

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Community Affairs Committee

BILL: SB 1580
 INTRODUCER: Senator Latvala
 SUBJECT: Local Administrative Action to Abate Public Nuisances and Criminal Gang Activity
 DATE: February 14, 2012 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	Favorable
2.	<u>Toman</u>	<u>Yeatman</u>	<u>CA</u>	Pre-meeting
3.	_____	_____	<u>BC</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill amends s. 893.138, F.S., relating to local administrative actions to abate specified public nuisances and criminal gang activity, to do the following:

- Authorize a local administrative board to declare a place or premises to be a public nuisance if it is used on more than 2 occasions within a 6-month period as the site of the storage of a controlled substance with intent to sell or deliver the controlled substance off the premises.
- Specify the duration of a public nuisance order, when the term of the order may be extended, and the period of extension.
- Provide that the local ordinance supplementing s. 893.138, F.S., may include fines not to exceed \$250 per day for each day that the public nuisance activities involving a place or premises have occurred, including days outside the 6 month period in which the minimum number of public nuisance activities are shown to have occurred. (Some nuisance activities involve use of the place or premise on more than 2 occasions within a 6-month period for specified unlawful activities like unlawfully selling a controlled substance.)
- Authorize a local ordinance to provide for continuing jurisdiction over a place or premises that is subject to an extension of the public nuisance order.

This bill substantially amends section 893.138, Florida Statutes.

II. Present Situation:

Section 893.138, F.S., provides that when a place or premises has been used for any of the following activities, the place or premises may be declared a public nuisance and the public nuisance may be abated:

- On more than 2 occasions within a 6-month period, as the site of a violation of s. 796.07, F.S., which punishes various acts involving prostitution, lewdness, or assignation.¹
- On more than 2 occasions within a 6-month period, as the site of the unlawful sale, delivery, manufacture, or cultivation of any controlled substance.²
- On 1 occasion as the site of the unlawful possession of a controlled substance, where such possession constitutes a felony and that has been previously used on more than 1 occasion as the site of the unlawful sale, delivery, manufacture, or cultivation of any controlled substance.
- By a criminal gang for the purpose of conducting criminal gang activity as defined by s. 874.03, F.S.
- On more than 2 occasions within a 6-month period, as the site of a violation of s. 812.019, F.S., which punishes dealing in stolen property.

Section 893.138, F.S., also provides that when a pain-management clinic, as described in s. 458.3265, F.S., or s. 459.0137, F.S., has been used as the site of a violation of any of the following statutes, the pain-management clinic may be declared to be a public nuisance and the public nuisance may be abated:

- Section 784.011, F.S., s. 784.021, F.S., s. 784.03, F.S., or s. 784.045, F.S., all of which punish various acts of assault and battery.
- Section 810.02, F.S., which punishes burglary.
- Section 812.014, F.S., which punishes theft.
- Section 812.131, F.S., which punishes robbery by sudden snatching.
- Section 893.13, F.S., which punishes unlawful possession, sale, etc., of a controlled substance.

Section 893.138, F.S., also authorizes any county or municipality, by ordinance, to create an administrative board to hear complaints regarding the public nuisance activities.³ Any employee, officer, or resident of the county or municipality may bring a complaint before the board after giving not less than 3 days' written notice of such complaint to the owner of the place or premises at his or her last known address. After a hearing in which the board may consider any evidence, including evidence of the general reputation of the place or premises, and at which the owner of the premises shall have an opportunity to present evidence in his or her defense, the board may declare the place or premises to be a public nuisance as previously described.

If the board declares a place or premises to be a public nuisance, it may enter an order requiring the owner of such place or premises to adopt such procedure as may be appropriate under the circumstances to abate any such nuisance or it may enter an order immediately prohibiting any of the following:

¹ "Assignation" means the making of any appointment or engagement for prostitution or lewdness, or any act in furtherance of such appointment or engagement. Section 796.07(1)(c), F.S.

² Section 893.138(10), F.S., states that the term "controlled substance" includes any substance sold in lieu of a controlled substance in violation of s. 817.563, F.S., or any imitation controlled substance defined in s. 817.564, F.S.

³ The statute specifies that the complaints are in regard to nuisances described in s. 893.138(2), F.S., which lists the nuisance activities applicable to places and premises. However s. 893.138(3), F.S., which lists the nuisance activities applicable to pain-management clinics, states that these activities may be abated pursuant to "the procedures provided in this section." Therefore, it appears that any county or municipality may also, by ordinance, create an administrative board to hear complaints regarding the public nuisance activities relating to pain-management clinics.

