1982

Session Law 82-037

Florida Senate & House of Representatives

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A bill to be entitled
An act relating to local code enforcement
boards; amending ss. 26.012(1), 166.051-
166.055, 166.057-166.061, Florida Statutes;
creating s. 166.063, Florida Statutes;
authorizing counties to create code enforcement
boards; providing a short title; providing
intent; providing applicability; providing
definitions; providing for membership and
organization of boards; limiting reappointment
of members; providing hearing procedures;
providing powers of boards; providing for fines
and liens; reducing maximum fine; providing for
liens against real and personal property of
violator other than property where violation
occurred under specified circumstances;
providing for appeals to the circuit court;
providing that provisions of act are
supplemental; providing an effective date.

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

Section 1. Section 166.051, Florida Statutes, is
amended to read:

166.051 Short title.---Sections 166.051-166.063 166.062
shall be known and may be cited as the "Local Government
Municipal Code Enforcement Boards Act."

Section 2. Section 166.052, Florida Statutes, is
amended to read:

166.052 Intent.---It is the intent of this act 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 to provide an equitable, expeditious, effective, and inexpensive method of enforcing the various occupational, fire, building, zoning, and sign codes in force in counties and municipalities, including, but not limited to, occupational license, fire, building, zoning, and sign codes.

Section 3. Section 166.053, Florida Statutes, is amended to read:

166.053 Applicability.--

(1) This act shall apply to the incorporated areas of every municipality in this state. Each county or municipality may, at its option, create or abolish by ordinance a Local Government Code Enforcement Board as provided herein.

(2) Charter counties may, by county ordinance, be exempted from the provisions of this act.

Section 4. Section 166.054, Florida Statutes, is amended to read:

166.054 Definitions.--

(1) "Local governing body" means the governing body of the county or municipality, however designated. "City council" means the legislative body of the municipality.

(2) "Code inspector" means any authorized agent or employee of the county or municipality whose duty it is to assure code compliance.

(3) "Local governing body city attorney" means the legal counselor for the county or municipality.

(4) "Enforcement board" means the Local Government Code Enforcement Board.
Section 5. Section 166.055, Florida Statutes, is amended to read:

166.055 **Municipal code Enforcement board; organization.**--

(1) The local governing body **city council** may appoint a member code enforcement board and legal counsel for the enforcement board. Members of the enforcement board shall be residents of the municipality in the case of an municipal board, or residents of the county in the case of a county board. Appointments shall be made in accordance with applicable law and ordinances **city charter** on the basis of experience or interest in the fields of zoning and building control. The membership of the enforcement board shall, whenever possible, consist of an architect, a businessman, an engineer, a general contractor, a subcontractor, and a realtor.

(2) The initial appointments to the enforcement board shall be as follows:

(a) Two members appointed for a term of 1 year.

(b) Two members appointed for a term of 2 years.

(c) Two members appointed for a term of 3 years.

Thereafter, all appointments shall be made for a term of 3 years. A any member may be reappointed for one successive term upon approval of the local governing body. Appointments to fill any vacancy on the enforcement board shall be for the remainder of the unexpired term of office. If any member who fails to attend two of three successive meetings without cause and without prior approval of the chairman, the board shall declare the member's office vacant shall automatically forfeit his appointment, and

CODING: Words in struck through type are deletions from existing law; words underlined are additions.
the local governing body shall promptly fill such vacancy. The members shall serve in accordance with
district's ordinances of the local governing body the city charter and
may be suspended and removed for cause as provided in such the
city code of ordinances for removal of members of city boards.

(3) The members of the enforcement board shall elect a
chairman from among its members. The presence of four or more
members shall constitute a quorum of the enforcement board.
Members shall serve without compensation, but may be
reimbursed for such travel, mileage, and per diem expenses as
may be authorized by the local governing body or as otherwise
provided by law.

(4) The local governing body attorney shall
either be counsel to the code enforcement board or shall
represent the municipality or county by presenting cases
before the board, but in no case shall the local governing
body attorney serve in both capacities.

Section 6. Section 166.057, Florida Statutes, is
amended to read:

166.057 Conduct of hearing.--

(1) The chairman of the enforcement board may call
hearings of the enforcement board; hearings may also be called
by written notice signed by at least three members of the
enforcement board. At any hearing the enforcement board may
set a future hearing date. The enforcement board shall attempt to convene no less frequently than once every 2
months, but it may meet more or less often as the demand
necessitates. Minutes shall be kept of all hearings by the
enforcement board, and all hearings and proceedings shall be
open to the public. The local governing body shall provide clerical and administrative personnel as may be
reasonably required by the enforcement board for the proper
performance of its duties.

(2) Each case before the enforcement board shall be
presented by the local governing body city attorney or by a
member of the administrative staff of the local governing body
municipality.

(3) The enforcement board shall proceed to hear the
cases on the agenda for that day. All testimony shall be
under oath and shall be recorded. The enforcement board shall
take testimony from the code inspector and alleged violator.
Formal rules of evidence shall not apply, but fundamental due
process shall be observed and shall govern said proceedings.

(4) At the conclusion of the hearing, the enforcement
board shall issue findings of fact, based on evidence of
record, and conclusions of law and shall issue an order
affording the proper relief consistent with powers granted
herein. The finding shall be by motion approved by a majority
of those present and voting, except that at least three
members of the enforcement board must vote in order for the
action to be official. The record shall be presented to the
court on appeal and shall be subject to review:

Section 7. Section 166.058, Florida Statutes, is
amended to read:

166.058 Powers of the enforcement board.--The
enforcement board shall have the power to:

(1) Adopt rules for the conduct of its hearings.

(2) Subpoena alleged violators and witnesses to its
hearings. Subpoenas may be served by the sheriff of the
county or police department of the municipality.

(3) Subpoena evidence.

(4) Take testimony under oath.

CODING: Words in struck through type are deletions from existing law, words underlined are additions.
(5) Issue orders having the force of law commanding whatever steps are necessary to bring a violation into compliance.

Section 8. Section 166.059, Florida Statutes, is amended to read:

166.059 Administrative fines; liens.--The enforcement board, upon notification by the code inspector that a previous order of the enforcement board has not been complied with by the set time, may order the violator to pay a fine not to exceed $100 for each day the violation continues past the date set for compliance. A certified copy of an order imposing a fine may be recorded in the public records and thereafter shall constitute a lien against the land on which the violation exists or, if the violator does not own the land, upon any other real or personal property owned by the violator. After 1 year from the filing of any such lien which remains unpaid, the enforcement board may authorize the local governing body or its attorney to foreclose on the lien.

Section 9. Section 166.061, Florida Statutes, is amended to read:

166.061 Appeals.--An aggrieved party, including the local governing body, may appeal a final administrative ruling or order of the enforcement board to the circuit court. An appeal shall be filed within 30 days of the execution of the order to be appealed.

Section 10. Section 166.063, Florida Statutes, is created to read:

166.063 Provisions of act supplemental.--Nothing contained in ss. 166.051-166.062 shall prohibit a local governing body from enforcing its codes by any other means. It is the legislative intent of ss. 166.051-166.062 to provide

CODING: Words in struck through type are deletions from existing law; words underlined are additions.
Section 11. Subsection (1) of section 26.012, Florida Statutes, is amended to read:

26.012 Jurisdiction of circuit court.--

(1) Circuit courts shall have jurisdiction of appeals from county courts except appeals of county court orders or judgments declaring invalid a state statute or a provision of the State Constitution. Circuit courts shall have jurisdiction of appeals from final administrative orders of local government code enforcement boards.

Section 12. This act shall take effect July 1, 1982.

SENATE SUMMARY

Authorizes counties to establish code enforcement boards in the same manner as municipalities may establish such boards. Provides that a fine imposed by such a board constitutes a lien against any real or personal property owned by the violator if the violator does not own the property on which the violation occurred. Limits reappointment of members to one successive term. Reduces maximum fine that may be imposed by a local code enforcement board from $500 to $100.

