

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 Committee on Criminal Justice

BILL: SB 888

INTRODUCER: Senator Perry

SUBJECT: Public Nuisances

DATE: January 13, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Jones</u>	<u>CJ</u>	<u>Favorable</u>
2.	_____	_____	<u>CA</u>	_____
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 888 amends s. 60.05, F.S., which generally provides for enjoinder of public nuisances. The bill amends this statute to:

- Extend and increase the frequency of notice so a property owner has sufficient time to receive notice and correct the use of the property;
- Allow for shorter notice where the public nuisance presents a danger of immediate and irreparable injury; and
- Provide more detail on what must be provided in the notice and serving the notice.

The bill also amends s. 823.05, F.S., relating to public nuisances, to:

- Delete the requirement that a criminal gang or member or associate of such gang must use a location “on two or more occasions” for the purpose of engaging in a criminal gang-related activity in order for such use to qualify as a public nuisance that can be abated or enjoined;
- Provide that any place or premises that has been used on more than two occasions within a six-month period as the site of dealing in stolen property, assault, aggravated assault, battery, aggravated battery, burglary, theft, or robbery by sudden snatching, may be declared a public nuisance and may be abated or enjoined; and
- Provide that a rental property that is declared a public nuisance based upon the previously-described circumstances may not be abated or subject to forfeiture under the Florida Contraband Forfeiture Act if the nuisance was committed by someone other than the owner of the property and the property owner commences rehabilitation of the property within 30 days after the property is declared a public nuisance and completes the rehabilitation within a reasonable time thereafter.

The bill also amends s. 893.138, F.S., relating to public nuisances, to authorize a place or premises to be declared a public nuisance, which may be abated, if the place or premises has been used on more than two occasions within a six-month period as the site of any combination

of the following offenses: murder; attempted felony murder; aggravated battery with a deadly weapon; or aggravated assault with deadly weapon without intent to kill.

The abatement or enjoining of a public nuisance described in the bill may result in a cost-savings or cost-avoidance to homeowners or businesses, if they have sustained an economic loss, and a cost-savings or cost-avoidance to local governments if they have sustained an economic loss. See Section V. Fiscal Impact Statement.

The bill takes effect July 1, 2020.

II. Present Situation:

Enjoining or Abating a Public Nuisance (ss. 60.05 and 60.06, F.S.)

Public nuisances are generally enjoined pursuant to s. 60.05, F.S., and abated pursuant to s. 60.06, F.S.¹ Section 60.05(1), F.S., authorizes the Attorney General, state attorney, city attorney, county attorney, and any citizen of the county to sue in the name of the state to enjoin the nuisance, the person(s) maintaining it, and the owner or agent of the building or ground on which the nuisance exists. The court, based on evidence² or affidavit, may issue a temporary injunction enjoining:

- The maintaining of a nuisance;
- The operating and maintaining of the place or premises where the nuisance is maintained;
- The owner or agent of the building or ground upon which the nuisance exists; and
- The conduct, operation, or maintenance of any business or activity operated or maintained in the building or on the premises in connection with or incident to the maintenance of the nuisance.³

The injunction must specify the activities enjoined and must not preclude the operation of any lawful business not conducive to the maintenance of the alleged nuisance.⁴ If the existence of a nuisance is shown at the final hearing, the court must issue a permanent injunction and order the costs to be paid by the persons establishing or maintaining the nuisance.⁵ The court must adjudge that the costs are a lien on all personal property found in the place of the nuisance; however, if the property fails to bring enough to pay costs, the lien is on the real estate occupied by the nuisance.⁶

Section 60.06, F.S., requires the court, upon “proper” proof, to order the abatement of all nuisances mentioned in s. 823.05, F.S., and authorizes the court to enforce injunctions by

¹ Section 823.05(1), (2)(b) and (c), and (3), F.S.

² Evidence of the general reputation of the alleged nuisance and place is admissible to prove the existence of a nuisance. Section 60.05(3), F.S.

³ Section 60.05(2), F.S.

⁴ Section 60.05(2), F.S. At least 3 days’ notice in writing shall be given to the defendant of the time and place of application for the temporary injunction. *Id.*

⁵ Section 60.05(4), F.S.

