

CHAPTER 97-200

Committee Substitute for Committee Substitute for House Bill No. 381

An act relating to public nuisances; amending s. 893.138, F.S.; providing legislative intent; providing that counties and municipalities may impose additional penalties by ordinance on the owner of a place declared to be a public nuisance; providing an effective date.

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

Section 1. Section 893.138, Florida Statutes, 1996 Supplement, to read:

893.138 Local administrative action to abate drug-related or prostitution-related public nuisances and criminal street gang activity.—

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

~~(2)~~(4) Any place or premises that has been used on more than two occasions, within a 6-month period:

(a) As the site of a violation of s. 796.07;

(b) As the site of the unlawful sale, delivery, manufacture, or cultivation of any controlled substance;

(c) 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; or

(d) Any place or building used by a criminal street gang for the purpose of conducting a pattern of criminal street gang activity

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

~~(3)~~(2) Any county or municipality may, by ordinance, create an administrative board to hear complaints regarding the nuisances described in subsection ~~(2)~~ (4). 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 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 defense, the board may declare the place or premises to be a public nuisance as described in subsection (2) (4).

(4)(3) 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:

(a) The maintaining of the nuisance;

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

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

(5)(4) An order entered under subsection (4) (3) shall expire after 1 year or at such earlier time as is stated in the order.

(6)(5) An order entered under subsection (4) (3) may be enforced pursuant to the procedures contained in s. 120.69. This subsection does not subject a municipality that creates a board under this section, or the board so created, to any other provision of chapter 120.

(7)(6) The board may bring a complaint under s. 60.05 seeking temporary and permanent injunctive relief against any nuisance described in subsection (2) (4).

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

(9)(8) As used in this section, the term "controlled substance" includes any substance sold in lieu of a controlled substance in violation of s. 817.563 or any imitation controlled substance defined in s. 817.564.

(10) The provisions of this section 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. No lien created pursuant to the provisions of this section may be foreclosed on real property which is a homestead under s. 4, Art. X of the State Constitution. The total fines imposed pursuant to the authority

of this section shall not exceed \$5,000. Nothing contained within this section prohibits a county or municipality from proceeding against a public nuisance by any other means.

Section 2. This act shall take effect October 1, 1997.

Became a law without the Governor's approval May 30, 1997.

Filed in Office Secretary of State May 29, 1997.