CODING: Words in [ ] are deletions from existing law; words underlined are additions.
A bill to be entitled
An act relating to local code enforcement boards; amending ss. 26.012(1), 166.051-166.055, 166.057-166.061, Florida Statutes; creating ss. 166.060 and 166.063, Florida Statutes; authorizing counties to create code enforcement boards; providing a short title; providing intent; providing applicability; providing definitions; increasing membership of the code enforcement boards; providing for membership and organization of boards; limiting reappointment of members; providing hearing procedures; providing powers of boards; providing for fines and liens; reducing maximum fine; providing for liens against real and personal property of violator other than property where violation occurred under specified circumstances; providing for appeals to the circuit court; providing that provisions of act are supplemental; providing an effective date.

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

Section 1. Section 166.051, Florida Statutes, is amended to read:

166.051 Short title.--Sections 166.051-166.063 shall be known and may be cited as the "Local Government Municipal Code Enforcement Boards Act."

Section 2. Section 166.052, Florida Statutes, is amended to read:
166.052 Intent.--It is the intent of this act 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 to provide an equitable, expeditious, effective, and inexpensive method of enforcing the various occupational, fire, building, zoning, and sign codes in force in counties and municipalities, including, but not limited to, occupational license, fire, building, zoning, and sign codes.

Section 3. Section 166.053, Florida Statutes, is amended to read:

166.053 Applicability.--

1. This act shall apply to the incorporated areas of every municipality in this state. Each county or municipality may, at its option, create or abolish by ordinance a Local Government Code Enforcement Board as provided herein.

2. Charter counties may, by county ordinance, be exempted from the provisions of this act.

Section 4. Section 166.054, Florida Statutes, is amended to read:

166.054 Definitions.--

1. "Local governing body" means the governing body of the county or municipality, however designated. "City council" means the legislative body of the municipality.

2. "Code inspector" means any authorized agent or employee of the county or municipality whose duty it is to assure code compliance.

3. "Local governing body city attorney" means the legal counselor for the county or municipality.

Coding: Words in italics through type are deletions from existing law; words underlined are additions.
(4) "Enforcement board" means the Local Government Code Enforcement Board.

Section 5. Section 166.055, Florida Statutes, is amended to read:

166.055 Municipal code Enforcement board;

organization.--

(1) The local governing body city-council may appoint a seven-member code enforcement board and legal counsel for the enforcement board. Members of the enforcement board shall be residents of the municipality in the case of a municipal board, or residents of the county in the case of a county board. Appointments shall be made in accordance with applicable law and ordinances the-city-charter on the basis of experience or interest in the fields of zoning and building control. The membership of the enforcement board shall, whenever possible, include consist-of an architect, a businessman, an engineer, a general contractor, a subcontractor, and a realtor.

(2) The initial appointments to the enforcement board shall be as follows:

(a) Two members appointed for a term of 1 year.
(b) Three members appointed for a term of 2 years.
(c) Two members appointed for a term of 3 years.

Thereafter, all appointments shall be made for a term of 3 years. A member may be reappointed for one successive term upon approval of the local governing body city-council. Appointments to fill any vacancy on the enforcement board shall be for the remainder of the unexpired term of office. If any member who fails to attend two of three successive meetings without cause and without prior

CODING: Words in # type are deletions from existing law; words underlined are additions.
approval of the chairman, the board shall declare the member's office vacant shall automatically forfeit his appointment, and the local governing body city council shall promptly fill such vacancy. The members shall serve in accordance with ordinances of the local governing body the city charter and may be suspended and removed for cause as provided in such the city code of ordinances for removal of members of city boards.

(3) The members of the enforcement board shall elect a chairman from among its members. The presence of four or more members shall constitute a quorum of the enforcement board. Members shall serve without compensation, but may be reimbursed for such travel, mileage, and per diem expenses as may be authorized by the local governing body or as otherwise provided by law city council.

(4) The local governing body city attorney shall either be counsel to the code enforcement board or shall represent the municipality or county city by presenting cases before the board, but in no case shall the local governing body city attorney serve in both capacities.

Section 6. Section 166.057, Florida Statutes, is amended to read:

166.057 Conduct of hearing.--

(1) The chairman of the enforcement board may call hearings of the enforcement board; hearings may also be called by written notice signed by at least three members of the enforcement board. At any hearing the enforcement board may set a future hearing date. The enforcement board shall attempt to convene no less frequently than once every 2 months, but it may meet more or less often as the demand necessitates. Minutes shall be kept of all hearings by the enforcement board, and all hearings and proceedings shall be

CQCM: Words in square brackets are deletions from existing law; words underlined are additions.
open to the public. The local governing body shall provide clerical and administrative personnel as may be reasonably required by the enforcement board for the proper performance of its duties.

(2) Each case before the enforcement board shall be presented by the local governing body attorney or by a member of the administrative staff of the local governing body municipality.

(3) The enforcement board shall proceed to hear the cases on the agenda for that day. All testimony shall be under oath and shall be recorded. The enforcement board shall take testimony from the code inspector and alleged violator. Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern said proceedings.

(4) At the conclusion of the hearing, the enforcement board shall issue findings of fact, based on evidence of record, and conclusions of law and shall issue an order affording the proper relief consistent with powers granted herein. The finding shall be by motion approved by a majority of those present and voting, except that at least four members of the enforcement board must vote in order for the action to be official. The record shall be presented to the court of appeal and shall be subject to review.

Section 7. Section 166.058, Florida Statutes, is amended to read:

166.058 Powers of the enforcement board.--The enforcement board shall have the power to:

   (1) Adopt rules for the conduct of its hearings.

   (2) Subpoena alleged violators and witnesses to its hearings. Subpoenas may be served by the sheriff of the county or police department of the municipality.

CODING: Words in struck through type are deletions from existing law; words underlined are additions.
(3) Subpoena evidence.

(4) Take testimony under oath.

(5) Issue orders having the force of law commanding whatever steps are necessary to bring a violation into compliance.

Section 8. Section 166.059, Florida Statutes, is amended to read:

166.059 Administrative fines; liens.--The enforcement board, upon notification by the code inspector that a previous order of the enforcement board has not been complied with by the set time, may order the violator to pay a fine not to exceed $250 for each day the violation continues past the date set for compliance. A certified copy of an order imposing a fine may be recorded in the public records and thereafter shall constitute a lien against the land on which the violation exists or, if the violator does not own the land, upon any other real or personal property owned by the violator. After 1 year from the filing of any such lien which remains unpaid, the enforcement board may authorize the local governing body city attorney to foreclose on the lien.

Section 9. Section 166.060, Florida Statutes, is created to read:

166.060 Duration of lien.--No lien provided by the Local Government Code Enforcement Boards Act shall continue for a longer period than 2 years after the certified copy of an order imposing a fine has been recorded, unless within that time an action to foreclose on the lien is commenced in a court of competent jurisdiction. The continuation of the lien effected by the commencement of the action shall not be good against creditors or subsequent purchasers for valuable CODING: Words in struck through type are deletions from existing law; words underlined are additions.
consideration without notice, unless a notice of lis pendens is recorded.

Section 10. Section 166.061, Florida Statutes, is amended to read:

166.061 Appeals.--An aggrieved party, including the local governing body, may appeal a final administrative ruling or order of the enforcement board to the circuit court. An appeal shall be filed within 30 days of the execution of the order to be appealed.

Section 11. Section 166.063, Florida Statutes, is created to read:

166.063 Provisions of act supplemental.--Nothing contained in ss. 166.051-166.062 shall prohibit a local governing body from enforcing its codes by any other means. It is the legislative intent of ss. 166.051-166.062 to provide an additional or supplemental means of obtaining compliance with local codes.

Section 12. Subsection (1) of section 26.012, Florida Statutes, is amended to read:

26.012 Jurisdiction of circuit court.--

(1) Circuit courts shall have jurisdiction of appeals from county courts except appeals of county court orders or judgments declaring invalid a state statute or a provision of the State Constitution. Circuit courts shall have jurisdiction of appeals from final administrative orders of local government code enforcement boards.

