

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 883 County and Municipal Code Enforcement

**SPONSOR(S):** Public Integrity & Elections Committee, Local Administration & Veterans Affairs Subcommittee, Overdorf

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 60

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Administration & Veterans Affairs Subcommittee	13 Y, 4 N, As CS	Darden	Miller
2) Public Integrity & Elections Committee	16 Y, 1 N, As CS	Rubottom	Rubottom
3) State Affairs Committee			

### SUMMARY ANALYSIS

Code enforcement is a function of local government intended to enhance the economy and quality of life of counties and municipalities by protecting the health, safety, and welfare of the community. Four areas of Florida law create mechanisms counties and cities may utilize for code and ordinance enforcement. Under each statutory mechanism, a local government designates code inspectors or code enforcement officers, tasked with investigating potential code violations, providing notice of violations, and issuing citations for noncompliance, but possessing police powers. These statutes provide permissible code enforcement mechanisms that may be used by local governments in any combination they choose.

The bill amends the county and municipal code enforcement statutes to prohibit code inspectors and code enforcement officers from initiating an investigation or enforcement proceeding for an alleged code violation based upon an anonymous complaint. The bill requires each person reporting a potential violation of a code or ordinance to provide his or her the name and address to the governing body of the county or municipality before an investigation occurs. This provision does not apply if a code inspector or code enforcement officer has reason to believe that the violation presents an imminent threat to public health, safety, or welfare or may result in the imminent destruction of habitat or sensitive resources.

The bill also provides exceptions for complainants who desire anonymity due to fear of retaliation of status-based legal jeopardy. Penalties apply if a complainant falsely claims such fear and lodges a false code violation complaint.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

##### County and Municipal Code Enforcement

Code enforcement is a function of local government intended to enhance the economy and quality of life of counties and municipalities by protecting the health, safety, and welfare of the community.<sup>1</sup> Four areas of Florida law create mechanisms counties and cities may utilize for code and ordinance enforcement.<sup>2</sup> Under each statutory mechanism, a local government designates code inspectors or code enforcement officers, tasked with investigating potential code violations, providing notice of violations, and issuing citations for noncompliance, but possessing police powers. These statutes provide permissible code enforcement mechanisms that may be used by local governments in any combination they choose.<sup>3</sup>

##### *Code Enforcement Boards Act*

The Local Government Code Enforcement Boards Act<sup>4</sup> allows each county and municipality to create local government code enforcement boards by ordinance.<sup>5</sup> A code enforcement board is an administrative board composed of members appointed by the governing body of a county or municipality with the authority to hold hearings and impose administrative fines and other non-criminal penalties for violations of the jurisdiction's codes or ordinances. Each code enforcement board has seven members, except that a county or municipality with fewer than 5,000 residents may elect to appoint a board of five members. The governing body of the county or municipality may also appoint up to two alternate members to serve in the absence of other board members.

Members of a code enforcement board must be residents of the specific municipality or county creating the board. The members must include an architect, a businessperson, an engineer, a general contractor, a subcontractor, and a realtor, if possible.<sup>6</sup>

Code enforcement boards have the power to:

- Adopt hearing rules;
- Subpoena alleged violators, witnesses, and evidence to attend board hearings;
- Take testimony under oath; and
- Issue orders with the force of law commanding steps necessary to bring a violation into compliance.<sup>7</sup>

Code enforcement proceedings are initiated by code inspectors.<sup>8</sup> The process generally begins with a code inspector notifying the alleged violator of the specific violation, giving a reasonable period of time to correct the violation.<sup>9</sup> If the violation is not corrected within the time period specified in the notice, the code inspector informs the enforcement board and requests a hearing. The code enforcement board schedules the hearing and must provide written notice, by certified mail or personal service, to the

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<sup>1</sup> S. 162.02, F.S.

<sup>2</sup> Ch. 125, Part II, F.S. (county self-government), Ch. 162, Part I, F.S. (Local Government Code Enforcement Boards Act), Ch. 162 Part II (supplemental procedures for county or municipal code or ordinance enforcement procedures), and s. 166.0415, F.S. (city ordinance enforcement).

<sup>3</sup> See ss. 125.69(4)(i), 162.13, 162.21(8), and 166.0415(7), F.S.

<sup>4</sup> Ch. 162, Part I, F.S.

<sup>5</sup> S. 162.05(1), F.S.

<sup>6</sup> S. 162.05(2), F.S.

<sup>7</sup> S. 162.08, F.S.

<sup>8</sup> S. 162.06(1), F.S. A "code inspector" is "any authorized agent or employee of the county or municipality whose duty it is to assure code compliance." S. 164.04(2), F.S.

