

Committee Substitute for
Committee Substitute for House Bill No. 163

An act relating to local government code enforcement; amending s. 125.69, F.S.; providing an exception from certain notice requirements under certain circumstances; requiring owners of property subject to an enforcement proceeding to disclose certain information prior to transfer of such property; creating a presumption of fraud under certain circumstances; authorizing local governing bodies to make certain repairs under certain circumstances; providing for absence of liability for such repairs under certain circumstances; amending s. 162.03, F.S.; specifying the status of special masters; amending s. 162.04, F.S.; revising a definition; amending s. 162.06, F.S.; requiring owners of property subject to enforcement proceedings to provide disclosure and notice to prospective transferees under certain circumstances; providing a rebuttable presumption; providing for continuation of enforcement proceedings under certain circumstances; providing procedures; amending s. 162.09, F.S.; specifying that certain actions taken by a local government do not create continuing obligations or liabilities under certain circumstances; authorizing certain counties or municipalities to adopt ordinances granting code enforcement boards or special masters authority to impose certain fines in excess of those authorized by law; specifying limitations; providing requirements; clarifying enforcement of orders imposing certain fines or costs; amending s. 162.12, F.S.; revising prescribed methods for providing certain notices; clarifying the time period for posting certain notices; amending s. 162.23, F.S.; providing an additional exception to requirements to provide reasonable time to correct violations under certain circumstances; amending ss. 125.0103 and 166.043, F.S.; authorizing local governments to enact public service rates for certain activities; providing for inapplicability of county rates for such activities in certain municipalities; providing severability; providing an effective date.

WHEREAS, Florida's procedures for local government code enforcement are meant to secure speedy compliance with local codes and ordinances while protecting the rights of property owners and the public health, safety, and welfare, and

WHEREAS, the procedures set forth in chapter 162, Florida Statutes, contain several alternative methods of code enforcement for local governments to choose from, but the choices are in need of some clarification regarding legislative intent, and

WHEREAS, it was intended by the Legislature that the procedure for a special master or hearing officer was to be in all respects the equivalent of the procedure for a code enforcement board, and

WHEREAS, substantial delay has been encountered in code enforcement proceedings when the owner of a noncomplying property transferred ownership to a third party, with some local governments being required to begin

the entire code enforcement process all over again with respect to the new owner, which was not the intent of the Legislature, and

WHEREAS, some local governments have been reluctant to use their power to repair unsafe noncomplying property because of concerns about future liability, and

WHEREAS, creating a presumption of receipt of a notice sent by certified mail, return receipt requested, when properly addressed to the owner, would alleviate the current problem of violators evading or greatly delaying code enforcement proceedings by refusing to sign for such notice, and

WHEREAS, some local governments are construing the posting procedure contained in s. 162.12(2), Florida Statutes, as mandating that they must prove that the notice so posted was continuously present for the entire 10-day posting period, and some violators were frustrating the intent of the posting provision by removing and secreting the posted notice before the 10 days had expired, which was not the intent of the Legislature, and

WHEREAS, it is the intent of the Legislature to cure the ambiguities and loopholes in chapter 162, Florida Statutes, just described, NOW, THEREFORE,

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

Section 1. Subsection (2) of section 125.69, Florida Statutes, 1998 Supplement, is amended to read:

125.69 Penalties; enforcement by code inspectors.—

(2) The board of county commissioners of each county may designate its agents or employees as code inspectors whose duty it is to assure code compliance. Any person designated as a code inspector may issue citations for violations of county codes and ordinances, respectively, or subsequent amendments thereto, when such code inspector has actual knowledge that a violation has been committed.

(a) Prior to issuing a citation, a code inspector shall provide notice to the violator that the violator has committed a violation of a code or ordinance and shall establish a reasonable time period within which the violator must correct the violation. Such time period shall be no more than 30 days. If, upon personal investigation, a code inspector finds that the violator has not corrected the violation within the time period, a code inspector may issue a citation to the violator. A code inspector does not have to provide the violator with a reasonable time period to correct the violation prior to issuing a citation and may immediately issue a citation if the code inspector has reason to believe that the violation presents a serious threat to the public health, safety, or welfare, or if the violation is irreparable or irreversible.

(b) A citation issued by a code inspector shall state the date and time of issuance, name and address of the person in violation, date of the violation, section of the codes or ordinances, or subsequent amendments thereto, vio-

lated, name of the code inspector, and date and time when the violator shall appear in county court.

(c) If a repeat violation is found subsequent to the issuance of a citation, the code inspector is not required to give the violator a reasonable time to correct the violation and may immediately issue a citation. For purposes of this subsection, the term "repeat violation" means a violation of a provision of a code or ordinance by a person who has previously been found to have violated the same provision within 5 years prior to the violation, notwithstanding the violations occurred at different locations.

