

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  
9           unlawfully sell or deliver the controlled substance  
10          off the premises; authorizing an administrative board  
11          to hear complaints regarding any pain-management  
12          clinic declared to be a public nuisance; prohibiting a  
13          county or municipality from declaring a place or  
14          premises a public nuisance unless the county or  
15          municipality gives notice to the owner of the place or  
16          premises of its intent to declare the place or  
17          premises a public nuisance and affords the owner an  
18          opportunity to abate the nuisance; providing that an  
19          order entered against a person for a public nuisance  
20          expires after 1 year or at an earlier time if so  
21          stated in the order unless the person has violated the  
22          order during the term of the order; requiring that the  
23          board conduct a hearing to determine whether the  
24          person violated the administrative order; authorizing  
25          an administrative board to seek temporary and  
26          permanent injunctive relief against any pain-  
27          management clinic declared to be a public nuisance;  
28          authorizing the board to extend the term of the order

29 by up to 1 additional year and to impose a penalty if  
30 the board finds that the person violated the order;  
31 authorizing a county or municipal ordinance to include  
32 fines for days of public nuisance activities outside  
33 the 6-month period in which the minimum number of  
34 activities are shown to have occurred; authorizing a  
35 local ordinance to provide for continuing jurisdiction  
36 over a place or premises that are subject to an  
37 extension of the administrative order; providing an  
38 effective date.

39  
40 Be It Enacted by the Legislature of the State of Florida:

41  
42 Section 1. Section 893.138, Florida Statutes, is amended  
43 to read:

44 893.138 Local administrative action to abate drug-related,  
45 prostitution-related, or stolen-property-related public  
46 nuisances and criminal gang activity.—

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

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

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

59 (b) On more than two occasions within a 6-month period, as  
 60 the site of the unlawful sale, delivery, manufacture, or  
 61 cultivation of a any controlled substance, or as the site of the  
 62 storage of a controlled substance with intent to unlawfully sell  
 63 or deliver the controlled substance off the premises;

64 (c) On one occasion as the site of the unlawful possession  
 65 of a controlled substance, where such possession constitutes a  
 66 felony and that has been previously used on more than one  
 67 occasion as the site of the unlawful sale, delivery,  
 68 manufacture, or cultivation of a any controlled substance;

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

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

75  
 76 may be declared to be a public nuisance, and such nuisance may  
 77 be abated pursuant to ~~the procedures provided in~~ this section.

78 (3) Any pain-management clinic, as described in s.  
 79 458.3265 or s. 459.0137, which has been used on more than two  
 80 occasions within a 6-month period as the site of a violation of:

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

83 (b) Section 810.02, relating to burglary;

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

85 (d) Section 812.131, relating to robbery by sudden  
86 snatching; or

87 (e) Section 893.13, relating to the unlawful distribution  
88 of controlled substances,

89  
90 may be declared to be a public nuisance, and such nuisance may  
91 be abated pursuant to the procedures provided in this section.

92 (4) Any county or municipality may, by ordinance, create  
93 an administrative board to hear complaints regarding the  
94 nuisances described in subsections ~~subsection~~ (2) and (3). Any  
95 employee, officer, or resident of the county or municipality may  
96 bring a complaint before the board. Upon receiving a complaint,  
97 the county or municipality must give written notice to the owner  
98 of the place or premises at his or her last known address of the  
99 complaint and afford the owner an opportunity to abate the  
100 nuisance before taking any official action against the place or  
101 premises pursuant to this section. If the nuisance is not abated  
102 in the specified time period, the board may conduct ~~after giving~~  
103 ~~not less than 3 days' written notice of such complaint to the~~  
104 ~~owner of the place or premises at his or her last known address.~~  
105 ~~After~~ a hearing at ~~in~~ which the board may consider any evidence,  
106 including evidence of the general reputation of the place or  
107 premises, and at which the owner of the premises shall have an  
108 opportunity to present evidence in his or her defense. After  
109 the hearing, the board may declare the place or premises to be a  
110 public nuisance as described in subsection (2) or subsection  
111 (3).