<sup>9</sup> S. 162.06(2), F.S.

alleged violator.<sup>10</sup> A time period for corrective action is not required if the violation is a repeat violation, presents a serious threat to public health, safety and welfare, or the violation is irreparable or irreversible in nature.<sup>11</sup>

In each matter heard before a code enforcement board, the case is presented and testimony is taken from both the code inspector and alleged violator.<sup>12</sup> At the conclusion of the hearing, the board issues findings of fact and provides an order stating the relief granted.<sup>13</sup> The board may include a notice that repairs must be completed by a specified date and fine the violator for each day the order has not been complied with after the completion date or each day or that a repeat violation occurs.<sup>14</sup> All final administrative orders of the code enforcement board may be appealed to the circuit court 30 days after execution of the order.<sup>15</sup>

As an alternative to a code enforcement board, the act allows counties and municipalities to adopt a code enforcement system giving code enforcement officials or special magistrates the authority to hold hearings and assess fines against violators of the local government's codes or ordinances.<sup>16</sup> Each of these methods may be used at the local governments' discretion, but a local government may choose any method to enforce codes and ordinances.<sup>17</sup>

Local governments may enforce violations of codes and ordinances without establishing a code enforcement board.<sup>18</sup> Local governments may designate employees or agents as code enforcement officers authorized to enforce the local government's codes or ordinances.<sup>19</sup>

A code enforcement officer may issue a citation to a person when, based upon personal investigation, the officer has reasonable cause to believe that the person violated a duly enacted code or ordinance.<sup>20</sup> Prior to issuing a citation, a code enforcement officer must provide notice to the person that the person of the alleged violation of a code or ordinance and provide a reasonable time period, of no more than 30 days, within which the person must correct the violation.<sup>21</sup> If, upon personal investigation, a code enforcement officer finds the violation was not corrected within the time period, the officer may issue a civil citation.

Counties and municipalities choosing to enforce codes or ordinances under the provisions of Part II must enact an ordinance establishing the code enforcement procedures.<sup>22</sup> The ordinance, among other requirements, must provide procedures for code enforcement officers to issue citations.

A violation of a county or municipal code or an ordinance enforced under Part II is a civil infraction and carries a maximum civil penalty of \$500. Part II further allows counties and municipalities to enforce

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<sup>10</sup> Ss. 162.06(2), 162.12(1), F.S. The code enforcement board may also provide additional notice by publication in a newspaper of general circulation in the county or posting on the property where the alleged violation occurred and on the front door of the courthouse or main county governmental center (for a county) or primary municipal government office (for a municipality). Ss. 162.06(2), 162.12(2), F.S.

<sup>11</sup> S. 162.06(3)-(4), F.S.

<sup>12</sup> S. 162.07(2)-(3), F.S.

<sup>13</sup> S. 162.07(4), F.S.

<sup>14</sup> S. 162.09(1), F.S. Such fines may not exceed \$250 per day for a first violation and may not exceed \$500 per day for a repeat violation. However, a county or municipality having a population equal to or greater than 50,000 may pass an ordinance to increase the fine thresholds if approved by a majority plus one vote.

<sup>15</sup> S. 162.11, F.S.

<sup>16</sup> S. 162.03, F.S.

<sup>17</sup> The Attorney General has opined that "once a municipality has adopted the procedures of ch. 162, F.S., to enforce its municipal codes and ordinances, it may not alter or amend those statutorily prescribed procedures but must utilize them as they are set forth in the statutes." Op. Att'y Gen. 2000-53 (2000). A local government may, however, maintain a ch. 162, F.S., code enforcement board and still decide to enforce a particular violation by bringing a charge in county court, or any other means provided by law. *Goodman v. County Court in Broward County, Fla.* 711 So.2d 587 (Fla. 4th DCA 1998).

<sup>18</sup> Ch. 162, Part II, F.S.

<sup>19</sup> S. 162.21(2), F.S. Employees or agents that may be designated as code enforcement officers include, but are not limited to, code inspectors, law enforcement officers, animal control officers, or fire safety inspectors.

<sup>20</sup> S. 162.21(3)(a), F.S.

<sup>21</sup> S. 162.21(3)(b), F.S.

<sup>22</sup> S. 162.21(5), F.S.

code violations by filing a civil action in the county or circuit court, in the absence of a magistrate or code enforcement board.<sup>23</sup>

### *Enforcement of County Ordinance Violations*

Counties are authorized to prosecute violations of county ordinances in the same manner as misdemeanors.<sup>24</sup> The action is prosecuted in county court and is punishable by a fine up to \$500, imprisonment up to 60 days, or both.<sup>25</sup> The statute also allows counties to designate code enforcement officers, who may investigate violations of codes and ordinances and issue civil citations.<sup>26</sup>

### *Enforcement of Municipal Ordinance Violations*

Municipalities may enforce their ordinances and codes using code inspectors.<sup>27</sup> Municipalities may designate code enforcement officers authorized to investigate alleged violations of municipal codes or ordinances and initiate enforcement proceedings by issuing a citation and notice to the alleged violator.

