

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1621 Unlawful Demolition of Historical Structures and Landmarks
SPONSOR(S): Local Administration, Federal Affairs & Special Districts Subcommittee, Beltran
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Administration, Federal Affairs & Special Districts Subcommittee	16 Y, 0 N, As CS	Roy	Darden
2) 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 not possessing police powers. These statutes provide permissible code enforcement mechanisms that may be used by local governments in any combination they choose.

The Local Government Code Enforcement Boards Act allows each county and municipality to create local government code enforcement boards by ordinance. Code enforcement proceedings are initiated by code inspectors. The process generally begins with a code inspector notifying the alleged violator of the specific violation and giving a reasonable period to correct the violation. If the violation is not corrected within the period specified in the notice, the code inspector informs the enforcement board and requests a hearing. At the conclusion of the hearing, the code enforcement board issues finding of fact and provides an order stating the relief granted, which may include the imposition of fines. These fines may not exceed \$250 per day for a first violation, \$500 per day for a repeat violation, and \$5,000 for a violation that is irreparable or irreversible in nature. Boards of counties or municipalities with a population greater than 50,000 may adopt an ordinance imposing greater fines.

The bill authorizes code enforcement boards to impose an enhanced fine for the demolition of a structure listed on the National Register of Historic Places. A code enforcement board or special magistrate must make specific findings based on substantial evidence that the demolition of the historic structure of landmark was not permitted and was not the result of a natural disaster to impose the fine. The enhanced fine may not exceed 20 percent of the fair market value of the property, as identified in the property appraiser’s evaluation.

The bill does not appear to have a fiscal impact on state government and may have a positive negative fiscal impact on local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

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.¹ Four areas of Florida law create mechanisms counties and cities may utilize for code and ordinance enforcement.² 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 not possessing police powers. These statutes provide permissible code enforcement mechanisms that may be used by local governments in any combination they choose.³

The Local Government Code Enforcement Boards Act⁴ allows each county and municipality to create local government code enforcement boards by ordinance.⁵ 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 local governing body may appoint up to two alternate members for each code enforcement board to serve on the board in the absence of board members.

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

Code enforcement boards have the power to:

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

Code enforcement proceedings are initiated by code inspectors.⁸ The process generally begins with a code inspector notifying the alleged violator of the specific violation and giving a reasonable period to correct the violation.⁹ If the violation is not corrected within the 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 alleged violator.¹⁰ A period for corrective action is not required if the violation is a repeat violation,

¹ S. 162.02, F.S.

² 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).

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

⁴ Ch. 162, Part I, F.S.

⁵ S. 162.05(1), F.S.

⁶ S. 162.05(2), F.S.

⁷ S. 162.08, F.S.

⁸ 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.

⁹ S. 162.06(2), F.S.

¹⁰ 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

presents a serious threat to public health, safety and welfare, or the violation is irreparable or irreversible in nature.¹¹

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.¹² At the conclusion of the hearing, the board issues findings of fact and provides an order stating the relief granted.¹³ 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 that a repeat violation occurs.¹⁴ All final administrative orders of the code enforcement board may be appealed to the circuit court 30 days after execution of the order.¹⁵

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.¹⁶ 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.¹⁷

Administrative Fines for Code Enforcement Violations

A code enforcement board may, upon notification by the code inspector that repairs have not been completed by a specified date or upon finding that repeat violations have occurred, may order violators to pay a fine for each day of the continued violation.¹⁸ If the violation presents a serious threat to the public health, safety, and welfare, the code enforcement board may also notify the local governing body, who make all reasonable repairs to bring the property in compliance and charge the violator the reasonable cost of those repairs in addition to the fine imposed. If, after due notice and hearing, a code enforcement board finds a violation to be irreparable or irreversible in nature, it may order the violator to pay a fine.

