

By the Committee on Comprehensive Planning

316-1965-04

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; providing notice  
7           requirements; prescribing certain procedures  
8           before a complaint may be filed with a nuisance  
9           abatement board; providing that certain parties  
10          may be named as respondents in the complaint;  
11          providing notice and hearing requirements;  
12          requiring a nuisance abatement board to specify  
13          procedures to abate a public nuisance;  
14          providing for the closure of property under  
15          certain circumstances; clarifying the  
16          availability of civil penalties; providing  
17          exceptions; providing for closure of property  
18          only if the use of the property materially  
19          contributes to the nuisance; providing that  
20          closure of property constituting an unabated  
21          nuisance is not a taking; providing that a  
22          property may be reopened under certain  
23          circumstances; providing an effective date.

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

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

29           893.138 Local administrative action to abate  
30 drug-related, prostitution-related, or stolen-property-related  
31 public nuisances and criminal street gang activity.--

1           (1) It is the intent of this section to promote,  
2 protect, and improve the health, safety, and welfare of the  
3 citizens of the counties and municipalities of this state by  
4 authorizing the creation of administrative boards with  
5 authority to impose administrative fines and other noncriminal  
6 penalties, including, but not limited to, the power to close  
7 property for up to 1 year, in order to abate drug-related,  
8 prostitution-related, stolen-property-related, or  
9 street-gang-related public nuisances on the property and  
10 provide an equitable, expeditious, effective, and inexpensive  
11 method of enforcing ordinances in counties and municipalities  
12 under circumstances when a pending or repeated violation  
13 continues to exist.

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

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

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

20           (c) On one occasion as the site of the unlawful  
21 possession of a controlled substance, where such possession  
22 constitutes a felony and that has been previously used on more  
23 than one occasion as the site of the unlawful sale, delivery,  
24 manufacture, or cultivation of any controlled substance;

25           (d) By a criminal street gang for the purpose of  
26 conducting a pattern of criminal street gang activity as  
27 defined by s. 874.03; or

28           (e) On more than two occasions within a 6-month  
29 period, as the site of a violation of s. 812.019 relating to  
30 dealing in stolen property,  
31

1 may be declared to be a public nuisance, and such nuisance may  
2 be abated pursuant to the procedures provided in this section.  
3 However, specific instances of criminal activity reported to a  
4 law enforcement agency by the property owner of, the business  
5 owner of, or an employee at the site of the criminal activity  
6 do not constitute unlawful conduct for purposes of declaring  
7 the property a public nuisance under this subsection.

8 (3) Any county or municipality may, by ordinance,  
9 create an administrative board to hear complaints regarding  
10 the nuisances described in subsection (2). Any employee or  
11 ~~officer, or resident~~ of the county or municipality may bring a  
12 complaint before the board not less than 30 days after  
13 -serving, by hand delivery or by certified mail, return receipt  
14 requested, a giving not less than 3 days written notice of  
15 intent to bring such complaint to the owner of the place or  
16 premises at his or her current last known address according to  
17 the records of the county property appraiser.

18 (a) The notice must contain a statement describing the  
19 types of criminal activities occurring at the place or  
20 premises which constitute a public nuisance under subsection  
21 (2), including a description of the specific instances and  
22 dates on which the criminal activities occurred. The notice  
23 must include the name and telephone number of a law  
24 enforcement officer or other designated employee or officer to  
25 be contacted in order to obtain further information and to  
26 discuss corrective action that may be taken by the owner to  
27 abate the criminal activity and avoid bringing the complaint  
28 to the board.

29 (b) Following service of the notice, if the owner  
30 contacts the designated employee or officer to discuss action  
31 that may be taken to abate the public nuisance, the designated

1 employee or officer of the county or municipality shall  
2 discuss corrective action with the owner which may be taken to  
3 abate the public nuisance and to avoid consideration of the  
4 complaint by the board.

5 (c) After 30 days following service of the notice, if  
6 the owner fails to reach agreement with the county or  
7 municipality regarding corrective action that may be taken to  
8 abate the public nuisance, or if the criminal activities  
9 continue to occur at the place or premises despite actions  
10 that may have been taken by the owner, the county or  
11 municipality may proceed to file a complaint with the board.  
12 The complaint may incorporate allegations of additional  
13 criminal activities occurring at the place or premises  
14 following the service of the notice.

15 (d) In addition to naming the owner as a respondent,  
16 the complaint may also name as a respondent any tenant,  
17 subtenant, or other person having operational control over the  
18 place or premises.

19 (e) The board shall hear the complaint not less than 7  
20 calendar days after the date of service of notice of the  
21 hearing and service of a copy of the complaint to the owner.

22 (f) After a hearing in which the board may consider  
23 any evidence, including evidence of the general reputation of  
24 the place or premises, and at which the owner of the premises  
25 shall have an opportunity to present evidence in his or her  
26 defense, the board may declare the place or premises to be a  
27 public nuisance as described in subsection (2).

