

1 A bill to be entitled
2 An act relating to local administrative action to
3 abate public nuisances and criminal gang activity;
4 amending s. 893.138, F.S.; authorizing a local
5 administrative board to declare a place to be a public
6 nuisance if the place is used on more than two
7 occasions within a 6-month period as the site of the
8 storage of a controlled substance with intent to sell
9 or deliver the controlled substance off the premises;
10 authorizing an administrative board to hear complaints
11 regarding any pain-management clinic declared to be a
12 public nuisance; providing that an order entered
13 against a person for a public nuisance expires after 1
14 year or at an earlier time if so stated in the order
15 unless the person has violated the order during the
16 term of the order; requiring that the board conduct a
17 hearing to determine whether the person violated the
18 administrative order; authorizing an administrative
19 board to seek temporary and permanent injunctive
20 relief against any pain-management clinic declared to
21 be a public nuisance; authorizing the board to extend
22 the term of the order by up to 1 additional year and
23 to impose a penalty if the board finds that the person
24 violated the order; authorizing a county or municipal
25 ordinance to include fines for days of public nuisance
26 activities outside the 6-month period in which the
27 minimum number of activities are shown to have
28 occurred; authorizing a local ordinance to provide for

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29 continuing jurisdiction over a place or premises that
 30 are subject to an extension of the administrative
 31 order; providing an effective date.

32

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

34

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

37 893.138 Local administrative action to abate drug-related,
 38 prostitution-related, or stolen-property-related public
 39 nuisances and criminal gang activity.—

40 (1) It is the intent of this section to promote, protect,
 41 and improve the health, safety, and welfare of the citizens of
 42 the counties and municipalities of this state by authorizing the
 43 creation of administrative boards with authority to impose
 44 administrative fines and other noncriminal penalties in order to
 45 provide an equitable, expeditious, effective, and inexpensive
 46 method of enforcing ordinances in counties and municipalities
 47 under circumstances when a pending or repeated violation
 48 continues to exist.

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

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

52 (b) On more than two occasions within a 6-month period, as
 53 the site of the unlawful sale, delivery, manufacture, or
 54 cultivation of a ~~any~~ controlled substance, or as the site of the
 55 storage of a controlled substance with intent to sell or deliver
 56 the controlled substance off the premises;

57 (c) On one occasion as the site of the unlawful possession
 58 of a controlled substance, where such possession constitutes a
 59 felony and that has been previously used on more than one
 60 occasion as the site of the unlawful sale, delivery,
 61 manufacture, or cultivation of a any controlled substance;

62 (d) By a criminal gang for the purpose of conducting
 63 criminal gang-related ~~gang~~ activity as defined in ~~by~~ s. 874.03;
 64 or

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

68
 69 may be declared to be a public nuisance, and such nuisance may
 70 be abated pursuant to ~~the procedures provided in~~ this section.

71 (3) Any pain-management clinic, as described in s.
 72 458.3265 or s. 459.0137, which has been used on more than two
 73 occasions within a 6-month period as the site of a violation of:

74 (a) Section 784.011, s. 784.021, s. 784.03, or s. 784.045,
 75 relating to assault and battery;

76 (b) Section 810.02, relating to burglary;

77 (c) Section 812.014, relating to dealing in theft;

78 (d) Section 812.131, relating to robbery by sudden
 79 snatching; or

80 (e) Section 893.13, relating to the unlawful distribution
 81 of controlled substances,

82
 83 may be declared to be a public nuisance, and such nuisance may
 84 be abated pursuant to the procedures provided in this section.

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85 (4) Any county or municipality may, by ordinance, create
86 an administrative board to hear complaints regarding the
87 nuisances described in subsections ~~subsection~~ (2) and (3). Any
88 employee, officer, or resident of the county or municipality may
89 bring a complaint before the board after giving not less than 3
90 days' written notice of such complaint to the owner of the place
91 or premises at his or her last known address. After a hearing in
92 which the board may consider any evidence, including evidence of
93 the general reputation of the place or premises, and at which
94 the owner of the premises shall have an opportunity to present
95 evidence in his or her defense, the board may declare the place
96 or premises to be a public nuisance as described in subsection
97 (2) or subsection (3).