- The maintaining of the nuisance.
- The operating or maintaining of the place or premises, including the closure of the place or premises or any part thereof.
- The conduct, operation, or maintenance of any business or activity on the premises which is conducive to such nuisance.

The public nuisance order expires after 1 year or at such earlier time as is stated in the order.

The public nuisance order may be enforced pursuant to the procedures contained in s. 120.69, F.S. (Section 120.69, F.S., which is part of the Administrative Procedure Act, specifies procedures for proceedings in which the substantial interests of a party are determined by an agency, subject to exceptions.) This authorization does not subject a municipality that creates a board under s. 893.138, F.S., or the board so created, to any other provision of ch. 120, F.S.

Section 893.138, F.S., also authorizes the board to bring a complaint under s. 60.05, F.S., (issuance of an injunction abating a nuisance upon suit by the Attorney General; state, city, or county attorney; or any citizen of the county), seeking temporary and permanent injunctive relief against any public nuisance. This authorization does not restrict the right of any person to proceed under s. 60.05, F.S., against any public nuisance.

The statute may also be supplemented by a county or municipal ordinance, which may include, but is not limited to, provisions that:

- Establish additional penalties for public nuisances, including fines not to exceed \$250 per day.
- Provide for payment of reasonable costs, including reasonable attorney fees associated with investigations of and hearings on public nuisances.
- Provide for continuing jurisdiction for a period of 1 year over any place or premises that has been or is declared to be a public nuisance.
- Establish penalties, including fines not to exceed \$500 per day for recurring public nuisances.
- Provide for the recording of orders on public nuisances so that notice must be given to subsequent purchasers, successors in interest, or assigns of the real property that is the subject of the order.
- Provide that recorded orders on public nuisances may become liens against the real property that is the subject of the order.
- Provide for the foreclosure of property subject to a lien and the recovery of all costs, including reasonable attorney fees, associated with the recording of orders and foreclosure, except that no lien may be foreclosed on real property which is a homestead.

Where a local government seeks to bring an administrative action based on a stolen property nuisance against a property owner operating an establishment where multiple tenants on one site conduct their own retail business, the property owner shall not be subject to a lien against his or her property or the prohibition of operation provision if the property owner evicts the business declared to be a nuisance within 90 days after notification by registered mail to the property owner of a second stolen property conviction of the tenant.

The total fines imposed pursuant to the authority of s. 893.138, F.S., shall not exceed \$15,000.

Nothing contained within s. 893.138, F.S., prohibits a county or municipality from proceeding against a public nuisance by any other means.

III. Effect of Proposed Changes:

Section 1 amends s. 893.138, F.S., relating to local administrative actions to abate specified public nuisances and criminal gang activity, to do the following:

- Authorize a local administrative board to declare a place or premises to be a public nuisance if it is used on more than 2 occasions within a 6-month period as the site of the storage of a controlled substance with intent to sell or deliver the controlled substance off the premises.
- Provide that the public nuisance order expires after 1 year or at an earlier time if so stated in the order unless the person subject to the order has violated the order during its term.
- Require the board to conduct a hearing to determine whether the person violated the order after providing notice to the person whose activities have been declared to be a public nuisance.
- Provide that if the board finds the person violated the order, the board may extend the term of the order by up to 1 additional year and may impose an additional penalty to the extent authorized by s. 893.138, F.S., and by supplemental local ordinance.
- Provide that the local ordinance supplementing s. 893.138, F.S., may include fines not to exceed \$250 per day for each day that the public nuisance activities involving a place or premises have occurred, including days outside the 6-month period in which the minimum number of public nuisance activities are shown to have occurred. (Under s. 893.138, F.S., the board may issue a public nuisance order when it finds that a place or premises has been used on more than 2 occasions within a 6-month period for prostitution, lewdness, assignation, specified drug activity, or dealing in stolen property.)
- Authorize a local ordinance to provide for continuing jurisdiction over a place or premises that is subject to an extension of the public nuisance order.

Section 2 provides an effective date of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The bill potentially impacts those persons subject to fines as specified in the bill (see “Effect of Proposed Changes” section of this analysis) for the public nuisance.

C. Government Sector Impact:

There may be a cost-benefit to municipal and county governments if the provisions of the bill lead to a reduction in criminal activities in those places or premises declared a public nuisance, such as reducing impact on law enforcement resources. There may also be a benefit to municipal and county governments from the fines collected for the public nuisance.

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation, estimates that the bill will not have any prison bed impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.