28 (4) If the board declares a place or premises to be a  
29 public nuisance, it shall ~~may~~ enter an order requiring the  
30 owner of such place or premises to adopt specific procedures  
31 ~~such procedure as may be appropriate under the circumstances~~

1 to abate any such nuisance. If the property owner does not  
2 implement the board's recommended procedures within 30 days,  
3 or a longer period as determined by the board, the board ~~or it~~  
4 may enter an order immediately prohibiting:

5 (a) The maintaining of the nuisance;

6 (b) The operating or maintaining of the place or  
7 premises, including the closure of the place or premises or  
8 any part thereof for up to 1 year; or

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

12  
13 This subsection does not affect the availability of civil  
14 penalties under subsection (13).

15 (5) If the owner of the place or premises does not  
16 reside upon the property, before the property is closed the  
17 owner must be given at least 30 days in which to abate the  
18 nuisance, implement the board's recommended procedures, or  
19 commence legal proceedings. If such owner abates the nuisance,  
20 implements the board's recommended procedures, or commences  
21 and diligently pursues legal proceedings to abate the nuisance  
22 within the prescribed period, the board may not close the  
23 property under its existing order.

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

28 (7) If the owner of a place or premises petitions the  
29 board to reopen the property prior to expiration of the  
30 board's order closing the property under paragraph (4)(b), the  
31 board may reopen the property upon a showing that the nuisance

1 has been abated or upon a showing that the board's recommended  
2 procedures have been implemented and the proposed occupants  
3 are unlikely to maintain a nuisance therein.

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

7 (9)~~(6)~~ An order entered under subsection (4) may be  
8 enforced pursuant to the procedures contained in s. 120.69.  
9 This subsection does not subject a municipality that creates a  
10 board under this section, or the board so created, to any  
11 other provision of chapter 120.

12 (10)~~(7)~~ The board may bring a complaint under s. 60.05  
13 seeking temporary and permanent injunctive relief against any  
14 nuisance described in subsection (2).

15 (11)~~(8)~~ This section does not restrict the right of  
16 any person to proceed under s. 60.05 against any public  
17 nuisance.

18 (12)~~(9)~~ As used in this section, the term "controlled  
19 substance" includes any substance sold in lieu of a controlled  
20 substance in violation of s. 817.563 or any imitation  
21 controlled substance defined in s. 817.564.

22 (13)~~(10)~~ The provisions of this section may be  
23 supplemented by a county or municipal ordinance. The  
24 ordinance may include, but is not limited to, provisions that  
25 establish additional penalties for public nuisances, including  
26 fines not to exceed \$250 per day; provide for the payment of  
27 reasonable costs, including reasonable attorney fees  
28 associated with investigations of and hearings on public  
29 nuisances; provide for continuing jurisdiction for a period of  
30 1 year over any place or premises that has been or is declared  
31 to be a public nuisance; establish penalties, including fines

1 not to exceed \$500 per day for recurring public nuisances;  
2 provide for the recording of orders on public nuisances so  
3 that notice must be given to subsequent purchasers, successors  
4 in interest, or assigns of the real property that is the  
5 subject of the order; provide that recorded orders on public  
6 nuisances may become liens against the real property that is  
7 the subject of the order; and provide for the foreclosure of  
8 property subject to a lien and the recovery of all costs,  
9 including reasonable attorney fees, associated with the  
10 recording of orders and foreclosure. No lien created pursuant  
11 to the provisions of this section may be foreclosed on real  
12 property which is a homestead under s. 4, Art. X of the State  
13 Constitution. Where a local government seeks to bring an  
14 administrative action, based on a stolen property nuisance,  
15 against a property owner operating an establishment where  
16 multiple tenants, on one site, conduct their own retail  
17 business, the property owner shall not be subject to a lien  
18 against his or her property or the prohibition of operation  
19 provision if the property owner evicts the business declared  
20 to be a nuisance within 90 days after notification by  
21 registered mail to the property owner of a second stolen  
22 property conviction of the tenant. The total fines imposed  
23 pursuant to the authority of this section shall not exceed  
24 \$15,000. Nothing contained within this section prohibits a  
25 county or municipality from proceeding against a public  
26 nuisance by any other means.

27 Section 2. This act shall take effect October 1, 2004.  
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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
COMMITTEE SUBSTITUTE FOR  
Senate Bill 1608

The Committee Substitute (CS) adds language requiring a county or municipality to provide notice to a property owner of its intent to file a complaint with a nuisance abatement board (board). It requires the notice to include specific information regarding the criminal activity occurring on the property and contact information for a designated local law enforcement officer, employee, or other local government officer. The CS gives a property owner 30 days to contact the designated officer, or employee, to discuss corrective action before a complaint is filed. The CS provides that after 30 days following service of the notice, if the property owner fails to reach agreement with the county or municipality regarding corrective action or if criminal activities continue to occur at the property despite the corrective actions taken, the county or municipality may file a complaint with the board. Also, the CS provides notice and hearing requirements.