112 (5) If the board declares a place or premises to be a

113 public nuisance, it may enter an order requiring the owner of  
 114 such place or premises to adopt such procedure as may be  
 115 appropriate under the circumstances to abate any such nuisance  
 116 or it may enter an order immediately prohibiting:

117 (a) The maintaining of the nuisance;

118 (b) The operating or maintaining of the place or premises,  
 119 including the closure of the place or premises or any part  
 120 thereof; or

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

123 (6) An order entered under subsection (5) ~~expires~~ ~~(4)~~  
 124 ~~shall expire~~ after 1 year or at such earlier time as is stated  
 125 in the order unless the owner of a place or premises that has  
 126 been declared to be a public nuisance has violated the order  
 127 during the term of the order. Upon receiving a complaint of  
 128 recurring public nuisance activity or noncompliance and after  
 129 providing at least 3 days' written notice to the owner of such  
 130 place or premises, the board shall conduct a hearing to  
 131 determine whether the owner violated the administrative order  
 132 entered under subsection (5). If the board finds that the owner  
 133 of such place or premises violated the order, the board may  
 134 extend the term of the order by up to 1 additional year and may  
 135 impose an additional penalty to the extent authorized by this  
 136 section and by a supplemental county or municipal ordinance.

137 (7) An order entered under subsection (5) ~~(4)~~ may be  
 138 enforced pursuant to the procedures contained in s. 120.69. This  
 139 subsection does not subject a municipality that creates a board  
 140 under this section, or the board so created, to any other

141 provision of chapter 120.

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

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

147 (10) As used in this section, the term "controlled  
148 substance" includes any substance sold in lieu of a controlled  
149 substance in violation of s. 817.563 or any imitation controlled  
150 substance defined in s. 817.564.

151 (11) ~~The provisions of~~ This section may be supplemented by  
152 a county or municipal ordinance. The ordinance may include, but  
153 need is not be limited to, provisions that establish additional  
154 penalties for public nuisances, including fines not to exceed  
155 \$250 per day for each day that the public nuisance activities  
156 described in subsections (2) and (3) have occurred, including  
157 days outside the 6-month period in which the minimum number of  
158 public nuisance activities are shown to have occurred. The  
159 ordinance may also, provide for the payment of reasonable costs,  
160 including reasonable attorney fees associated with  
161 investigations of and hearings on public nuisances; provide for  
162 continuing jurisdiction for a period of 1 year over any place or  
163 premises that have ~~has~~ been or are ~~is~~ declared to be a public  
164 nuisance, subject to an extension for up to 1 additional year as  
165 provided in subsection (6); establish penalties, including fines  
166 not to exceed \$500 per day for recurring public nuisances;  
167 provide for the recording of orders on public nuisances so that  
168 notice must be given to subsequent purchasers, successors in

169 interest, or assigns of the real property that is the subject of  
 170 the order; provide that recorded orders on public nuisances may  
 171 become liens against the real property that is the subject of  
 172 the order; and provide for the foreclosure of the property that  
 173 is subject to a lien and the recovery of all costs, including  
 174 reasonable attorney fees, associated with the recording of  
 175 orders and foreclosure. A ~~No~~ lien created pursuant to ~~the~~  
 176 ~~provisions of~~ this section may not be foreclosed on real  
 177 property that ~~which~~ is a homestead under s. 4, Art. X of the  
 178 State Constitution. When ~~Where~~ a local government seeks to bring  
 179 an administrative action, based on a stolen property nuisance,  
 180 against a property owner operating an establishment where  
 181 multiple tenants, on one site, conduct their own retail  
 182 business, the property owner is ~~shall~~ not be subject to a lien  
 183 against his or her property or the prohibition of operation  
 184 provision if the property owner evicts the business declared to  
 185 be a nuisance within 90 days after notification by registered  
 186 mail to the property owner of a second stolen property  
 187 conviction of the tenant. The total fines imposed pursuant to  
 188 ~~the authority of~~ this section may ~~shall~~ not exceed \$15,000.  
 189 ~~Nothing contained within~~ This section does not prohibit  
 190 ~~prohibits~~ a county or municipality from proceeding against a  
 191 public nuisance by any other means.

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