⁶ *Id.* However, no lien attaches to the real estate of any person other than the person establishing or maintaining the nuisance unless five days’ written notice has been given to the owner or owner’s agent who fails to abate the nuisance within this five-day period. *Id.*

contempt. However, this jurisdiction does not repeal or alter s. 823.01, F.S., which provides criminal penalties for nuisances described in that section.⁷

**Public Nuisances: Places and Groups Engaged in Criminal Gang-Related Activity
(s. 823.05, F.S.)**

Section 823.05(1), F.S., provides that a person is guilty of maintaining a public nuisance⁸ if he or she erects, establishes, continues, or maintains, owns or leases any building, booth, tent or place which tends to annoy the community or injure the health of the community, or become manifestly injurious to the morals or manners of the people as described in s. 823.01, F.S., or any house or place of prostitution, assignation, lewdness or place or building where games of chance are engaged in violation of law or any place where any law of the state is violated. The building, erection, place, tent or booth and the furniture, fixtures, and contents are declared a public nuisance.

Section 823.05(2), F.S., provides that a criminal gang, criminal gang member, or criminal gang associate who engages in the commission of criminal gang-related activity⁹ is a public nuisance,¹⁰ and the use of a location on two or more occasions by a criminal gang or member or associate of such gang for the purpose of engaging in criminal gang-related activity is also a public nuisance.¹¹

Section 823.05(2), F.S., does not prevent a local governing body from adopting and enforcing laws consistent with ch. 823, F.S., relating to criminal gangs and gang violence.¹² Further, the state, through the Department of Legal Affairs or any state attorney, or any of the state's agencies, instrumentalities, subdivisions, or municipalities having jurisdiction over conduct in violation of a provision of ch. 823, F.S., may institute civil proceedings under s. 823.05(2)(e), F.S., and, pending final determination, the circuit court may enter injunctions, prohibitions, or restraining orders, or take such other actions it deems proper.¹³

⁷ Section 60.06, F.S.

⁸ Although s. 823.05(1), F.S., refers to a person being "guilty of maintaining a public nuisance," s. 823.05, F.S., does not make maintaining a public nuisance a crime. However, s. 823.01, F.S., provides that all nuisances that tend to annoy the community, injure the health of the citizens in general, or corrupt the public morals are second degree misdemeanors, except that a violation of s. 823.10, F.S., is a third degree felony. Section 823.10(1), F.S., provides that certain places visited by persons for the purpose of unlawfully using any controlled substance under ch. 893, F.S. (Florida Comprehensive Drug Abuse Prevention and Control Act), or any drugs as described in ch. 499, F.S. (Florida Drug and Cosmetic Act), or for the illegal keeping, selling, or delivering of such substance or drug, are a public nuisance. Any person who willfully keeps or maintains, or aids or abets another in keeping or maintaining, such public nuisance commits a third degree felony, if such public nuisance is a warehouse, structure, or building. *Id.*

⁹ Section 823.05(2)(a), F.S., defines the terms "criminal gang," "criminal gang member," "criminal gang associate," and "criminal gang-related activity" by reference to the definitions of those terms in s. 874.03, F.S.

¹⁰ Section 823.05(2)(b), F.S. Section 893.138(2)(d), F.S., also provides that any place or premises that has been used by a criminal gang for the purpose of conducting criminal gang activity may be declared a public nuisance. Additionally, if the place or premises has been used on more than two occasions within a six-month period as the site of dealing in stolen property or a violation of ch. 499, F.S., such location may be declared a public nuisance. Unlike s. 823.05, F.S., a public nuisance described in s. 893.138, F.S., is abated pursuant to procedures provided in that section. Section 893.138(2)-(7), F.S. However, the public nuisance may be enjoined pursuant to s. 60.05, F.S. Section 893.138(9), F.S.

¹¹ Section 823.05(2)(c), F.S.

¹² Section 823.05(2)(d), F.S.

¹³ Section 823.05(2)(e), F.S.

Local Administrative Action to Abate Prohibited Activity Relating to Drugs, Prostitution, Stolen Property, or Criminal Street Gangs (s. 893.138, F.S.)

Section 893.138(2), F.S., provides that a place or premises may be declared a public nuisance, which may be abated, if the place or premises has been used:

- On more than two occasions within a 6-month period, as the site of a violation of s. 796.07, F.S. (prostitution and related acts);
- On more than two occasions within a 6-month period, as the site of the unlawful sale, delivery, manufacture, or cultivation of any controlled substance;
- On one 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 one 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;
- On more than two occasions within a 6-month period, as the site of a violation of s. 812.019, F.S. (stolen property); or
- On two or more occasions within a 6-month period, as the site of a violation of ch. 499, F.S. (the “Florida Drug and Cosmetic Act”).

