

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1151

Collier County

SPONSOR(S): Davis

TIED BILLS:

IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Local Government Council</u>	<u>8 Y, 0 N</u>	<u>DiVagno</u>	<u>Hamby</u>
2) <u>Judiciary Committee</u>	<u>8 Y, 0 N</u>	<u>Hogge</u>	<u>Hogge</u>
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

Collier County (County) is a non-charter county. The County only has the powers of self-government as provided in general or special law. Special law has given the County's board of county commissioners the power to designate employees of the County's Department of Parks and Recreation as county park enforcement officers (park rangers). Park rangers have the authority to issue citations for violations of County ordinances in county parks, public beaches, beach access areas adjacent to county parks, county operated parking facilities, and public areas immediately adjacent to county parks. Currently, violators who are issued a citation must either pay the fine and waive court appearance, or appear before the county court.

General law gives counties and municipalities the authority to establish administrative boards (or special magistrates) with authority to impose administrative fines and other noncriminal penalties.

This bill requires violators of County ordinances, in areas under the jurisdiction of the County park rangers, who receive citations, to appear before a Code Enforcement Special Master.

This bill would take effect upon becoming law.

According the Economic Impact Statement, Collier County expects an increase of \$16,000 in revenue in fiscal year 2007-08.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government: This bill grants the Enforcement Code Special Master authority over violations of the Collier County Ordinances under specific circumstances.

B. EFFECT OF PROPOSED CHANGES:

Non-charter Counties

Collier County (County) is a non-charter county. Counties not operating under a county charter only have the powers of self-government provided in general or special law. The board of county commissioners of a non-charter county may enact county ordinances not inconsistent with general or special law. If a county ordinance conflicts with a municipal ordinance, the county ordinance is not effective within the municipality to the extent of the conflict. Section 125.01, F.S., is a general law grant of expansive home rule authority to all Florida counties. All counties have the home rule authority to enact ordinances for any public purpose, absent preemption by the Legislature.

In 1989, Collier County received authority to authorize its Board of County Commissioners (Board) to designate employees of the County's Department of Parks and Recreation as county park enforcement officers (park rangers).¹ Park rangers were given the authority to issue citations within the boundaries of any of the County's parks for violations of County ordinances, or provisions of special acts, and regulating acts within county parks. The form of the citations is prescribed by the Board, but must include the following:

- Date and time of issuance.
- Name and address of the person in violation.
- The date of the violation.
- Description of the violation.
- The County ordinance and section violated.
- Name of citing park ranger.
- A date and time at which the violator shall appear in county court.

If issued a citation, a violator had a mandatory court appearance in the county court.

Chapter 97-347, L.O.F., made amendments to chapter 89-449, L.O.F., in regards to areas in which park rangers could regulate activities. It increased the area from county parks to include public beaches, beach access areas adjacent to county parks, county operated parking facilities, and public areas immediately adjacent to county parks. The amendment also gave violators the option to elect to pay the fine and not appear in court.

Administrative boards are provided for in general law, chapter 162, F.S. Section 162.03, F.S., allows charter or non-charter counties to adopt an alternate code enforcement system by ordinance. The code enforcement boards and/or special magistrates designated by the local governing body are authorized to hold hearing and assess fines against violations of the respective municipal or county codes and ordinances. Neither a member of a code enforcement board or a special magistrate can initiate enforcement proceedings. At the conclusion of a hearing, the enforcement board or special magistrate is required to issue findings of fact, based on evidence of record and conclusions of law, and

¹ Chapter 89-449, L.O.F.

issue an order affording proper relief. An aggrieved party may appeal a final administrative order of an enforcement board to the circuit court.²

Collier County has created a Code Enforcement Board (Enforcement Board) to provide an administrative alternative to judicial hearings. The Enforcement Board is comprised of seven members and two alternates. The Enforcement Board hears evidence from Code Enforcement, the alleged violator, and witnesses. If the Enforcement Board determines the accused committed a violation, the enforcement option used is dependent upon the degree and severity of the violation.³

Effect of Bill

This bill changes the forum in which a violator would appear. Instead of electing to appear before a county court, this bill provides for appearance before the Collier County Code Enforcement Special Master. Because this is an administrative proceeding in a non-charter county, the proceedings will have to follow the rule in chapter 162, F.S., and County ordinances, to the extent they are not inconsistent with general law.

C. SECTION DIRECTORY:

Section 1: Section 4 of chapter 89-449, L.O.F., as amended by chapter 97-347, L.O.F., is amended to give judicatory authority to Collier County Code Enforcement Special Master.

Section 2: Provides an effective date of upon becoming law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? January 16, 2006

WHERE? *Naples Daily News*, Naples, Florida.

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached No

The Economic Impact Statement indicates that by moving these issues of minor infractions from the court to a special master, the County expects \$16,000 in increased revenue for fiscal year 2007-08. This data is based on past revenue from parking citations.⁴

² Sections 162.06, 162.07, and 162.11, F.S.

³ <http://www.colliergov.net/codeenf/EnforcementOptions.htm>

⁴ Collier County 2006 Economic Impact Statement.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

Access To Courts

Article I, section 21 of the Florida Constitution provides "The courts shall be open to every person for redress of any injury, and justice shall not be administered without sale, denial, or delay." Where citizens have enjoyed a historical right of access, the Legislature can only eliminate a judicial remedy in two circumstances: Valid Public Purpose Coupled with a Reasonable Alternative and/or Overriding Public Necessity.

The Florida Legislature has chosen to allow counties and municipalities to allow administrative boards to have the authority to impose administrative fines and other non-criminal penalties with the goal of promoting, protecting, and improving the health, safety, and welfare of the citizens of the state. This asserts both a public purpose and reasonable alternative.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.