Section 13. This act shall take effect July 1, 1982.
S 0345 GENERAL BILL/CS BY JUDICIARY-CIVIL, ANDERSON (COMPARE H 0190)
COMPRESSED GASES TRANSPORTATION; LIMITS LIABILITY OF PERSONS WHO PROVIDE
ASSISTANCE IN A DANGEROUS INCIDENT; PROVIDES EXCEPTIONS.
EFFECTIVE DATE: 10/01/82.
12/18/81 SENATE PREFILED
01/07/82 SENATE REFERRED TO JUDICIARY-CIVIL
01/18/82 SENATE INTRODUCED, REFERRED TO JUDICIARY-CIVIL - SJ 00035
01/25/82 SENATE ON COMMITTEE AGENDA - JUDICIARY-CIVIL 1/29/82 2 PM
RM B
01/27/82 SENATE COMM. REPORT: C/S PLACED ON CALENDAR BY
JUDICIARY-CIVIL - SJ 00085
01/10/82 SENATE PLACED ON SPECIAL ORDER CALENDAR; C/S READ FIRST TIME;
C/S PASSED; YEA 37 NAY 0 - SJ 00396
01/11/82 HOUSE IN MESSAGES
01/25/82 HOUSE DIED IN MESSAGES

S 0346 GENERAL BILL BY ANDERSON (IDENTICAL H 0363)
RELIEF/CRYSTAL ANDREWS; PROVIDES APPROPRIATION TO A TRUST TO COMPENSATE
HER FOR THE DEATH OF JEFFREY ALLEN ANDREWS, HER FATHER; PROVIDES FOR
PAYMENT OF ATTORNEYS' FEES & ADMINISTRATION FEES.
CLAIM WITH APPROPRIATION: $35,000. EFFECTIVE DATE: UPON BECOMING LAW.
12/18/81 SENATE PREFILED
01/07/82 SENATE REFERRED TO THE SPECIAL MASTER FOR CLAIM BILLS, FINANCE, TAXATION AND CLAIMS
01/18/82 SENATE INTRODUCED, REFERRED TO THE SPECIAL MASTER FOR CLAIM BILLS, FINANCE, TAXATION AND CLAIMS - SJ 00035
01/28/82 SENATE EXTENSION OF TIME GRANTED COMMITTEE THE SPECIAL MASTER
FOR CLAIM BILLS
02/09/82 SENATE EXTENSION OF TIME GRANTED COMMITTEE THE SPECIAL MASTER
FOR CLAIM BILLS
02/25/82 SENATE COMM. REPORT: UNFAVORABLE BY THE SPECIAL MASTER FOR
CLAIM BILLS; NOW IN FINANCE, TAXATION AND CLAIMS - SJ 00035
03/18/82 SENATE WITHDRAWN FROM FINANCE, TAXATION AND CLAIMS; REFERRED
TO RULES AND CALENDAR - SJ 00010
01/18/82 SENATE DIED IN COMMITTEE ON RULES AND CALENDAR

S 0347 GENERAL BILL BY ANDERSON (COMPARE CS/H 0211, CS/H 0931, CS/S 0683,
S 0850)
HEALTH CARE COST CONTAINMENT ACT; REQUIRES THAT GEOGRAPHICAL DIFFERENCES
BE ONE OF CHARACTERISTICS BY WHICH THE HOSPITAL COST CONTAINMENT BOARD
CLASSIFIES HOSPITALS. AMENDS 395.507, .509. EFFECTIVE DATE: UPON BECOMING LAW.
12/18/81 SENATE PREFILED
01/07/82 SENATE REFERRED TO HEALTH AND REHABILITATIVE SERVICES
01/18/82 SENATE INTRODUCED, REFERRED TO HEALTH AND REHABILITATIVE SERVICES - SJ 00035
02/01/82 SENATE EXTENSION OF TIME GRANTED COMMITTEE HEALTH AND
REHABILITATIVE SERVICES
02/15/82 SENATE EXTENSION OF TIME GRANTED COMMITTEE HEALTH AND
REHABILITATIVE SERVICES
03/02/82 SENATE EXTENSION OF TIME GRANTED COMMITTEE HEALTH AND
REHABILITATIVE SERVICES
03/08/82 SENATE WITHDRAWN FROM HEALTH AND REHABILITATIVE SERVICES;
REFERRED TO RULES AND CALENDAR - SJ 00010
03/18/82 SENATE DIED IN COMMITTEE, IDEN./SIM./COMPARE BILL PASSED, REFER TO C/S HS 931 CM. 82-1827

S 0348 GENERAL BILL BY MAXWELL
SCHOOLS; AUTHORIZES SEARCHES OF STUDENTS' LOCKERS UNDER CERTAIN
CIRCUMSTANCES; REQUIRES NOTICE IN PUBLIC SCHOOL THAT LOCKERS ARE SCHOOL
PROPERTY & SUBJECT TO SEARCHES; AUTHORIZES PHYSICAL SEARCHES OF STUDENTS
UNDER EMERGENCY SITUATIONS; AUTHORIZES USE OF METAL DETECTORS/ANIMALS/
OTHER DEVICES; ETC. EFFECTIVE DATE: UPON BECOMING LAW.
18/28/81 SENATE PREFILED
01/28/82 SENATE EXTENSION OF TIME GRANTED COMMITTEE EDUCATION
02/15/82 SENATE EXTENSION OF TIME GRANTED COMMITTEE EDUCATION
02/26/82 SENATE EXTENSION OF TIME GRANTED COMMITTEE EDUCATION
03/05/82 SENATE EXTENSION OF TIME GRANTED COMMITTEE EDUCATION
03/18/82 SENATE WITHDRAWN FROM EDUCATION; REFERRED TO RULES AND CALENDAR - SJ 00010
03/25/82 SENATE DIED IN COMMITTEE ON RULES AND CALENDAR

S 0349 GENERAL BILL BY FRANK (IDENTICAL H 0515)
MOTOR FUELS & SPECIAL FUELS TAX; AUTHORIZES A COUNTY TO SETTLE CERTAIN
CLAIMS ARISING FROM SUCH REFUNDS. AMENDS 336.021. EFFECTIVE DATE:
UPON BECOMING LAW.
12/1/81 SENATE PREFILED
01/07/82 SENATE REFERRED TO FINANCE, TAXATION AND CLAIMS
01/18/82 SENATE INTRODUCED, REFERRED TO FINANCE, TAXATION AND CLAIMS - SJ 00035
01/25/82 SENATE ON COMMITTEE AGENDA — FINANCE, TAX & CLAIMS 1/28/82
10 AM RM 1
01/28/82 SENATE COMM. REPORT: FAVORABLE, PLACED ON CALENDAR BY FINANCE,
TAXATION AND CLAIMS - SJ 00010
02/23/82 SENATE PLACED ON SPECIAL ORDER CALENDAR; IDEN./SIM. HOUSE BILL
SUBSTITUTED: LAID ON TABLE UNDER RULE, IDEN./SIM./COMPARE BILL PASSED, REFER TO HB 515 CM.
82-401 - SJ 00231

S 0350 GENERAL BILL/CS BY ECONOMIC, COMMUNITY AND CONSUMER AFFAIRS, Dunn
LOCAL CODE ENFORCEMENT BOARDS; PROVIDES FOR DURATION OF LIEN; AUTHORIZES
COUNTRIES TO CREATE SAID BOARDS; PROVIDES FOR MEMBERSHIP & ORGANIZATION
OF LOCAL CODE ENFORCEMENT BOARDS; PROVIDES APPOINTMENT OF MEMBERS; PROVIDES HOURS, PROCEDURES,
Powers OF BOARDS, FINES & LIENS; REDUCES MAXIMUM FINE, ETC. AMENDS
201.012, CH. 166. EFFECTIVE DATE: 10/01/82.
12/02/81 SENATE PREFILED
01/07/82 SENATE REFERRED TO ECONOMIC, COMMUNITY AND CONSUMER AFFAIRS,
JUDICIARY-CIVIL - SJ 00036
01/18/82 SENATE INTRODUCED, REFERRED TO ECONOMIC, COMMUNITY AND CONSUMER AFFAIRS,
JUDICIARY-CIVIL - SJ 00036
01/29/82 SENATE EXTENSION OF TIME GRANTED COMMITTEE ECONOMIC, COMMUNITY
AND CONSUMER AFFAIRS
02/01/82 SENATE ON COMMITTEE AGENDA — ECONOMIC, COMM/CONS. AFFAIRS
02/03/82 SENATE COMM. REPORT: C/S BY ECONOMIC, COMMUNITY AND CONSUMER
AFFAIRS - SJ 00123
02/05/82 SENATE DIED IN JUDICIARY-CIVIL - SJ 00123
02/18/82 SENATE EXTENSION OF TIME GRANTED COMMITTEE JUDICIARY-CIVIL; ON
COMMITTEE AGENDA — JUDICIARY-CIVIL 2/22/82 2 PM RM B
02/22/82 SENATE COMM. REPORT: FAVORABLE, PLACED ON CALENDAR BY
JUDICIARY-CIVIL - SJ 00029
03/02/82 SENATE C/S READ FIRST TIME; C/S PASSED AS AMENDED; YEA 33
NAY 0 - SJ 00248
03/03/82 SENATE RECONSIDERED - SJ 00035; IDEN./SIM. HOUSE BILL
SUBSTITUTED: LAID ON TABLE UNDER RULE, IDEN./SIM./COMPARE BILL PASSED, REFER TO C/S HB 421
(CH. 82-37) - SJ 00037

