

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 140

SPONSOR: Comprehensive Planning, Local & Military Affairs Committee and Senator Geller

SUBJECT: Local Government Code Enforcement Boards

DATE: December 8, 1999 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cooper</u>	<u>Yeatman</u>	<u>CA</u>	<u>Favorable/CS</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

This bill authorizes local government code enforcement boards to sue for money judgments on liens. The bill also allows boards the option of posting notices at the main county governmental center as well as the county courthouse.

This bill amends the following sections of the Florida Statutes: 162.09, 162.10, and 162.12.

II. Present Situation:

Part I, chapter 162, F.S., is known as the "Local Government Code Enforcement Boards Act" and defines the authority and duties of local government code enforcement boards. Counties and municipalities are authorized to create administrative boards with authority to impose administrative fines and other noncriminal penalties to provide an equitable, expeditious, effective, and inexpensive method of enforcing county and municipal codes and ordinances where pending or repeated violations exist.

Section 162.09, F.S., authorizes code enforcement boards to impose limited fines and reasonable cost of repairs upon code violators. Certified copies of the order imposing the fine may be recorded in the public records, thereby constituting a lien against the land. By petition to a circuit court, the order may be enforced in the same manner as a court judgment by the sheriff. After three months from the filing of a lien, the local government attorney may foreclose on the lien.

The boards do not have the authority to create an independent cause of action to collect a fine pursuant to chapter 162, F.S. See *City of Tampa v. Braxton*, 616 So.2d 554 (Fla. 2 DCA 1993).

Many properties found to be in code violation and assessed fines are homestead properties; and the board may not foreclose its enforcement lien against homestead property. *Miskin v. City of Fort Lauderdale*, 661 So.2d 415 (Fla. 4 DCA 1995). The boards maintain that in some of these situations, there is little ability to enforce compliance with the code.

Section 162.10, F.S., provides that in an action to foreclose on a lien, the prevailing party is entitled to recover all costs, including a reasonable attorney's fee, that it incurs in the foreclosure.

Section 162.12, F.S., requires notice of violations be provided to alleged violators by the following:

- certified mail, return receipt requested;
- hand delivery by the sheriff or other law enforcement officer, code inspector, or other designated person; or
- leaving the notice at the violator's usual place of residence with any person residing at the residence, subject to certain restrictions.

This section also allows the notice to be by publication or posting. Published notices must be published once a week for 4 consecutive weeks in a newspaper of general circulation in the county where the code enforcement board is located. Posted notices must be posted for at least ten days in at least two specific locations: the property where the alleged violation exists and, in the case of municipalities, the primary municipal government office, or in the case of counties, at the front door of the courthouse. Proof of posting must be by affidavit of the person posting the notice and must include the date and places of posting.

Notice by publication or posting may run concurrently with or may follow, an attempt or attempts to notice by hand delivery or by certified mail, return receipt requested. Evidence that an attempt to notice by hand or certified mail, along with proof of publication or posting is sufficient to show that the notice requirements have been met.

III. Effect of Proposed Changes:

Section 1 amends s. 162.09 (3), F.S., to permit code enforcement boards to institute actions for money judgments three months after filing a lien if the lien remains unpaid.

Section 2 amends s. 162.10, F.S., to permit code enforcement boards to collect attorneys' fees and costs in their actions for money judgments.

Section 3 amends s. 162.12, F.S., to allow code enforcement boards the option of posting notices at the main county governmental center as well as the county courthouse.

Section 4 specifies that actions for money judgments may be pursued only on fines levied after October 1, 2000.

Section 5 provides that this act will take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Owners of homestead property will be subject to a lawsuit over the collection of their fines owed to code enforcement boards. In addition, this change will increase the expenses of violators by awarding attorneys' fees and costs to the code boards for suing the violators.

C. Government Sector Impact:

Code enforcement boards will now be able to initiate separate actions for money judgments.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.