(d) If the owner of property which is subject to an enforcement proceeding before county court transfers ownership of such property between the time the initial citation or citations are issued and the date the violator has been summoned to appear in county court, such owner shall:

1. Disclose, in writing, the existence and the nature of the proceeding to the prospective transferee.

2. Deliver to the prospective transferee a copy of the pleadings, notices, and other materials relating to the county court proceeding received by the transferor.

3. Disclose, in writing, to the prospective transferee that the new owner will be responsible for compliance with the applicable code and with orders issued in the county court proceeding.

4. File a notice with the code enforcement official of the transfer of the property, with the identity and address of the new owner and copies of the disclosures made to the new owner, within 5 days after the date of the transfer.

A failure to make the disclosure described in subparagraphs 1., 2., and 3. before the transfer creates a rebuttable presumption of fraud. If the property is transferred before the date the violator has been summoned to appear in county court, the proceeding shall not be dismissed but the new owner will be substituted as the party of record and thereafter provided a reasonable period of time to correct the violation before the continuation of proceedings in county court.

(e) If the code inspector has reason to believe a violation or the condition causing the violation presents a serious threat to the public health, safety, and welfare or if the violation is irreparable or irreversible in nature, or if after attempts under this section to bring a repeat violation into compliance with a provision of a code or ordinance prove unsuccessful, the local governing body may make all reasonable repairs which are required to bring the property into compliance and charge the owner with the reasonable cost of the repairs along with the fine imposed pursuant to this section. Making such repairs does not create a continuing obligation on the part of the local governing body to make further repairs or to maintain the property and does not create any liability against the local governing body for any damages to the property if such repairs were completed in good faith.

(f)(e) Nothing in this subsection shall be construed to authorize any person designated as a code inspector to perform any function or duties of a law enforcement officer other than as specified in this subsection. A code inspector shall not make physical arrests or take any person into custody and shall be exempt from requirements relating to the Special Risk Class of the Florida Retirement System, bonding, and the Criminal Justice Standards and Training Commission, as defined and provided by general law.

(g)(d) The provisions of this subsection shall not apply to the enforcement pursuant to ss. 553.79 and 553.80 of building codes adopted pursuant to s. 553.73 as they apply to construction, provided that a building permit is either not required or has been issued by the county. For the purposes of this paragraph, "building codes" means only those codes adopted pursuant to s. 553.73.

(h)(e) The provisions of this subsection may be used by a county in lieu of the provisions of part II of chapter 162.

(i)(f) The provisions of this subsection are additional or supplemental means of enforcing county codes and ordinances. Except as provided in paragraph (h)(e), nothing in this subsection shall prohibit a county from enforcing its codes or ordinances by any other means.

Section 2. Subsection (2) of section 162.03, Florida Statutes, is amended to read:

162.03 Applicability.—

(2) A charter county, a noncharter county, or a municipality may, by ordinance, adopt an alternate code enforcement system which gives code enforcement boards or special masters designated by the local governing body, or both, the authority to hold hearings and assess fines against violators of the respective county or municipal codes and ordinances. A special master shall have the same status as an enforcement board under this chapter. References in this chapter to an enforcement board, except in s. 162.05, shall include a special master if the context permits.

Section 3. Subsection (5) of section 162.04, Florida Statutes, is amended to read:

(5) "Repeat violation" means a violation of a provision of a code or ordinance by a person ~~who whom the code enforcement board has been~~ previously found through a code enforcement board or any other quasi-judicial or judicial process, to have violated or who has admitted violating the same provision within 5 years prior to the violation, notwithstanding the violations occur at different locations.

Section 4. Subsection (5) is added to section 162.06, Florida Statutes, to read:

162.06 Enforcement procedure.—

(5) If the owner of property which is subject to an enforcement proceeding before an enforcement board, special master, or court transfers ownership

of such property between the time the initial pleading was served and the time of the hearing, such owner shall:

(a) Disclose, in writing, the existence and the nature of the proceeding to the prospective transferee.

(b) Deliver to the prospective transferee a copy of the pleadings, notices, and other materials relating to the code enforcement proceeding received by the transferor.

(c) Disclose, in writing, to the prospective transferee that the new owner will be responsible for compliance with the applicable code and with orders issued in the code enforcement proceeding.

(d) File a notice with the code enforcement official of the transfer of the property, with the identity and address of the new owner and copies of the disclosures made to the new owner, within 5 days after the date of the transfer.