S 0351 GENERAL BILL BY LANGLEY (SIMILAR H 0439, S 0312, COMPARE S 0069,
S 0432)
IMPRISONMENT FOR PERSONS DRIVING WITH BLOOD ALCOHOL CONTENT BY WEIGHT OF
0.20% OR MORE. AMENDS 316.193. EFFECTIVE DATE: 10/01/82.
12/21/81 SENATE PREFILED
01/07/82 SENATE REFERRED TO JUDICIARY-CRIMINAL
01/18/82 SENATE INTRODUCED, REFERRED TO JUDICIARY-CRIMINAL - SJ 00036
01/25/82 SENATE ALSO REFERRED TO JUDICIARY-CIVIL - SJ 00036
By Representative Brown

A bill to be entitled
An act relating to local code enforcement boards; amending ss. 26.012(1), 166.051-166.055, 166.057-166.061, Florida Statutes; creating s. 166.063, Florida Statutes; authorizing counties to create code enforcement boards; providing a short title; providing intent; providing applicability; providing definitions; providing for membership and organization of boards; limiting reappointment of members; providing hearing procedures; providing powers of boards; providing for fines and liens; reducing maximum fine; providing for liens against real and personal property of violator other than property where violation occurred under specified circumstances; providing for appeals to the circuit court; providing that provisions of act are supplemental; providing an effective date.

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

Section 1. Section 166.051, Florida Statutes, is amended to read:

166.051 Short title.--Sections 166.051-166.063 shall be known and may be cited as the "Local Government Municipal Code Enforcement Boards Act."

Section 2. Section 166.052, Florida Statutes, is amended to read:

166.052 Intent.--It is the intent of this act 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 to provide an equitable, expeditious, effective, and inexpensive method of enforcing the various occupational license, fire, building, zoning, and sign codes in force in counties and municipalities, including, but not limited to, occupational license, fire, building, zoning, and sign codes.

Section 3. Section 166.053, Florida Statutes, is amended to read:

166.053 Applicability.--
(1) This act shall apply to the unincorporated areas of every municipality in this state. Each county or municipality may, at its option, create or abolish by ordinance a Local Government Code Enforcement Board as provided herein.

(2) Charter counties may, by county ordinance, be exempted from the provisions of this act.

Section 4. Section 166.054, Florida Statutes, is amended to read:

166.054 Definitions.--
(1) "Local governing body" means the governing body of the county or municipality, however designated. "City council" means the legislative body of the municipality.

(2) "Code inspector" means any authorized agent or employee of the county or municipality whose duty it is to assure code compliance.

(3) "Local governing body city attorney" means the legal counsel for the county or municipality.

(4) "Enforcement board" means the Local Government Code Enforcement Board.

Thereafter, all appointments shall be made for a term of 3 years. Any member may be reappointed for one successive term upon approval of the local governing body city council. Appointments to fill any vacancy on the enforcement board shall be for the remainder of the unexpired term of office. If any member who fails to attend two of three successive meetings without cause and without prior approval of the chairman, the board shall declare the member's office vacant shall automatically forfeit his appointment, and...
the local governing body shall promptly fill such vacancy. The members shall serve in accordance with ordinances of the local governing body and may be suspended and removed for cause as provided in such the eity-code-of ordinances for removal of members of eity boards.

(3) The members of the enforcement board shall elect a chairman from among its members. The presence of four or more members shall constitute a quorum of the enforcement board. Members shall serve without compensation, but may be reimbursed for such travel, mileage, and per diem expenses as may be authorized by the local governing body or as otherwise provided by law.

(4) The local governing body attorney shall either be counsel to the code enforcement board or shall represent the municipality or county by presenting cases before the board, but in no case shall the local governing body attorney serve in both capacities.

Section 6. Section 166.057, Florida Statutes, is amended to read:

166.057 Conduct of hearing.--
(1) The chairman of the enforcement board may call hearings of the enforcement board; hearings may also be called by written notice signed by at least three members of the enforcement board. At any hearing the enforcement board may set a future hearing date. The enforcement board shall attempt to convene no less frequently than once every 2 months, but it may meet more or less often as the demand necessitates. Minutes shall be kept of all hearings by the enforcement board, and all hearings and proceedings shall be open to the public. The enforcement board shall provide clerical and administrative personnel as may be reasonably required by the enforcement board for the proper performance of its duties.

(2) Each case before the enforcement board shall be presented by the local governing body attorney or by a member of the administrative staff of the local governing body.

(3) The enforcement board shall proceed to hear the cases on the agenda for that day. All testimony shall be under oath and shall be recorded. The enforcement board shall take testimony from the code inspector and alleged violator. Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern said proceedings.

(4) At the conclusion of the hearing, the enforcement board shall issue findings of fact, based on evidence of record, and conclusions of law and shall issue an order affording the proper relief consistent with powers granted herein. The finding shall be by motion approved by a majority of those present and voting, except that at least three members of the enforcement board must vote in order for the action to be official. The record shall be presented to the court on appeal and shall be subject to review.

Section 7. Section 166.058, Florida Statutes, is amended to read:

166.058 Powers of the enforcement board.--The enforcement board shall have the power to:

(1) Adopt rules for the conduct of its hearings.

(2) Subpoena alleged violators and witnesses to its hearings. Subpoenas may be served by the sheriff of the county or police department of the municipality.

(3) Subpoena evidence.

(4) Take testimony under oath.

CODING: Words in struck through type are deletions from existing law; words underlined are additions.
(5) Issue orders having the force of law commanding whatever steps are necessary to bring a violation into compliance.

Section 8. Section 166.059, Florida Statutes, is amended to read:

166.059 Administrative fines; liens.—The enforcement board, upon notification by the code inspector that a previous order of the enforcement board has not been complied with by the set time, may order the violator to pay a fine not to exceed $100 for each day the violation continues past the date set for compliance. A certified copy of an order imposing a fine may be recorded in the public records and thereafter shall constitute a lien against the land on which the violation exists or, if the violator does not own the land, upon any other real or personal property owned by the violator. After 1 year from the filing of any such lien which remains unpaid, the enforcement board may authorize the local governing body or city attorney to foreclose on the lien.

Section 9. Section 166.061, Florida Statutes, is amended to read:

166.061 Appeals.—An aggrieved party, including the local governing body, may appeal a final administrative ruling or order of the enforcement board to the by-eertier-in-circuit court. An appeal shall be filed within 30 days of the execution of the order to be appealed.

Section 10. Section 166.063, Florida Statutes, is created to read:

166.063 Provisions of act supplemental.—Nothing contained in ss. 166.051-166.062 shall prohibit a local governing body from enforcing its codes by any other means. It is the legislative intent of ss. 166.051-166.062 to provide an additional or supplemental means of obtaining compliance with local codes.

Section 11. Subsection (1) of section 26.012, Florida Statutes, is amended to read:

26.012 Jurisdiction of circuit court.—

(1) Circuit courts shall have jurisdiction of appeals from county courts except appeals of county court orders or judgments declaring invalid a state statute or a provision of the State Constitution. Circuit courts shall have jurisdiction of appeals from final administrative orders of local government code enforcement boards.

Section 12. This act shall take effect July 1, 1982.

