminal penalties to
"provide an equitable, expeditious, effective, and inexpensive
method of enforcing ordinances. . . ."

30 This committee substitute also reinserts existing language
31 that provides a premises meeting certain criteria "may be"
declared a nuisance.