

By the Committee on Comprehensive Planning

316-917E-04

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 specifying the period that property may be
 6 closed; providing exceptions; requiring a
 7 nuisance abatement board to specify procedures
 8 to abate a public nuisance; providing
 9 exceptions; providing for closure of property
 10 only if the use of the property materially
 11 contributes to the nuisance; providing that
 12 closure of property constituting an unabated
 13 nuisance is not a taking; providing that a
 14 property may be reopened under certain
 15 circumstances; providing an effective date.

16
 17 Be It Enacted by the Legislature of the State of Florida:

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

21 893.138 Local administrative action to abate
 22 drug-related, prostitution-related, or stolen-property-related
 23 public nuisances and criminal street gang activity.--

24 (1) It is the intent of this section to promote,
 25 protect, and improve the health, safety, and welfare of the
 26 citizens of the counties and municipalities of this state by
 27 authorizing the creation of administrative boards with
 28 authority to impose administrative fines and other noncriminal
 29 penalties, including, but not limited to, the power to close
 30 property for up to 1 year, in order to abate drug-related,
 31 prostitution-related, stolen-property-related, or

1 street-gang-related public nuisances on the property and
2 provide an equitable, expeditious, effective, and inexpensive
3 method of enforcing ordinances in counties and municipalities
4 under circumstances when a pending or repeated violation
5 continues to exist.

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

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

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

12 (c) On one occasion as the site of the unlawful
13 possession of a controlled substance, where such possession
14 constitutes a felony and that has been previously used on more
15 than one occasion as the site of the unlawful sale, delivery,
16 manufacture, or cultivation of any controlled substance;

17 (d) By a criminal street gang for the purpose of
18 conducting a pattern of criminal street gang activity as
19 defined by s. 874.03; or

20 (e) On more than two occasions within a 6-month
21 period, as the site of a violation of s. 812.019 relating to
22 dealing in stolen property,
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24 may be declared to be a public nuisance, and such nuisance may
25 be abated pursuant to the procedures provided in this section.
26 However, specific instances of criminal activity reported to a
27 law enforcement agency by the property owner of, the business
28 owner of, or an employee at the site of the criminal activity
29 do not constitute unlawful conduct for purposes of declaring
30 the property a public nuisance under this subsection.
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1 (3) Any county or municipality may, by ordinance,
2 create an administrative board to hear complaints regarding
3 the nuisances described in subsection (2). Any employee,
4 officer, or resident of the county or municipality may bring a
5 complaint before the board after giving not less than 3 days'
6 written notice of such complaint to the owner of the place or
7 premises at his or her last known address. After a hearing in
8 which the board may consider any evidence, including evidence
9 of the general reputation of the place or premises, and at
10 which the owner of the premises shall have an opportunity to
11 present evidence in his or her defense, the board may declare
12 the place or premises to be a public nuisance as described in
13 subsection (2).

14 (4) If the board declares a place or premises to be a
15 public nuisance, it shall ~~may~~ enter an order requiring the
16 owner of such place or premises to adopt specific procedures
17 ~~such procedure as may be appropriate under the circumstances~~
18 to abate any such nuisance. If the property owner does not
19 implement the board's recommended procedures within 30 days,
20 or a longer period as determined by the board, the board or it
21 may enter an order immediately prohibiting:

22 (a) The maintaining of the nuisance;

23 (b) The operating or maintaining of the place or
24 premises, including the closure of the place or premises or
25 any part thereof for up to 1 year; or

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

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30 This subsection does not affect the availability of civil
31 penalties under subsection (13).

1 (5) If the owner of the place or premises does not
2 reside upon the property, before the property is closed the
3 owner must be given at least 30 days in which to abate the
4 nuisance, implement the board's recommended procedures, or
5 commence legal proceedings. If such owner abates the nuisance,
6 implements the board's recommended procedures, or commences
7 and diligently pursues legal proceedings to abate the nuisance
8 within the prescribed period, the board may not close the
9 property under its existing order.

10 (6) A place or premises may be closed under paragraph
11 (4)(b) only if the use of the property materially contributes
12 to the nuisance. Closure of property that constitutes an
13 unabated nuisance does not constitute a taking.

14 (7) If the owner of a place or premises petitions the
15 board to reopen the property prior to expiration of the
16 board's order closing the property under paragraph (4)(b), the
17 board may reopen the property upon a showing that the nuisance
18 has been abated or upon a showing that the board's recommended
19 procedures have been implemented and the proposed occupants
20 are unlikely to maintain a nuisance therein.

21 ~~(8)(5)~~ An order entered under subsection (4) shall
22 expire after 1 year or at such earlier time as is stated in
23 the order.

24 ~~(9)(6)~~ An order entered under subsection (4) may be
25 enforced pursuant to the procedures contained in s. 120.69.
26 This subsection does not subject a municipality that creates a
27 board under this section, or the board so created, to any
28 other provision of chapter 120.

29 ~~(10)(7)~~ The board may bring a complaint under s. 60.05
30 seeking temporary and permanent injunctive relief against any
31 nuisance described in subsection (2).

1 (11)~~(8)~~ This section does not restrict the right of
2 any person to proceed under s. 60.05 against any public
3 nuisance.

4 (12)~~(9)~~ As used in this section, the term "controlled
5 substance" includes any substance sold in lieu of a controlled
6 substance in violation of s. 817.563 or any imitation
7 controlled substance defined in s. 817.564.

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

1 against a property owner operating an establishment where
2 multiple tenants, on one site, conduct their own retail
3 business, the property owner shall not be subject to a lien
4 against his or her property or the prohibition of operation
5 provision if the property owner evicts the business declared
6 to be a nuisance within 90 days after notification by
7 registered mail to the property owner of a second stolen
8 property conviction of the tenant. The total fines imposed
9 pursuant to the authority of this section shall not exceed
10 \$15,000. Nothing contained within this section prohibits a
11 county or municipality from proceeding against a public
12 nuisance by any other means.

13 Section 2. This act shall take effect October 1, 2004.

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15 SENATE SUMMARY

16 Revises the law authorizing the closure of property for
17 up to 1 year for drug-related, prostitution-related,
18 stolen-property-related, or street-gang-related
19 activities. Provides for certain exceptions. Specifies
20 that the closure of property in order to abate a nuisance
21 is not a taking. (See bill for details.)
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