



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |   |                             |   |
|--------------------------------------|---|-----------------------------|---|
| 1. Reduce government?                | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes?                      | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |
| 5. Empower families?                 | 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. EFFECT OF PROPOSED CHANGES:

Section 893.138, F.S., provides that the legislature intends to improve the health, safety, and welfare of citizens by permitting counties and municipalities to create boards to abate nuisances.<sup>1</sup> The statute allows counties and municipalities to create administrative boards to hear nuisance complaints.<sup>2</sup> A place may be declared a public nuisance if it has been used:

- (1) On more than two occasions within a 6-month period, as the site of a violation of s. 796.07, F.S.;<sup>3</sup>
- (2) On more than two occasions within a 6-month period, as the site of the unlawful sale, delivery, manufacture, or cultivation of any controlled substance;
- (3) On one occasion as the site of the unlawful possession of a controlled substance, where such possession constitutes a felony and that has been previously used on more than one occasion as the site of the unlawful sale, delivery, manufacture, or cultivation of any controlled substance;
- (4) By a criminal street gang for the purpose of conducting a pattern of criminal street gang activity; or
- (5) On more than two occasions within a 6-month period, as the site of a violation of s. 812.019 relating to dealing in stolen property.

If the county or municipal board, after holding a hearing, declares a place to be a public nuisance, it may require the owner to adopt a procedure to abate the nuisance or it may enter an order prohibiting the maintaining of the nuisance, prohibiting the conduct or activity which is conducive to the nuisance, or order the closing of the premises.<sup>4</sup> An order entered by the board may only be in effect for up to one year.<sup>5</sup>

HB 719 changes the intent language of s. 893.138, F.S. The bill makes clear that administrative boards have the authority to close property for up to 1 year in order to abate drug-related, prostitution-

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<sup>1</sup> See s. 893.138(1), F.S.

<sup>2</sup> See s. 893.138(3), F.S.

<sup>3</sup> Section 796.07, F.S., prohibits prostitution.

<sup>4</sup> See s. 893.138(4), F.S.

<sup>5</sup> See s. 893.138(5), F.S.

related, stolen-property-related or street-gang-related public nuisances. While closure of property is already permitted under current law, this language makes clear that closure is allowed.

HB 719 contains certain protections for nonresident owners of property that may be declared a public nuisance. It provides that a nonresident owner will have a reasonable time to abate the nuisance before the property is closed. It permits a nonresident owner to commence legal proceedings to abate the nuisance. It requires that the legal proceedings be commenced within ten days after the hearing before the county or municipal board.

This bill provides that a closure to abate a public nuisance shall not constitute a taking.

#### C. SECTION DIRECTORY:

Section 1. Amends s. 893.138, F.S., to provide procedures for a nonresident owner to avoid closure of property which is declared to be a public nuisance.

Section 2. Provides that the bill becomes effective upon becoming law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

This bill does not appear to impact state government revenues.

##### 2. Expenditures:

This bill does not appear to impact state government expenditures.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

This bill does not appear to impact local government revenues.

##### 2. Expenditures:

This bill does not appear to impact local government expenditures.

#### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill does not appear to have a direct economic impact on the private sector.

#### D. FISCAL COMMENTS:

None.

## III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to take an action requiring the expenditure of funds, does not reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

**Takings Issue**

This bill states that closing property which is an unabated public nuisance shall not constitute a taking. The Fifth Amendment of the United States Constitution provides that private property cannot be taken for public use without just compensation. In Lucas v. South Carolina Coastal Council,<sup>6</sup> the United States Supreme Court discussed the limitations on the state's ability to deprive a landowner of economically beneficial uses of land:

Where the State seeks to sustain regulation that deprives land of all economically beneficial use, we think it may resist compensation only if the logically antecedent inquiry into the nature of the owner's estate shows that the proscribed use interests were not part of the title to begin with.<sup>7</sup>

The court continued:

Any limitation so severe cannot be newly legislated or decreed (without compensation), but must inhere in the title itself, in the restrictions that background principles of the State's law of property and nuisance already in place upon land ownership. **A law or decree with such effect must, in other words, do no more than duplicate the result that could have been achieved in the courts – by adjacent landowners (or other uniquely affected persons) under the State's law of private nuisance, or by the State under its complementary power to abate nuisances that affect the public generally, or otherwise.**<sup>8</sup>

The Florida Supreme Court held the Lucas analysis applied to nuisance abatement actions under s. 893.138, F.S., in Keshbro, Inc. v. City of Miami.<sup>9</sup> Accordingly, a temporary closure under s. 893.138, F.S., can be a taking and require compensation if the closure orders do not "mirror the relief" that could have been obtained under nuisance actions.<sup>10</sup> The court explained that actions to abate public nuisances in Florida "must be specifically tailored to abate the objectionable conduct, without unnecessarily infringing upon the conduct of a lawful enterprise."<sup>11</sup> In Keshbro, the court found that closure was appropriate when a drug and prostitution operation had become "inextricably intertwined" with the operation of the hotel that was closed, but closure was not appropriate based simply upon repeated cocaine sales.<sup>12</sup>

It can be argued that this bill addresses the court's concern that closure cannot be appropriate on the basis of repeated drug sales because it specifically finds that closure can be an appropriate remedy if the activity prohibited in the bill occurs on the premises. However, since Keshbro is based on the Fifth Amendment of the United States Constitution and not on an interpretation of statute, it can be argued that the legislature lacks the authority to change that result.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

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<sup>6</sup> 505 U.S. 1003 (1992).

<sup>7</sup> Lucas, 505 U.S. at 1027.

<sup>8</sup> Lucas, 505 U.S. at 1029 (emphasis added).

<sup>9</sup> 801 So. 2d 864 (Fla. 2001).

<sup>10</sup> Keshbro, 801 So. 2d at 875.

<sup>11</sup> Keshbro, 801 So. 2d at 876.

<sup>12</sup> See Keshbro, 801 So. 2d at 876-77.

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

The Committee on Judiciary considered the bill on April 9, 2003. The committee adopted an amendment that removed language that declared certain places to be public nuisances and restored current law which permits a local nuisance board to determine whether these places should be named public nuisances. The bill, as amended, was reported favorably with a committee substitute.