A county or municipality, by ordinance, may create an administrative board to hear complaints regarding the nuisances described in s. 893.138(2), F.S. 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 has an opportunity to present evidence in his or her defense, the board may declare the place or premises to be a public nuisance.¹⁴

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:

- 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; or
- The conduct, operation, or maintenance of any business or activity on the premises which is conducive to such nuisance.¹⁵

The board may also bring a complaint under s. 60.05, F.S., seeking temporary and permanent injunctive relief against any public nuisance described in s. 893.138(2), F.S.¹⁶ Further, nothing

¹⁴ Section 893.138(4), F.S.

¹⁵ Section 893.138(5), F.S. The order expires after 1 year or at such earlier time as is stated in the order. Section 893.138(6), F.S. The order may be enforced pursuant to the procedures contained in s. 120.69, F.S., which provides for enforcement of an agency action under ch. 120, F.S. (the “Administrative Procedure Act” or APA), but a municipality that creates a board under s. 893.138, F.S., or the board so created, is not subject to any other provision of the APA. Section 893.138(7), F.S.

¹⁶ Section 893.138(8), F.S. Additionally, s. 893.138, F.S., does not restrict the right of any person to proceed under s. 60.05, F.S., against any public nuisance. Section 893.138(9), F.S.

contained in s. 893.138, F.S., prohibits a county or municipality from proceeding against a public nuisance by any other means.¹⁷

Section 893.138, F.S., may be supplemented by a county or municipal ordinance. The ordinance 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 the 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; and
- 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.¹⁸

Real Property and the Florida Contraband Forfeiture Act

The “Florida Contraband Forfeiture Act” (Act)¹⁹ authorizes seizure and civil forfeiture of real property used in violation of the provisions of the Act.²⁰ The seizure may only occur if the owner of the property is arrested for a criminal offense²¹ that forms the basis for determining that the property is a “contraband article” under s. 932.701, F.S.,²² or when one or more statutorily-specified exceptions to this arrest requirement apply.²³ For example, one specified exception is

¹⁷ Section 893.138(11), F.S.

¹⁸ Total fines may not exceed \$15,000. A lien cannot 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 is not subject to a lien against his or her property or the prohibition of operation 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. *Id.*

¹⁹ Sections 932.701-932.7062, F.S. *See* s. 932.701(1), F.S.

²⁰ Section 932.703(1)(a), F.S. Real property may not be seized or restrained, other than by *lis pendens*, subsequent to a violation of the Florida Contraband Forfeiture Act until the persons entitled to notice are afforded the opportunity to attend the pre-seizure adversarial preliminary hearing. Section 932.703(3)(b), F.S. “A notice of *lis pendens* is an instrument which may be filed with the clerk of the circuit court in connection with actions involving the ownership of, or interest in, property. It is intended to operate as constructive notice to persons dealing with the property that is the subject matter of litigation.” *Op. Att’y Gen. Fla. 58-135* (1958). Other requirements relating to seizure are specified in s. 932.703, F.S. Forfeiture proceedings are addressed in s. 932.704, F.S., and disposition of liens and forfeited property are addressed in s. 932.7055, F.S.

²¹ Section 932.703(1)(a), F.S.

²² The definition of “contraband article” in s. 932.701(2), F.S., includes an extensive list of tangible items. One of these items is real property used or attempted to be used as an instrumentality in the commission of, or in aiding or abetting the commission of, any felony, or which is acquired by proceeds obtained as a result of a violation of the Act. Section 932.701(2)(a)6., F.S. *See* s. 932.702, F.S. (unlawful acts involving a contraband article).

²³ Section 932.703(1)(a), F.S.

when the property is not owned by the person arrested for a criminal offense that forms the basis for determining that the property is a “contraband article,” but the owner of the property had actual knowledge of the criminal activity.²⁴

As previously noted, s. 823.05, F.S., in part, addresses criminal gang-related activity. Section 874.08, F.S., provides that the following are subject to seizure and forfeiture under the Florida Contraband Forfeiture Act:

- All profits, proceeds, and instrumentalities of criminal gang activity;
- All property used or intended or attempted to be used to facilitate the criminal activity of any criminal gang or of any criminal gang member;
- All profits, proceeds, and instrumentalities of criminal gang recruitment; and
- All property used or intended or attempted to be used to facilitate criminal gang recruitment.