A failure to make the disclosures described in paragraphs (a), (b), and (c) before the transfer creates a rebuttable presumption of fraud. If the property is transferred before the hearing, the proceeding shall not be dismissed, but the new owner shall be provided a reasonable period of time to correct the violation before the hearing is held.

Section 5. Subsections (1) and (3) of section 162.09, Florida Statutes, are amended, and paragraph (d) is added to subsection (2) of said section, to read:

162.09 Administrative fines; costs of repair; liens.—

(1) An enforcement board, upon notification by the code inspector that an order of the enforcement board has not been complied with by the set time or, upon finding that a repeat violation has been committed, may order the violator to pay a fine in an amount specified in this section for each day the violation continues past the date set by the enforcement board for compliance or, in the case of a repeat violation, for each day the repeat violation continues, beginning with the date the repeat violation is found to have occurred by the code inspector. In addition, if the violation is a violation described in s. 162.06(4), the enforcement board shall notify the local governing body, which may make all reasonable repairs which are required to bring the property into compliance and charge the violator with the reasonable cost of the repairs along with the fine imposed pursuant to this section. Making such repairs does not create a continuing obligation on the part of the local governing body to make further repairs or to maintain the property and does not create any liability against the local governing body for any damages to the property if such repairs were completed in good faith. If a finding of a violation or a repeat violation has been made as provided in this part, a hearing shall not be necessary for issuance of the order imposing the fine. 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 as specified in paragraph (2)(a).

(2)(a) A fine imposed pursuant to this section shall not exceed \$250 per day for a first violation and shall not exceed \$500 per day for a repeat violation, and, in addition, may include all costs of repairs pursuant to subsection (1). However, if a code enforcement board finds the violation to be irreparable or irreversible in nature, it may impose a fine not to exceed \$5,000 per violation.

(b) In determining the amount of the fine, if any, the enforcement board shall consider the following factors:

1. The gravity of the violation;
2. Any actions taken by the violator to correct the violation; and
3. Any previous violations committed by the violator.

(c) An enforcement board may reduce a fine imposed pursuant to this section.

(d) A county or a municipality having a population equal to or greater than 50,000 may adopt, by a vote of at least a majority plus one of the entire governing body of the county or municipality, an ordinance that gives code enforcement boards or special masters, or both, authority to impose fines in excess of the limits set forth in paragraph (a). Such fines shall not exceed \$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 master finds the violation to be irreparable or irreversible in nature. In addition to such fines, a code enforcement board or special master may impose additional fines to cover all costs incurred by the local government in enforcing its codes and all costs of repairs pursuant to subsection (1). Any ordinance imposing such fines shall include criteria to be considered by the code enforcement board or special master in determining the amount of the fines, including, but not limited to, those factors set forth in paragraph (b).

(3) A certified copy of an order imposing a fine, or a fine plus repair costs, may be recorded in the public records and thereafter shall constitute a lien against the land on which the violation exists and upon any other real or personal property owned by the violator. Upon petition to the circuit court, such order ~~shall be enforceable~~ may be enforced in the same manner as a court judgment by the sheriffs of this state, including execution and levy against the personal property of the violator, but such order shall not be deemed to be a court judgment except for enforcement purposes. A fine imposed pursuant to this part shall continue to accrue until the violator comes into compliance or until judgment is rendered in a suit to foreclose on a lien filed pursuant to this section, whichever occurs first. 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 pursuant to this section. After 3 months from the filing of any such lien which remains unpaid, the enforcement board may authorize the local governing body attorney to foreclose on the lien. No lien created pursuant to the provisions of this part may be foreclosed on real property which is a homestead under s. 4, Art. X of the State Constitution.

Section 6. Subsection (1) and paragraph (b) of subsection (2) of section 162.12, Florida Statutes, are amended to read:

162.12 Notices.—

(1) All notices required by this part shall be provided to the alleged violator by:

(a) Certified mail, return receipt requested, provided if such notice is sent under this paragraph to the owner of the property in question at the address listed in the tax collector's office for tax notices, and at any other address provided to the local government by such owner and is returned as unclaimed or refused, notice may be provided by posting as described in subparagraphs (2)(b)1. and 2. and by first class mail directed to the addresses furnished to the local government with a properly executed proof of mailing or affidavit confirming the first class mailing; by

(b) Hand delivery by the sheriff or other law enforcement officer, code inspector, or other person designated by the local governing body; ~~or by~~

(c) Leaving the notice at the violator's usual place of residence with any person residing therein who is above 15 years of age and informing such person of the contents of the notice; or

(d) In the case of commercial premises, leaving the notice with the manager or other person in charge.