SENATE SUMMARY

Authorizes counties to establish code enforcement boards in the same manner as municipalities may establish such boards. Provides that a fine imposed by such a board constitutes a lien against any real or personal property owned by the violator if the violator does not own the property on which the violation occurred. Limits reappointment of members to one successive term. Reduces maximum fine that may be imposed by a local code enforcement board from $500 to $100.
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Sales of houses and other structures as provided hereby shall first be made in single units; thereafter, sales in bulk may be made as herein provided. Removal of houses and other structures, when sales are made under bulk sale provisions as herein provided, shall not be permitted until all houses and structures sold in single units have been removed from the site. "Due advertisement" under this section shall be advertisement in a newspaper of general circulation in the area of the improvements of not less than 14 calendar days prior to the date of the receipt of bids or the date on which public auction is to be held.

(5) In addition to the options otherwise available to the department, property held by the department which is no longer used or needed may be leased or conveyed without consideration to a county, municipality, or other unit of state or local government to be used for a public purpose. In the case of property acquired for use as a borrow pit but which is no longer needed, the department may sell such property to the owner of the parcel of abutting land from which the borrow pit was originally acquired, provided the sale shall be at a negotiated price not less than fair market value as determined by an independent appraisal, the cost of which is paid by the owner of such abutting land.

(7) The appraisal required by subsections (2) and (5) shall be prepared in accordance with department guidelines and regulations by an independent appraiser who has been certified by the department. If federal funds were used in the acquisition of the property, the appraisal shall also be subject to the approval of the Federal Highway Administration of the United States Department of Transportation.

Section 3. Subsection (7) is added to section 337.28, Florida Statutes, to read:

337.28 Rights-of-way furnished by counties; eminent domain; contracts with department; bond.--

(7) Any property which was acquired by a county for rights-of-way for roads on the state highway or state park road system and which is no longer used or needed by the department may be conveyed without consideration to that county. The county may then sell such surplus property upon receipt of competitive bids in the same manner prescribed for the department in s. 337.25(2).

Section 4. This act shall take effect upon becoming law.

Approved by the Governor March 17, 1982.

Filed in Office Secretary of State March 17, 1982.

Committee Substitute for House Bill No. 421

An act relating to local code enforcement boards; amending ss. 26.012(1), 166.051-166.055, 166.057-166.061, Florida Statutes; creating ss. 166.060 and 166.063, Florida Statutes; authorizing counties to create code enforcement boards; providing a short title; providing
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intent; providing applicability; providing definitions; increasing membership of the code enforcement boards; providing for membership and organization of boards; limiting reappointment of members; providing hearing procedures; providing powers of boards; providing for fines and liens; reducing maximum fine; providing for liens against real and personal property of violator other than property where violation occurred under specified circumstances; providing for appeals to the circuit court; providing that provisions of act are supplemental; providing an effective date.

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

Section 1. Section 166.051, Florida Statutes, is amended to read:

166.051 Short title.--Sections 166.051-166.063 shall be known and may be cited as the "Local Government Code Enforcement Boards Act."

Section 2. Section 166.052, Florida Statutes, is amended to read:

166.052 Intent.--It is the intent of this act 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 to provide an equitable, expeditious, effective, and inexpensive method of enforcing various occupational license, fire, building, zoning, sign, and related technical codes in force in counties and municipalities, including, but not limited to, occupational licenses, fire, building, zoning, and sign codes.

Section 3. Section 166.053, Florida Statutes, is amended to read:

166.053 Applicability.--

(1) This act shall apply to the incorporated areas of every municipality in this state. Each county or municipality may, at its option, create or abolish by ordinance a Local Government Code Enforcement Board as provided herein.

(2) Charter counties may, by county ordinance, be exempted from the provisions of this act.

Section 4. Section 166.054, Florida Statutes, is amended to read:

166.054 Definitions.--

(1) "Local governing body" means the governing body of the county or municipality, however designated. "City council" means the legislative body of the municipality.

(2) "Code inspector" means any authorized agent or employee of the county or municipality whose duty it is to assure code compliance.

(3) "Local governing body City attorney" means the legal counselor for the county or municipality.

(4) "Enforcement board" means the Local Government Code Enforcement Board.
Section 5. Section 166.055, Florida Statutes, is amended to read:

166.055 Municipal city enforcement board; organization.--

(1) The local governing body city may appoint a seven-member six-member code enforcement board and legal counsel for the enforcement board. Members of the enforcement board shall be residents of the municipality in the case of a municipal board, or residents of the county in the case of a county board. Appointments shall be made in accordance with applicable law and ordinances of the city charter on the basis of experience or interest in the fields of zoning and building control. The membership of the enforcement board shall, whenever possible, include members of an architect, a businessman, an engineer, a general contractor, a subcontractor, and a realtor.

(2) The initial appointments to the enforcement board shall be as follows:

(a) Two members appointed for a term of 1 year.
(b) Three members appointed for a term of 2 years.
(c) Two members appointed for a term of 3 years.

Thereafter, all appointments shall be made for a term of 3 years. Any member may be reappointed for one successive term upon approval of the local governing body city. Appointments to fill any vacancy on the enforcement board shall be for the remainder of the unexpired term of office. If any member who fails to attend two of three successive meetings without cause and without prior approval of the chairman, the board shall declare the member's office vacant and automatically forfeit his appointment, and the local governing body city shall promptly fill such vacancy.

The members shall serve in accordance with ordinances of the local governing body city charter and may be suspended and removed for cause as provided in such ordinances for removal of members of city boards.

(3) The members of the enforcement board shall elect a chairman from among its members. The presence of four or more members shall constitute a quorum of the enforcement board. Members shall serve without compensation, but may be reimbursed for such travel, mileage, and per diem expenses as may be authorized by the local governing body or as otherwise provided by law city.

(4) The local governing body city attorney shall either be counsel to the code enforcement board or shall represent the municipality or county city by presenting cases before the board, but in no case shall the local governing body city attorney serve in both capacities.

Section 6. Section 166.057, Florida Statutes, is amended to read:

166.057 Conduct of hearing.--

(1) The chairman of the enforcement board may call hearings of the enforcement board; hearings may also be called by written notice signed by at least three members of the enforcement board. At any hearing the enforcement board may set a future hearing date. The
enforcement board shall attempt to convene no less frequently than once every 2 months, but it may meet more or less often as the demand necessitates. Minutes shall be kept of all hearings by the enforcement board, and all hearings and proceedings shall be open to the public. The local governing body shall provide clerical and administrative personnel as may be reasonably required by the enforcement board for the proper performance of its duties.

(2) Each case before the enforcement board shall be presented by the local governing body attorney or by a member of the administrative staff of the local governing body.

(3) The enforcement board shall proceed to hear the cases on the agenda for that day. All testimony shall be under oath and shall be recorded. The enforcement board shall take testimony from the code inspector and alleged violator. Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern said proceedings.

(4) At the conclusion of the hearing, the enforcement board shall issue findings of fact, based on evidence of record, and conclusions of law and shall issue an order affording the proper relief consistent with powers granted herein. The finding shall be by motion approved by a majority of those present and voting, except that at least four members of the enforcement board must vote in order for the action to be official. The record shall be presented to the court on appeal and shall be subject to review.

Section 7. Section 166.058, Florida Statutes, is amended to read:

166.058 Powers of the enforcement board.--The enforcement board shall have the power to:

(1) Adopt rules for the conduct of its hearings.

(2) Subpoena alleged violators and witnesses to its hearings. Subpoenas may be served by the sheriff of the county or police department of the municipality.

(3) Subpoena evidence.

(4) Take testimony under oath.

(5) Issue orders having the force of law commanding whatever steps are necessary to bring a violation into compliance.

Section 8. Section 166.059, Florida Statutes, is amended to read:

166.059 Administrative fines; liens.--The enforcement board, upon notification by the code inspector that a previous order of the enforcement board has not been complied with by the set time, may order the violator to pay a fine not to exceed $250 for each day the violation continues past the date set for compliance. A certified copy of an order imposing a fine may be recorded in the public records and thereafter shall constitute a lien against the land on which the violation exists or, if the violator does not own the land, upon any other real or personal property owned by the violator and may be enforced in the same manner as a court judgment by the sheriffs of this state, including levy against the personal property, but shall not be deemed otherwise to be a judgment of a court except for enforcement purposes. After 1 year from the filing
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LAWS OF FLORIDA

CHAPTER 82-37

of any such lien which remains unpaid, the enforcement board may authorize the local governing body or its attorney to foreclose on the lien.