III. Effect of Proposed Changes:

Public nuisances are generally enjoined pursuant to s. 60.05, F.S. The bill amends this statute to increase the notice requirements from one three-day notice to two notices (if needed) with a total of 25 days to abate the nuisance. The defendant must be given written notice (first notice) to abate the public nuisance within 10 days after issuance of the notice. The first notice must inform the defendant that an application for temporary injunction may be filed if the nuisance is not timely abated. If the nuisance is not timely abated, the defendant must be given a second written notice that informs the defendant that an application for a temporary injunction will be filed if the nuisance is not abated within 15 days after the end of the initial 10-day period. This notice also must provide the location where the application will be filed and the time when it will be filed. If the nuisance is not timely abated as provided in the second notice, the application for the temporary injunction must be filed as indicated in the notice.

Contents of the notice must also include:

- If applicable, a description of the building, booth, tent, or place that is declared a public nuisance;
- A statement of the activities that led to the public nuisance being declared;
- A statement of the actions necessary to abate the public nuisance; and
- A statement that costs will be assessed if abatement of the public nuisance is not completed and if the court determines that the public nuisance exists.

Required notices must be sent by personal service to the owner at his or her address as it appears on the latest tax assessment roll or to the tenant of such address. If an address is not found for the owner, notices must be sent to the location of the declared nuisance and displayed prominently and conspicuously at that location. The notice timeframe before a lien may attach when the property is owned by someone other than the person causing the public nuisance is extended from five days to 15 days.

²⁴ Section 932.703(1)(a)3., F.S. Evidence that the owner received notification from a law enforcement agency and acknowledged receipt of the notification in writing, that the seized asset had been used in violation of the Act on a prior occasion by the arrested person, may be used to establish actual knowledge. *Id.*

If a nuisance presents a danger of immediate and irreparable injury to a person or to the safety of a community, the previously-described notice requirements are waived, and only one notice is required, which must inform the defendant that the application for a temporary injunction will be filed if the nuisance is not abated within a designated timeframe of between 24 and 72 hours. The notice also must identify the location where the application will be filed and the time when it will be filed.

The bill also amends s. 823.05, F.S., relating to public nuisances, to:

- Delete the requirement that a criminal gang or member or associate of such gang must use a location “on two or more occasions” for the purpose of engaging in a criminal gang-related activity in order for such use to qualify as a public nuisance that can be abated or enjoined;
- Provide that any place or premises that has been used on more than two occasions within a six-month period as the site of dealing in stolen property (s. 812.019, F.S.), assault (s. 784.011, F.S.), aggravated assault (s. 784.021, F.S.), battery (s. 784.03, F.S.), aggravated battery (s. 784.045, F.S.), burglary (s. 810.02, F.S.),²⁵ theft (s. 812.014, F.S.), or robbery by sudden snatching (s. 812.131, F.S.), may be declared a public nuisance and may be abated or enjoined as provided in s. 60.05, F.S., or s. 60.06, F.S.; and
- Provide that a rental property that is declared a public nuisance based upon the previously-described circumstances may not be abated or subject to forfeiture under the Florida Contraband Forfeiture Act if the nuisance was committed by someone other than the owner of the property and the property owner commences rehabilitation of the property within 30 days after the property is declared a public nuisance and completes the rehabilitation within a reasonable time thereafter.

The bill also restructures s. 823.05(1), F.S., which defines what constitutes a public nuisance and what may be abated or enjoined as a public nuisance. This is not a substantive change because nothing of a substantive nature is eliminated from or added to that subsection.

The bill also amends s. 893.138, F.S., relating to public nuisances, to authorize a place or premises to be declared a public nuisance, which may be abated, if the place or premises has been used on more than two occasions within a six-month period as the site of any combination of the following offenses: murder (s. 782.04, F.S.); attempted felony murder (s. 782.051, F.S.); aggravated battery with a deadly weapon (s. 784.045(1)(a)2., F.S.); or aggravated assault with deadly weapon without intent to kill (s. 784.021(1)(a), F.S.).

The bill takes effect July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, s. 18, of the State Constitution.

²⁵ Armed burglary is also included in this section. *See* s. 810.02(2)(b), F.S.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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

None.

B. Private Sector Impact:

The abatement or enjoining of a public nuisance described in the bill may result in a cost-savings or cost-avoidance to homeowners or businesses, if they have sustained an economic loss (e.g., decreased home and business property values and loss of customers) as a result of the presence of the nuisance.

C. Government Sector Impact:

The abatement or enjoining of a public nuisance described in the bill may result in a cost-savings or cost-avoidance to local governments if they have sustained an economic loss (e.g., decreased local tax revenues, increased local law enforcement costs, and increased local ordinance or code enforcement costs) as a result of the presence of the nuisance.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 60.05, 823.05, and 893.138.

IX. Additional Information:

- A. **Committee Substitute – Statement of Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
