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CHAMBER ACTION

The Committee on Judiciary recommends the following:

Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to nuisance abatement; amending s. 893.138, F.S.; revising language with respect to legislative intent concerning local administrative action to abate drug-related, prostitution-related, stolen-property-related, or street-gang-related public nuisances; providing for a mandatory, rather than optional, declaration of a place or premises as a public nuisance under certain circumstances; providing for the closure of a place or premises under certain circumstances; providing an effective date.

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

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

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



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

41 (2) Any place or premises that has been used:

42 (a) On more than two occasions within a 6-month period, as
 43 the site of a violation of s. 796.07;

44 (b) On more than two occasions within a 6-month period, as
 45 the site of the unlawful sale, delivery, manufacture, or
 46 cultivation of any controlled substance;

47 (c) On one occasion as the site of the unlawful possession
 48 of a controlled substance, where such possession constitutes a
 49 felony and that has been previously used on more than one
 50 occasion as the site of the unlawful sale, delivery,
 51 manufacture, or cultivation of any controlled substance;

52 (d) By a criminal street gang for the purpose of
 53 conducting a pattern of criminal street gang activity as defined
 54 by s. 874.03; or



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55 (e) On more than two occasions within a 6-month period, as
56 the site of a violation of s. 812.019 relating to dealing in
57 stolen property

58
59 may be declared to be a public nuisance, and such nuisance may
60 be abated pursuant to the procedures provided in this section.

61 (3) Any county or municipality may, by ordinance, create
62 an administrative board to hear complaints regarding the
63 nuisances described in subsection (2). Any employee, officer, or
64 resident of the county or municipality may bring a complaint
65 before the board after giving not less than 3 days' written
66 notice of such complaint to the owner of the place or premises
67 at his or her last known address. After a hearing in which the
68 board may consider any evidence, including evidence of the
69 general reputation of the place or premises, and at which the
70 owner of the premises shall have an opportunity to present
71 evidence in his or her defense, the board may declare the place
72 or premises to be a public nuisance as described in subsection
73 (2).

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

79 (a) The maintaining of the nuisance;

80 (b) The operating or maintaining of the place or premises,
81 including the closure of the place or premises or any part
82 thereof; or



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

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

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

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

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

97 (9) As used in this section, the term "controlled
98 substance" includes any substance sold in lieu of a controlled
99 substance in violation of s. 817.563 or any imitation controlled
100 substance defined in s. 817.564.

101 (10) The provisions of this section may be supplemented by
102 a county or municipal ordinance. The ordinance may include, but
103 is not limited to, provisions that establish additional
104 penalties for public nuisances, including fines not to exceed
105 \$250 per day; provide for the payment of reasonable costs,
106 including reasonable attorney fees associated with
107 investigations of and hearings on public nuisances; provide for
108 continuing jurisdiction for a period of 1 year over any place or
109 premises that has been or is declared to be a public nuisance;
110 establish penalties, including fines not to exceed \$500 per day



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111 for recurring public nuisances; provide for the recording of
112 orders on public nuisances so that notice must be given to
113 subsequent purchasers, successors in interest, or assigns of the
114 real property that is the subject of the order; provide that
115 recorded orders on public nuisances may become liens against the
116 real property that is the subject of the order; and provide for
117 the foreclosure of property subject to a lien and the recovery
118 of all costs, including reasonable attorney fees, associated
119 with the recording of orders and foreclosure. No lien created
120 pursuant to the provisions of this section may be foreclosed on
121 real property which is a homestead under s. 4, Art. X of the
122 State Constitution. Where a local government seeks to bring an
123 administrative action, based on a stolen property nuisance,
124 against a property owner operating an establishment where
125 multiple tenants, on one site, conduct their own retail
126 business, the property owner shall not be subject to a lien
127 against his or her property or the prohibition of operation
128 provision if the property owner evicts the business declared to
129 be a nuisance within 90 days after notification by registered
130 mail to the property owner of a second stolen property
131 conviction of the tenant. The total fines imposed pursuant to
132 the authority of this section shall not exceed \$15,000. Nothing
133 contained within this section prohibits a county or municipality
134 from proceeding against a public nuisance by any other means.

135 (11) A place or premises may be closed pursuant to
136 paragraph (4)(b) when occupancy of the property materially
137 contributes to the public nuisance. If the owner of the place or
138 premises does not reside upon the property, then the owner shall



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139 have a reasonable time in which to abate the public nuisance
140 before the property is closed. If the nonresident owner abates
141 the public nuisance within a reasonable time or commences and
142 diligently pursues legal proceedings to abate such nuisance, the
143 property shall not be closed. The legal proceedings shall be
144 initiated on or before the 10th day after the hearing pursuant
145 to subsection (3). A nonresident owner's opportunity to abate
146 the public nuisance or commence proceedings to abate such
147 nuisance may be before or after the hearing pursuant to
148 subsection (3). Closure of property which constitutes an
149 unabated public nuisance shall not constitute a taking.

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