Section 9. Section 166.060, Florida Statutes, is created to read:

166.060 Duration of lien.--No lien provided by the Local Government Code Enforcement Boards Act shall continue for a longer period than 2 years after the certified copy of an order imposing a fine has been recorded, unless within that time an action to foreclose on the lien is commenced in a court of competent jurisdiction. The continuation of the lien effected by the commencement of the action shall not be good against creditors or subsequent purchasers for valuable consideration without notice, unless a notice of lis pendens is recorded.

Section 10. Section 166.061, Florida Statutes, is amended to read:

166.061 Appeals.--An aggrieved party, including the local governing body, may appeal a final administrative order of the enforcement board to the circuit court. An appeal shall be filed within 30 days of the execution of the order to be appealed.

Section 11. Section 166.063, Florida Statutes, is created to read:

166.063 Provisions of act supplemental.--Nothing contained in ss. 166.051-166.062 shall prohibit a local governing body from enforcing its codes by any other means. It is the legislative intent of ss. 166.051-166.062 to provide an additional or supplemental means of obtaining compliance with local codes.

Section 12. Subsection (1) of section 26.012, Florida Statutes, is amended to read:

26.012 Jurisdiction of circuit court.--

(1) Circuit courts shall have jurisdiction of appeals from county courts except appeals of county court orders or judgments declaring invalid a state statute or a provision of the State Constitution. Circuit courts shall have jurisdiction of appeals from final administrative orders of local government code enforcement boards.

Section 13. This act shall take effect July 1, 1982.

Approved by the Governor March 17, 1982.

Filed in Office Secretary of State March 17, 1982.

CHAPTER 82-38

House Bill No. 424

An act relating to probate and the administration of estates and filing of tax claims by the Department of Revenue; amending s. 198.35, Florida Statutes, deleting reference to a date with respect to estate and
offered the following amendment:

On page 3, line 6, strike six

and insert: seven

Mr. Watt moved the adoption of the amendment, which failed of adoption.
Representative Watt offered the following amendment:

On page 3, line 14, strike consist of

and insert: include

Mr. Watt moved the adoption of the amendment, which was adopted.

which failed of adoption.
Representative Watt

offered the following amendment:

On page 3, line 20, strike two and insert: three

Mr. moved the adoption of the amendment, which was adopted.

which failed of adoption.
Representative Watt offered the following amendment:

On page 5, line 18, strike three and insert: four

which failed of adoption.

Form H-62
offered the following amendment:

Between On page 6, line 18-19, insert:

Section 9. Section 166.060, Florida Statutes, is created to read:

166.060 Duration of Lien.--No lien provided by the Municipal Code Enforcement Board Act shall continue for a longer period than two years after the certified copy of an order imposing a fine has been recorded, unless within that time an action to foreclose on the lien is commenced in a court of competent jurisdiction. The continuation of the lien effected by the commencement of the action shall not be good against creditors or subsequent purchasers for valuable consideration without notice, unless a notice of lis pendens is recorded.

Mr. ______________________ moved the adoption of the amendment, which was adopted.

which failed of adoption.
Representative of the Committee on ____________________________

offered the following amendment:

On page 6, line 10, strike 100

and insert 250

adopted

failed of adoption

HB 421
Companion/Similar: SB 350
Relating to: Local Code Enforcement Boards

I. Summary:
A. Present Situation -- Under current law, only municipal ordinance violations relating to various occupational license, fire, building, zoning, sign and technical codes are enforceable through the use of a code inspector and an enforcement board. Violations of similar county ordinances (excluding those of charter counties) must be prosecuted by the state attorney in county court and characteristically receive rather low priority, due to high case load and subject matter of the suit.

B. Probable Effect of Proposed Changes -- This bill amends the current statutory law by authorizing counties to establish local code enforcement boards and by providing expanded scope for various types of municipal and county ordinances. Other provisions restrict board membership to one successive term and lower limits on administrative fines from $500 to $100. There is also a provision specifying jurisdiction to circuit courts upon final administration orders of the local government code enforcement board.

II. Fiscal Impact:
Actual savings to the state from reduced case loads would be indeterminable and dependent upon the number of counties adopting code enforcement boards pursuant to this Act.

III. Comments:
Potential conflict may exist with the prohibition in Article V, Section 1, against establishing any courts other than those enumerated in the constitution. This bill provides that the code enforcement officer would carry out the duties of the state attorney regarding prosecution of county ordinance violations.

AGO 81-25 ruled that the jurisdiction of a municipal code enforcement board was limited to those codes specifically enumerated within statutory law. The current bill would alleviate this problem for county and municipal code enforcement boards. Within the same opinion, the attorney general determined that a municipality which has elected to establish a code enforcement board under the statutes does not have the option of filing suit in prosecution of an ordinance violation in county court without first going through the municipal code enforcement board.

Analysis prepared by: Charles E. Scarlett
Staff Director's review: Sandra M. Anderson
Copy to Sponsor: 1/22/82
The substantive changes are as follows: Counties or municipalities may create or abolish a Local Government Code Enforcement Board. "Local governing body" is defined. Board members may be reappointed for one successive term upon approval of the local governing body. All hearings and proceedings shall be open to the public.

The fine for noncompliance with a board order is reduced to $250 per day. If a certified copy of an order imposing a fine is recorded in the public records and the violator does not own the land on which the violation exists, a lien may attach to any other real or personal property owned by the violator.

Once the order is recorded, an action to foreclose on the lien must be commenced within two years or the lien becomes invalid. A notice of lis pendens must be recorded in order for the lien to be good against creditors or subsequent purchasers once a foreclosure action is begun. It is made explicit that the local governing body may appeal an order of the enforcement board. It is established that ss. 166.051 -166.062, F.S., do not prohibit a local governing body from enforcing its codes by any other means. Section 26.012, F.S., is amended to give circuit courts jurisdiction of appeals from final administrative orders of local government code enforcement boards. The board would have seven members, one of whom would be a licensed real estate salesperson or broker (instead of "realtor").

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

If the enforcement board mechanism is less expensive than prosecution in the county court, local taxpayers could realize a savings. The total amount of such savings is indeterminable because the difference in cost between the two methods is unknown and the new method of enforcement is optional.

B. Government:

The bill could result in a savings to the state in those instances where a county which now relies on the State Attorney's Office to prosecute ordinance violations (and finance the same) switches to the optional method.

Expenses related to a code enforcement board are of the following nature: official travel and per diem for board...
Local Government Code Enforcement Boards

I. SUMMARY:

A. Present Situation:

In 1980, the "Municipal Code Enforcement Boards Act" (ss. 166.051-166.062, F.S.) was passed, which granted municipalities the authority to establish boards to provide "an equitable, expeditious, effective, and inexpensive method of enforcing the various occupational license, fire, building, zoning, sign, and related technical codes in force in municipalities (Statement of Intent, s. 166.052, F.S.)."

For municipalities which have code enforcement boards, the procedure for enforcement is as follows: When a violation of the codes is found, the code inspector must notify the violator and give him a reasonable time to correct the violation. If it is not corrected within the time specified, the inspector must notify the board and request a hearing. Written notice is mailed to the alleged violator. Minutes are kept of the hearing, which is open to the public. The case is presented to the board by the city attorney or by a member of the administrative staff of the municipality. All testimony is given under oath and is recorded. At the conclusion of the hearing, the board issues findings of fact, based on evidence of record, and conclusions of law, and an order granting the proper relief, consistent with its
Mr. Arthur M. Birken  
City Attorney  
City of Tamarac  
5811 Northwest 88th Avenue  
Tamarac, Florida 33321  

Re: MUNICIPAL CODE ENFORCEMENT BOARDS ACT--jurisdiction of code enforcement board; optional prosecution of violations in county court, limitations on; appeals by municipality from orders of enforcement board, unauthorized. Ch. 80-300, Laws of Florida; §§166.051 - 166.062, F.S. (1980 Supp.).