### Anonymous and Identified Complaints

A code enforcement investigation usually begins with a complaint or tip from the public - typically by phone or online form - or by a code enforcement officer personally observing an alleged violation while performing his or her duties.<sup>28</sup> As procedures for collecting complaints are not specified by state law, local governments have adopted a variety of rules and regulations for collecting complaints. Many jurisdictions allow for the anonymous submission of complaints, while some require the complainant to provide identifying information.<sup>29</sup> Code inspectors accept information initially provided in the complaints and may investigate the allegations made.

Any document made or received by any public agency in the course of its official business are available for inspection, unless specifically exempted by the Legislature.<sup>30</sup> Any information given by a complainant to the local government, including name, address, and contact information, is public record except where an exemption would otherwise apply.<sup>31</sup>

### Effect of Proposed Changes

The bill amends the county and municipal code enforcement statutes to prohibit code inspectors and code enforcement officers from initiating an investigation or enforcement proceeding for an alleged code violation based upon an anonymous complaint. The bill requires each person reporting a potential violation of a code or ordinance to provide his or her the name and address to the governing body of the county or municipality before an investigation occurs. This provision does not apply if a code inspector or code enforcement officer has reason to believe that the violation presents an imminent threat to public health, safety, or welfare or may result in the imminent destruction of habitat or sensitive resources.

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<sup>23</sup> S. 162.30, F.S.

<sup>24</sup> S. 125.69(4), F.S.

<sup>25</sup> S. 125.69(1), F.S.

<sup>26</sup> This process for code enforcement is similar to that authorized by s. 162.21, F.S.

<sup>27</sup> S. 166.0415, F.S. The statute functionally is identical to s. 162.21, F.S.

<sup>28</sup> Anthony A. Velardi, *The Law: Got a code violation? Here's how the process works*, *The Ledger*, May 18, 2017, available at <https://www.theledger.com/news/20170518/law-got-code-violation-heres-how-process-works> (last accessed Mar. 2, 2021).

<sup>29</sup> *E.g.*, Collier County code enforcement regulations to require that a name and phone number must be provided along with a complaint "unless the concern is an emergency that immediately threatens the public health and safety or could cause catastrophic consequences." Collier County, Report a Code Violation, <https://www.colliercountyfl.gov/your-government/divisions-a-e/code-enforcement/report-a-code-violation> (last accessed Mar. 2, 2021).

<sup>30</sup> *See generally*, s. 119.01(1), F.S., the Public Records Act. "[i]t is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency." *See also* Office of Attorney Gen., *Open Government – The "Sunshine" Law*, <https://myfloridalegal.com/pages.nsf/Main/DC0B20B7DC22B7418525791B006A54E4> (last accessed Mar. 2, 2021).

<sup>31</sup> *See* ss. 119.071(4) and (5), F.S.

The bill also provides exceptions for complainants who desire anonymity due to fear of retaliation of status-based legal jeopardy. Penalties apply if a complainant falsely claims such fear and lodges a false complaint.

**B. SECTION DIRECTORY:**

Section 1: Amends s. 125.69, F.S., prohibiting code enforcement investigations based on anonymous complaints and requiring a person who reports a potential code violation to provide specified information to the board of county commissioners before an investigation may occur and providing exceptions.

Section 2: Amends s. 162.06, F.S., prohibiting code enforcement investigations based on anonymous complaints and requiring a person who reports a potential code violation to provide specified information to the governing body of the county or municipality before an investigation may occur and providing exceptions.

Section 3: Amends s. 162.13, F.S., conforming legislative intent to changes made by the bill.

Section 4: Amends s. 162.21, F.S., prohibiting code enforcement investigations based on anonymous complaints and requiring a person who reports a potential code violation to provide specified information to the governing body of the county or municipality before an investigation may occur and providing an exception.

Section 5: Amends s. 166.0415, F.S., prohibiting code enforcement investigations based on anonymous complaints and requiring a person who reports a potential code violation to provide specified information to the governing body of the municipality before an investigation may occur and providing an exception.

Section 6: Provides an effective date of July 1, 2021.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take any action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

The bill neither provides authority for nor requires rulemaking by executive branch agencies.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

Sections 1 and 2 in the Public Integrity & Elections Committee permit anonymity for a complainant who is afraid of retaliation or status-based legal jeopardy. Sections 4 and 5, addressing other similar complaints, do not have the same exception.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 9, 2021, the Local Administration & Veterans Affairs Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. This amendment allows anonymous reporting when a code inspector or code enforcement officer has reason to believe that the violation presents an imminent threat to public health, safety, or welfare or may result in the imminent destruction of habitat or sensitive resources.

On March 29, 2021, the Public Integrity & Elections Committee adopted two amendments and reported the bill favorably as a committee substitute. The first amendment corrected a reference to the board of county commissioners in section 1. The second amendment added exceptions in sections 1 and 2 allowing anonymous reporting when a complainant fears retaliation or status-based legal jeopardy if identified. Penalties apply if the complainant makes a false claim of fear in support of a false complaint.

This analysis is drafted to the committee substitute as passed by the Public Integrity & Elections Committee.