(2) In addition to providing notice as set forth in subsection (1), at the option of the code enforcement board, notice may also be served by publication or posting, as follows:

(b)1. In lieu of publication as described in paragraph (a), such notice may be posted ~~for~~ at least 10 days prior to the hearing, or prior to the expiration of any deadline contained in the notice, in at least two locations, one of which shall be the property upon which the violation is alleged to exist and the other of which shall be, in the case of municipalities, at the primary municipal government office, and in the case of counties, at the front door of the courthouse in said county.

2. Proof of posting shall be by affidavit of the person posting the notice, which affidavit shall include a copy of the notice posted and the date and places of its posting.

Evidence that an attempt has been made to hand deliver or mail notice as provided in subsection (1), together with proof of publication or posting as provided in subsection (2), shall be sufficient to show that the notice requirements of this part have been met, without regard to whether or not the alleged violator actually received such notice.

Section 7. Subsection (2) of section 162.23, Florida Statutes, is amended to read:

162.23 Notice to appear.—

(2) Prior to issuing a notice to appear, a code enforcement officer shall provide written notice to the person that the person has committed a violation of a code or ordinance and shall establish a reasonable time period within which the person must correct the violation. Such time period shall be no fewer than 5 days and no more than 30 days. If, upon personal investigation, a code enforcement officer finds that the person has not corrected the violation within the prescribed time period, a code enforcement officer may issue a notice to appear to the person who has committed the violation. A code enforcement officer is not required to provide the person with a reasonable time period to correct the violation prior to issuing a notice to appear and may immediately issue a notice to appear if a repeat violation is found, or if the code enforcement officer has reason to believe that the violation presents a serious threat to the public health, safety, or welfare or that the violator is engaged in violations of an itinerant or transient nature, as defined by local code or ordinance within the jurisdiction, or if the violation is irreparable or irreversible.

Section 8. Paragraphs (b) and (c) of subsection (1) of section 125.0103, Florida Statutes, 1998 Supplement, are amended to read:

125.0103 Ordinances and rules imposing price controls; findings required; procedures.—

(1)

(b) The provisions of this section shall not prevent the enactment by local governments of public service rates otherwise authorized by law, including water, sewer, solid waste, public transportation, taxicab, or port rates, rates for towing of vehicles from or immobilization of vehicles on private property, or rates for removal and storage of wrecked or disabled vehicles from an accident scene or the removal and storage of vehicles in the event the owner or operator is incapacitated, unavailable, leaves the procurement of wrecker service to the law enforcement officer at the scene, or otherwise does not consent to the removal of the vehicle.

(c) Counties must establish maximum rates fees which may be charged on the towing of vehicles from or immobilization of vehicles on private property, removal and storage of wrecked or disabled vehicles from an accident scene or for the removal and storage of vehicles, in the event the owner or operator is incapacitated, unavailable, leaves the procurement of wrecker service to the law enforcement officer at the scene, or otherwise does not consent to the removal of the vehicle. However, if a municipality chooses to enact an ordinance establishing the maximum fees for the towing or immobilization of vehicles as described in paragraph (b), the county's ordinance shall not apply within such municipality.

Section 9. Paragraphs (b) and (c) of subsection (1) of section 166.043, Florida Statutes, 1998 Supplement, are amended to read:

166.043 Ordinances and rules imposing price controls; findings required; procedures.—

(1)

(b) The provisions of this section shall not prevent the enactment by local governments of public service rates otherwise authorized by law, including water, sewer, solid waste, public transportation, taxicab, or port rates, rates for towing of vehicles from or immobilization of vehicles on private property, or rates for removal and storage of wrecked or disabled vehicles from an accident scene or the removal and storage of vehicles in the event the owner or operator is incapacitated, unavailable, leaves the procurement of wrecker service to the law enforcement officer at the scene, or otherwise does not consent to the removal of the vehicle.

(c) Counties must establish maximum rates fees which may be charged on the towing of vehicles from or immobilization of vehicles on private property, removal and storage of wrecked or disabled vehicles from an accident scene or for the removal and storage of vehicles, in the event the owner or operator is incapacitated, unavailable, leaves the procurement of wrecker service to the law enforcement officer at the scene, or otherwise does not consent to the removal of the vehicle. However, if a municipality chooses to enact an ordinance establishing the maximum fees for the towing or immobilization of vehicles as described in paragraph (b), the county's ordinance established under s. 125.0103 shall not apply within such municipality.

Section 10. The provisions of this act are declared to be severable. If any provision of section 8 or section 9 of this act are determined to be invalid, such invalidity shall not affect the validity of the remaining sections of this act, which sections express the primary intent of the Legislature in enacting this act.

Section 11. This act shall take effect October 1, 1999.

Approved by the Governor June 17, 1999.

Filed in Office Secretary of State June 17, 1999.