Dear Mr. Birken:

This is in response to your request for an opinion on substantially the following questions:

(1) IF A MUNICIPAL CODE ENFORCEMENT BOARD IS CREATED IN A MUNICIPALITY, DOES THE JURISDICTION OF SAID BOARD EXTEND TO ALL ORDINANCES ENACTED BY A MUNICIPALITY (INCLUDING PARKING VIOLATIONS TRAFFIC VIOLATIONS, AND ALL MISDEMEANORS ADOPTED BY ORDINANCE) OR IS THE BOARD'S JURISDICTION LIMITED TO ENFORCING OCCUPATIONAL LICENSE, FIRE, BUILDING, ZONING, SIGN AND RELATED TECHNICAL CODES AS SET FORTH IN SECTION 166.052, F.S. (1980 SUPP.)?

(2) IF A MUNICIPAL CODE ENFORCEMENT BOARD IS CREATED IN A MUNICIPALITY, DOES THAT MUNICIPALITY STILL HAVE THE OPTION OF FILING SUIT IN PROSECUTION OF A VIOLATOR IN COUNTY COURT WITHOUT FIRST GOING TO THE CODE ENFORCEMENT BOARD?

(3) MAY A MUNICIPALITY BE AN AGGRIEVED PARTY FOR PURPOSES OF §166.061, F.S. (1980 SUPP.), AND THEREFORE APPEAL AN ORDER OF THE MUNICIPAL CODE ENFORCEMENT ACT?
QUESTION I


... an equitable, expeditious, effective, and inexpensive method of enforcing the various occupational license, fire, building, zoning, sign, and related technical codes in force in municipalities. (e.s.)

The act applies to the incorporated areas of every municipality in the state. Section 166.053(1), F.S. (1980 Supp.). Charter counties may by ordinance exempt themselves from the operation of the act, 166.053(2), F.S. (1980 Supp.), but municipalities are not so authorized. The act is, of course, presumptively valid and must be given effect until judicially determined otherwise. State v. State Board of Equalizers, 94 So. 681 (Fla. 1922); Evans v. Hillsborough County, 186 So. 193 (Fla. 1938).

It is a general rule of statutory construction that where a statute enumerates the things on which it is to operate, it is to be construed as excluding from its operation all things not expressly mentioned therein; expressum uniis est exclusio alterius. Thayer v. State, 335 So.2d 815 (Fla. 1976); Dobbs v. Sea Isle Hotel, 56 So.2d 341 (Fla. 1952); Ideal Farms Drainage Dist. v. Certain Lands, 19 So.2d 234 (Fla. 1944). Cf. Interlachen Lakes Estates, Inc. v. Snyder, 304 So.2d 433, 434 (Fla. 1973). Moreover, where the Legislature has directed how a thing shall be done, it is, in effect, a prohibition against it being done in any other way. See Alsop v. Pierce, 19 So.2d 799, 805, 806 (Fla. 1944); In re Advisory Opinion of Governor Civil Rights, 306 So.2d 520, 523 (Fla. 1975). Applying these rules to your first question, by clear implication the Code Enforcement Board's jurisdiction is limited to the enforcement of the various occupational license, fire, building, zoning, sign and related technical codes as prescribed in the Municipal Code Enforcement Boards Act. Thus, the enforcement board's jurisdiction does not extend to, and the exercise of its jurisdiction is impliedly prohibited over, all other ordinances enacted by a municipality, including those concerned with parking and traffic violations and all misdemeanors and other offenses adopted and provided for by municipal ordinance.
QUESTION II

Section 166.056, F.S. (1980 Supp.), deals with the enforcement procedure to be followed by a municipality's code inspector (whose duty it is to assure code compliance, §166.054(2), F.S.) once a violation of any of the codes enumerated in §166.052, supra, is found. It is the duty of the code inspector to initiate enforcement proceedings of the designated codes. Section 166.056(1), F.S. (1980 Supp.). Subsection (2) provides, in pertinent part, that:

... if a violation of the codes is found, the code inspector shall notify the violator and give him a reasonable time to correct the violation. Should the violation continue beyond the time specified for correction, the code inspector shall notify the enforcement board and request a hearing pursuant to the procedure in s.166.057. Written notice shall be mailed to said violator as provided herein. (e.s.)

Once a municipality has elected to create a code enforcement board pursuant to Part I of Ch. 166, F.S. (1980 Supp.), it must thereafter proceed in compliance with Part I, Ch. 166. Nothing in Part I of Ch. 166, F.S. (1980 Supp.), evinces a legislative intent to allow a municipality to arbitrarily choose which technical code violations will be brought before the enforcement board and which will be prosecuted in county court. The Staff Analysis prepared by the House Committee on Community Affairs, dealing with the then proposed Municipal Code Enforcement Boards Act, dated January 27, 1980, states that, under the act, "the code enforcement officer would carry out the duties the state attorney now has for prosecuting municipal ordinance violations, and the code enforcement board would replace the county court as the forum for resolution of these violations." (e.s.) Compare also AGO 079-40 which concluded that when a county elects to adopt provisions of Part II of Ch. 163, F.S., governing zoning and planning, thereafter that county must proceed in compliance with Part II for all of that county's planning and zoning, and once it had elected to proceed under Part II of Ch. 163, it could not repeal its adoption and proceed independently to adopt zoning, subdivision planning, or other codes or regulations inconsistent with Part II of Ch. 163. That opinion further stated that a county could not pick and choose which portions of a comprehensive program established by the Legislature it wished to comply with; once it elected to adopt Part II of Ch. 163, any question as to its prior independent authority became moot and thereafter Part II became binding on the county in its totality for all of its planning, subdivision and zoning regulations.
The Florida Supreme Court dealt with an analogous question in Orange City Water Company v. Town of Orange City, 188 So.2d 306 (Fla. 1966). The court discussed whether a local option feature of a statute carried with it, by implication, the right to rescind its operation, and found it to be a matter of first impression. Citing from a "persuasive" case from another jurisdiction, Northern Trust Co. v. Snyder, 89 N.W. 460 (Wis. 1902), the court said "[t]he power to adopt is a special, limited power, which, once executed, is exhausted." 188 So.2d 308, 309. Applying this reasoning to the instant inquiry, it would appear that once a municipality creates by ordinance a code enforcement board as provided in Part I of Ch. 166, F.S. (1980 Supp.), it may not thereafter prosecute or cause to be prosecuted violations of the codes enumerated in §166.052, F.S. (1980 Supp.), or any municipal ordinances on or prescribing violations and penalties for violating ordinances on any of the subjects therein specified in the county court. The municipality cannot pick and choose which violators of the designated technical codes it wishes to have prosecuted in the county court and which it will prosecute pursuant to the enforcement procedure set forth in §166.056–166.059, F.S. (1980 Supp.). Cf. AGO 079-40.

I therefore conclude that once a municipality has created a code enforcement board under the Municipal Code Enforcement Boards Act, it does not retain any option of prosecuting or causing the prosecution of a violator of any of the technical codes enumerated in §166.052, F.S. (1980 Supp.), in the county court.

QUESTION III

Section 166.061, F.S. (1980 Supp.) provides that an "aggrieved party" may take an "appeal" from a ruling or order of the enforcement board by certiorari in circuit court, but neither that provision nor the definitions contained in §166.054, F.S. (1980 Supp.), define the term "aggrieved party." Compare §176.16, F.S. 1971 (preserved in effect by §166.042[1], F.S.), providing that any person aggrieved by any decision of a board of adjustment or any taxpayer or any officer, department, board or bureau of the governing body of a municipality may petition the circuit court for issuance of a writ of certiorari to review the legality of decisions of such board; §163.250, F.S., authorizing any person aggrieved by any decision of a board of adjustment or any officer, department, board, commission, or bureau of the governing body of a municipality to apply to the circuit court for judicial relief or review, which review may be either by a trial de novo or by petition for writ of certiorari at the election of the appellant. Under these statutes both or either of the aggrieved persons or the designated municipal agencies or officers are authorized to apply to the circuit court for judicial relief from or review of
decisions of the board of adjustment. Section 166.061, supra, makes no such provision for appeals of rulings or orders of the municipal code enforcement board by the city or any agency or officer of the city or its governing body. Moreover, I am unaware of any decisional law allowing municipalities to take an appeal from an adjudication or punishment meted out by the county court under the existing system for the prosecution of violations of municipal codes or ordinances such as those enumerated in §166.052, F.S. (1980 Supp.).