Administrative fines may not exceed \$250 per day for a first violation and may not exceed \$500 per day for a repeat violation.¹⁹ If the board finds the violation is irreparable or irreversible in nature, the board may impose a fine of up to \$5,000. When determining the amount of the fine, the board may consider the following factors:

- The gravity of the violation;
- Any actions taken by the violator to correct the violation; and
- Any previous violations committed by the violator.²⁰

A code enforcement board may choose to reduce the amount of the fine initially imposed.²¹

A county or municipality with a population greater than 50,000 may adopt, by majority vote plus one vote of the entire governing body, an ordinance that allows code enforcement boards or special magistrates to impose fines in excess of the above limits.²² The ordinance may provide for fines of up

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.

¹¹ S. 162.06(3)-(4), F.S.

¹² S. 162.07(2)-(3), F.S.

¹³ S. 162.07(4), F.S.

¹⁴ S. 162.09(1), F.S.

¹⁵ S. 162.11, F.S.

¹⁶ S. 162.03, F.S.

¹⁷ The Attorney General has opined, "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).

¹⁸ S.162.09(1), F.S.

¹⁹ S.162.09(2)(a), F.S.

²⁰ S.162.09(2)(b), F.S.

²¹ S.162.09(2)(c), F.S.

²² S.162.09(2)(d), F.S.

\$1,000 per day per violation for a first violation, \$5,000 per day per violation for a repeat violation, and up to \$15,000 per violation if the code enforcement board or special magistrate find the violation to be irreparable or irreversible in nature. In addition to such fines, a code enforcement board or special magistrate may impose additional fines to cover all costs incurred by the local government in enforcing its codes and all costs of repairs. Any ordinance imposing such fines shall include criteria to be considered by the code enforcement board or special magistrate in determining the amount of the fines.

A certified copy of an order imposing a fine, including any repair costs incurred by the local government, may be recorded in the public records and constitutes a lien against the land on which the violation exists and upon any other real or personal property owned by the violator.²³ Upon petition to the circuit court, the order is enforceable in the same manner as a court judgment, including execution and levy against the personal property of the violator, but such order cannot be deemed to be a court judgment except for enforcement purposes. A lien arising from a fine imposed pursuant to this section runs in favor of the local governing body, and the local governing body may execute a satisfaction or release of lien entered.

National Register of Historic Places

The National Register of Historic Places is an official list of sites and properties throughout the country that reflect the prehistoric occupation and historical development of our nation, states, and local communities.²⁴ More than 1,700 properties and districts in Florida are listed on the National Register. Nominations for properties in Florida are submitted to the National Park Service through the Florida Department of State's Division of Historical Resources, following review and recommendation by the Florida National Register Review Board. Listing in the National Register does not, in itself, impose any obligation on the property owner, or restrict the owner's basic right to use and dispose of the property as he or she sees fit, but does encourage the preservation of significant historic resources.

Demolition Permits

It is unlawful for a person, firm, or corporation to construct, erect, alter, repair, secure, or demolish any building without first obtaining a building permit from the local government or from such persons as may, by resolution or regulation, be directed to issue such permit, upon the payment of reasonable fees as set forth in a schedule of fees adopted by the enforcing agency.²⁵

A local law, ordinance, or regulation may not prohibit or otherwise restrict the ability of a private property owner to obtain a building permit to demolish his or her single-family residential structure provided that:

- Such structure is located in a coastal high-hazard area, moderate flood zone, or special flood hazard area according to a Flood Insurance Rate Map issued by the Federal Emergency Management Agency for the purpose of participating in the National Flood Insurance Program;
- The lowest finished floor elevation of such structure is at or below base flood elevation as established by the Building Code or a higher base flood elevation as may be required by local ordinance, whichever is higher; and
- Such permit complies with all applicable Building Code, Fire Prevention Code, and local amendments to such codes.²⁶

However, a local law, ordinance, or regulation may restrict demolition permits for a:

- Structure designated on the National Register of Historic Places;
- Privately owned single-family residential structure designated historic by a local, state, or federal governmental agency on or before January 1, 2022; or

²³ S.162.09(3), F.S.

²⁴ Fla. Dept. of State, *National Register of Historic Places*, <https://dos.fl.gov/historical/preservation/national-register/> (last visited Jan. 29, 2024).

²⁵ S. 553.79(1), F.S.