98 (5) If the board declares a place or premises to be a
99 public nuisance, it may enter an order requiring the owner of
100 such place or premises to adopt such procedure as may be
101 appropriate under the circumstances to abate any such nuisance
102 or it may enter an order immediately prohibiting:

103 (a) The maintaining of the nuisance;

104 (b) The operating or maintaining of the place or premises,
105 including the closure of the place or premises or any part
106 thereof; or

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

109 (6) An order entered under subsection (5) ~~expires~~ ~~(4)~~
110 ~~shall expire~~ after 1 year or at such earlier time as is stated
111 in the order unless the owner of a place or premises that has
112 been declared to be a public nuisance has violated the order

113 during the term of the order. Upon receiving a complaint of
 114 recurring public nuisance activity or noncompliance and after
 115 providing at least 3 days' written notice to the owner of such
 116 place or premises, the board shall conduct a hearing to
 117 determine whether the owner violated the administrative order
 118 entered under subsection (5). If the board finds that the owner
 119 of such place or premises violated the order, the board may
 120 extend the term of the order by up to 1 additional year and may
 121 impose an additional penalty to the extent authorized by this
 122 section and by a supplemental county or municipal ordinance.

123 (7) An order entered under subsection (5) ~~(4)~~ may be
 124 enforced pursuant to the procedures contained in s. 120.69. This
 125 subsection does not subject a municipality that creates a board
 126 under this section, or the board so created, to any other
 127 provision of chapter 120.

128 (8) The board may bring a complaint under s. 60.05 seeking
 129 temporary and permanent injunctive relief against any nuisance
 130 described in subsection (2) or subsection (3).

131 (9) This section does not restrict the right of any person
 132 to proceed under s. 60.05 against any public nuisance.

133 (10) As used in this section, the term "controlled
 134 substance" includes any substance sold in lieu of a controlled
 135 substance in violation of s. 817.563 or any imitation controlled
 136 substance defined in s. 817.564.

137 ~~The provisions of~~ This section may be supplemented by
 138 a county or municipal ordinance. The ordinance may include, but
 139 need is not be limited to, provisions that establish additional
 140 penalties for public nuisances, including fines not to exceed

141 | \$250 per day for each day that the public nuisance activities
 142 | described in subsections (2) and (3) have occurred, including
 143 | days outside the 6-month period in which the minimum number of
 144 | public nuisance activities are shown to have occurred. The
 145 | ordinance may also~~+~~ provide for the payment of reasonable costs,
 146 | including reasonable attorney fees associated with
 147 | investigations of and hearings on public nuisances; provide for
 148 | continuing jurisdiction for a period of 1 year over any place or
 149 | premises that have ~~has~~ been or are ~~is~~ declared to be a public
 150 | nuisance, subject to an extension for up to 1 additional year as
 151 | provided in subsection (6); establish penalties, including fines
 152 | not to exceed \$500 per day for recurring public nuisances;
 153 | provide for the recording of orders on public nuisances so that
 154 | notice must be given to subsequent purchasers, successors in
 155 | interest, or assigns of the real property that is the subject of
 156 | the order; provide that recorded orders on public nuisances may
 157 | become liens against the real property that is the subject of
 158 | the order; and provide for the foreclosure of the property that
 159 | is subject to a lien and the recovery of all costs, including
 160 | reasonable attorney fees, associated with the recording of
 161 | orders and foreclosure. A ~~No~~ lien created pursuant to ~~the~~
 162 | ~~provisions of~~ this section may not be foreclosed on real
 163 | property that ~~which~~ is a homestead under s. 4, Art. X of the
 164 | State Constitution. When ~~Where~~ a local government seeks to bring
 165 | an administrative action, based on a stolen property nuisance,
 166 | against a property owner operating an establishment where
 167 | multiple tenants, on one site, conduct their own retail
 168 | business, the property owner is ~~shall~~ not be subject to a lien

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169 | against his or her property or the prohibition of operation
170 | provision if the property owner evicts the business declared to
171 | be a nuisance within 90 days after notification by registered
172 | mail to the property owner of a second stolen property
173 | conviction of the tenant. The total fines imposed pursuant to
174 | ~~the authority of this section may shall~~ not exceed \$15,000.
175 | ~~Nothing contained within~~ This section does not prohibit
176 | ~~prohibits~~ a county or municipality from proceeding against a
177 | public nuisance by any other means.

178 | Section 2. This act shall take effect July 1, 2012.