

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: SB 360

SPONSOR: Senators Campbell and Scott

SUBJECT: Local governments

DATE: January 11, 2000

REVISED: 1/18/00 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Bowman</u>	<u>Yeatman</u>	<u>CA</u>	<u>Fav/1 amendment</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

This bill increases a local governments' authority to: (1) declare that dealing in stolen property in any place or premise is a public nuisance, and (2) abate such nuisance.

This bill amends s. 893.138, Florida Statutes.

II. Present Situation:

Chapter 893, F.S., addresses drug-abuse prevention and control. Specifically, s. 893.138, F.S., establishes instances where local governments may declare certain illegal activities a public nuisance and abate such activity. Examples of such activities include prostitution, the sale and possession of illegal drugs, and gang activity. Premises that have been used on more than two occasions, within a 6 month period for the identified activity, may be declared a public nuisance and subject to the penalties described below. The current language of the section does not define the term "pattern of criminal activity."

The provisions of s. 893.138, F.S., provide local governments with an administrative tool to assist in enforcing nuisance ordinances whose purpose is preventing or abating activities related to drug-abuse, prostitution, and criminal street gangs. This section is intended to promote, protect, and improve the health, safety, and welfare of the citizens of the state's counties and municipalities.

Section 893.138, F.S., authorizes the creation of administrative boards to hear certain public nuisance complaints and for local governments to impose administrative fines and other non-criminal penalties against owners of premises experiencing public nuisance activity as described in s. 893.138, F.S. Any employee, officer or resident of the municipality or county may bring a complaint before the administrative board after providing the owner of the premises at issue with at least three days notice of the complaint. After a hearing, the local government may declare the premises a public nuisance and require the owner to abate the nuisance or it may enter an order

prohibiting the operation, maintenance or conduct of any business or activity that is conducive to the nuisance.

Enforcement options under the section for the local government include: 1) enforcing an administrative order issued under the statute pursuant to s. 120.69, F.S.; or 2) seeking a temporary and permanent injunction pursuant to s. 60.05, F.S. In addition, the local government may supplement the provisions of the section by enacting an ordinance which creates additional fines for public nuisances, not to exceed \$250 per day, and fines not to exceed \$500 per day for recurring public nuisances.

III. Effect of Proposed Changes:

The bill adds dealing in stolen property to the list of activities considered public nuisances for which local governments may invoke administrative fines and other noncriminal penalties to enforce nuisance ordinances. A premise that has been used on more than two occasions within a 6-month period as the site of a violation of s. 812.019, F.S., which prohibits the dealing in stolen property, may be declared a public nuisance under s. 893.138, F.S., and subject to administrative fines.

The bill removes the potential nuisance of “pattern of criminal activity” from the requirement that the place or premise at issue had to have been used on more than two occasions, within a 6-month period. Because a “pattern of criminal street gang activity” implies more than one occurrence of gang activity, this precondition created ambiguity in interpreting the statute. Accordingly, the bill clarifies that a “pattern of criminal street gang activity” is defined by s. 874.03, F.S. A “pattern of criminal street gang activity” is defined by s. 874.03(3), F.S., to mean:

the commission or attempted commission of, or solicitation or conspiracy to commit, two or more felony or three or more misdemeanor offenses, or one felony and two misdemeanor offenses or the comparable number of delinquent acts or violations of law which would be felonies or misdemeanors if committed by an adult, on separate occasions within a 3-year period.

Section 2 provides an effective date of July 1, 1999.

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:

None.

C. Government Sector Impact:

Local governments may experience a nominal fiscal impact of the administrative cost of handling any new nuisance cases based on the use of premises for the purpose of dealing in stolen property that are brought before the local administrative board. These costs may be offset by the recovery of attorney's fees and costs from the owner of the property declared to be a nuisance.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

#1 Requires that property owners with multiple tenants located on a single site must be notified by a local government seeking to declare a public nuisance based on stolen property convictions. The notification must occur after the second stolen property conviction and provide that the property owner be given the opportunity to evict the offending tenant within 90 days of receipt of the notice, prior to the local government imposing a lien on the property.