²⁶ S. 553.79(26)(a), F.S.

- Privately owned single-family residential structure designated historic after January 1, 2022, by a local, state, or federal governmental agency with the consent of its owner.²⁷

Permits for Property with a Historic Designation

Some local governments in Florida have adopted land development regulations that designate certain older buildings to be historic. These local governments have placed restrictions on property owners from obtaining permits for the demolition of older buildings that the local government has deemed historic. Below are examples of such regulations:

- Requiring a special demolition permit process,²⁸ and
- Requiring new construction on the site of the demolished structure to be subject to certain architectural regulations, related to:²⁹
 - The colors, pattern, and trim used in the building’s façade.
 - The design of the roof.
 - The proportions and relationships between doors and windows.

Proponents of these land development regulations argue that these regulations are needed to protect Florida’s history and preserve Florida’s character and architectural style.³⁰ Opponents of these regulations argue that these older buildings are damaged, do not meet the Building Code’s minimum flood elevation requirements, which can make them dangerous and can be demolished for new structures or buildings that meet the requirements of the current Building Code.³¹

There appear to be conflicts³² in some areas related to whether older buildings that may be unsafe should be demolished or be given time to be rehabilitated. Some argue that policies related to demolition are having an effect on affordable housing.³³

Effect of Proposed Changes

The bill authorizes code enforcement boards to impose an enhanced fine for the demolition of a structure listed on the National Register of Historic Places. A code enforcement board or special magistrate must make specific findings based on substantial evidence that the demolition of the historic structure of landmark was not permitted and was not the result of a natural disaster to impose the fine. The enhanced fine may not exceed 20 percent of the fair market value of the property, as identified in the property appraiser’s evaluation.

B. SECTION DIRECTORY:

Section 1: Amends s. 162.09, F.S., relating to administrative fines.

Section 2: Provides an effective date of July 1, 2024.

²⁷ S. 553.79(26)(d), F.S.

²⁸ Sec. 54-71., 54-125., Town of Palm Beach Code of Ordinances.

²⁹ Sec. 54-122., Town of Palm Beach Code of Ordinances.

³⁰ Miami Herald Editorial Board, *Historic-home teardowns risk washing away Miami Beach’s character in a flood of cash*, Miami Herald (Jan. 11, 2022) <https://www.miamiherald.com/opinion/editorials/article257198932.html> (last visited Jan. 29, 2024).

³¹ Pedro Portal, *Miami Beach older homes demolished in part because of ‘flood requirements’*, Miami Herald (Jan. 9, 2022) <https://www.miamiherald.com/news/business/real-estate-news/article257166737.html> (last visited Jan. 29, 2024); CBS Miami, *Miami Beach Waterfront Home Of Notorious Prohibition-Era Gangster Al Capone Slated For Demolition*, <https://miami.cbslocal.com/video/5955888-miami-beach-waterfront-home-of-notorious-prohibition-era-gangster-al-capone-slated-for-demolition/> (last visited Jan. 29, 2024).

³² In November 2022, news reports indicated that there were “dozens of ongoing lawsuits that have recently been filed between property owners and the City of Miami over attempts to demolish their properties. WLRN Miami | South Florida, *After Surfside, Miami changes rules to fast-track demolition. Affordable housing is in the crosshairs*, December 5, 2022, After Surfside, Miami changes rules to fast-track demolition. <https://www.wlrn.org/housing/2022-12-05/after-surfside-miami-changes-rules-to-fast-track-demolition-affordable-housing-is-in-the-crosshairs> (last visited Jan. 29, 2024).

³³ In 2022, approximately “48 buildings were demolished by city order, including 30 residential properties. In 2019, 52 buildings were demolished by order of the city.” *Id.*

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:

The bill may increase local government revenues to the extent additional fines are collected for code enforcement violations.

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. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or 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:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 31, 2024, the Local Administration, Federal Affairs & Special Districts Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment removed language that would have allowed a code enforcement board to assess an enhanced fine for an individually listed local historic landmark.

This analysis is drafted to the committee substitute as passed by the Local Administration, Federal Affairs & Special Districts Subcommittee.