The Municipal Code Enforcement Boards Act does not purport to vest in a code enforcement board any power to grant any exception of any nature or special exception to or variance from the terms of the codes or ordinances enumerated in §166.052, F.S. (1980 Supp.). Cf. §163.225, F.S.; §176.14, F.S. 1971. The declared intent of the act is to provide a method of enforcing the designated codes or ordinances. Section 166.052, F.S. (1980 Supp.). Cf. §163.255, F.S.; §176.22, F.S. 1971. It is the duty of the code inspector to assure code compliance, §166.054(2), and to initiate enforcement proceedings of the various listed codes, §166.056(1), F.S. (1980 Supp.). The enforcement board is empowered to issue orders having the force of law commanding whatever steps are necessary to bring a violation [brought before it by the code inspector pursuant to §166.056(2) or (3), F.S. (1980 Supp.)] into compliance, §166.058(5), F.S. (1980 Supp.), and, failing in which and upon notification thereof by the code inspector, to order the violator to pay a fine not exceeding $500 for each day the violation shall continue past the date set by the enforcement board for compliance. Implicit in the provisions of §166.057(3) and (4) and §166.058(2) - (5), F.S. (1980 Supp.), and necessarily arising from the expressly granted enforcement powers, is the power of the enforcement board to find an alleged violator not guilty of violating any of the various codes listed in §166.052, supra. No provision of the Municipal Code Enforcement Boards Act, specifically §166.061, empowers the municipality or any of its agencies or officers to take an appeal by certiorari in the circuit court from any such ruling or order of the enforcement board entered in the statutorily prescribed enforcement proceedings; neither do the provisions of such statutes as §§163.255(1), F.S., and 176.22, F.S. 1971 empower such an appeal from the adjudications and penalties therein prescribed or the adjudications of and penalties imposed by the county court under the existing constitutional and statutory scheme of enforcement and prosecution of violations of municipal codes or ordinances such as those listed in §166.052, F.S. (1980 Supp.).
By way of analogy, the competency of a city to appeal from the decision of boards of adjustment or other zoning authorities depends upon the law and practice of a particular state, and, generally, a city is a proper party defendant or appellee in proceedings to set aside or reverse administrative decisions in zoning matters. See 8A McQuillin, Municipal Corporations, §25.319, at p.442. Cf. 62 C.J.S. Municipal Corporations §228(3)(b), at page 573, which suggests that there exists a split of authority as to whether, for purposes of judicial review of a decision of a board of appeals or adjustment, the board itself is a proper party. Compare also City of Pompano Beach v. Zoning Board of Appeals, 206 So.2d 52 (4 D.C.A. Fla., 1968), holding that a city charter provision adopted subsequent to §176.16, F.S., providing:

Any person or persons jointly or severally, aggrieved by any decision of the Zoning Board of Appeals, may appeal to a court of record and proceed as provided in Chapter 176, Florida Statutes, 1955 [,]

was not inconsistent with and had not superseded the previously enacted §176.16, which permitted an appeal from a decision of a board of adjustment by three classes of persons, including municipal agencies or officers. The court's ultimate determination was that the petitioning city, its city manager and members of its governing body had standing as taxpayers and as officers of the municipality to challenge the granting of a variance from the zoning laws of the city by the city's zoning board of appeals in circuit court under §176.16, supra.

In the absence of any legislative or judicial direction or precedent and based upon the foregoing considerations and authorities, I therefore conclude that the city is not authorized by the Municipal Code Enforcement Boards Act to take an appeal by certiorari in the circuit court from a ruling or order of its code enforcement board entered in the enforcement proceedings provided for in that act.

In summary, therefore, until legislatively or judicially determined otherwise, I am of the opinion that:

(1) The jurisdiction of a Municipal Code Enforcement Board under §§166.051 - 166.062, F.S. (1980 Supp.) is limited to the enforcement of the various occupational license, fire, building, zoning, sign and related technical codes as prescribed in §166.052, F.S. (1980 Supp.), and
does not extend to, and the exercise of its powers is impliedly prohibited over, all other ordinances enacted by a municipality, including those concerned with parking and traffic violations and misdemeanors and other offenses adopted and provided for by ordinance.

(2) Once a municipality has created a code enforcement board under the Municipal Code Enforcement Boards Act, it does not retain any option of prosecuting or causing the prosecution of a violator of any of the technical codes enumerated in §166.052, F.S. (1980 Supp.), in the county court.

(3) A municipality is not authorized by the Municipal Code Enforcement Boards Act to take an appeal by certiorari in the circuit court from a ruling or order of its code enforcement board entered in the enforcement proceedings provided for in that act.

Sincerely,

[Signature]

Jim Smith
Attorney General

Prepared By:

Bill Hall
Assistant Attorney General

JS/BH/s1
A bill to be entitled
An act relating to local code enforcement
boards; amending ss. 26.012(1), 166.051-
166.055, 166.057-166.061, Florida Statutes;
creating ss. 166.060, 166.063, Florida
Statutes; providing for duration of lien;
authorizing counties to create code enforcement
boards; providing a short title; providing .
intent; providing applicability; providing
definitions; providing for membership and
organization of boards; limiting reappointment
of members; providing hearing procedures;
providing powers of boards; providing for fines
and liens; reducing maximum fine; providing for
liens against real and personal property of
violator other than property where violation
occurred under specified circumstances;
providing for appeals to the circuit court;
providing that provisions of act are
supplemental; providing an effective date.

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

Section 1. Section 166.051, Florida Statutes, is
amended to read:

166.051 Short title.--Sections 166.051-166.063 shall be known and may be cited as the "Local Government Municipal Code Enforcement Boards Act."

Section 2. Section 166.052, Florida Statutes, is
amended to read:

CODING: Words in struck through type are deletions from existing law; words underlined are additions.
166.052 Intent.--It is the intent of this act 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 to
provide an equitable, expeditious, effective, and
inexpensive method of enforcing the various occupational,
license, fire, building, zoning, sign, and related technical
codes in force in counties and municipalities, including, but
not limited to, occupational license, fire, building, zoning,
and sign codes.

Section 3. Section 166.053, Florida Statutes, is
amended to read:

166.053 Applicability.--

(1) This act shall apply to the incorporated areas of
every municipality in this state. Each county or municipality
may, at its option, create or abolish by ordinance a Local
Government Code Enforcement Board as provided herein.

(2) Charter counties may, by county ordinance, be
exempted from the provisions of this act.

Section 4. Section 166.054, Florida Statutes, is
amended to read:

166.054 Definitions.--

(1) "Local governing body" means the governing body of
the county or municipality, however designated. "City council"
means the legislative body of the municipality.

(2) "Code inspector" means any authorized agent or
employee of the county or municipality whose duty it is to
assure code compliance.

(3) "Local governing body City attorney" means the
legal counselor for the county or municipality.
(4) "Enforcement board" means the Local Government Code Enforcement Board.

Section 5. Section 166.055, Florida Statutes, is amended to read:

166.055 Municipal code Enforcement board;

organization.--

(1) The local governing body may appoint a seven-member code enforcement board and legal counsel for the enforcement board. Members of the enforcement board shall be residents of the municipality in the case of an municipal board, or residents of the county in the case of a county board. Appointments shall be made in accordance with applicable law and ordinances the city charter on the basis of experience or interest in the fields of zoning and building control. The membership of the enforcement board shall, whenever possible, include an architect, a businessman, an engineer, a general contractor, a subcontractor, and a licensed real estate salesperson or broker.

(2) The initial appointments to the enforcement board shall be as follows:

(a) Two members appointed for a term of 1 year.
(b) Three members appointed for a term of 2 years.
(c) Two members appointed for a term of 3 years.

Thereafter, all appointments shall be made for a term of 3 years. A member may be reappointed for one successive term upon approval of the local governing body. Appointments to fill any vacancy on the enforcement board shall be for the remainder of the unexpired term of office. If any member who fails to attend two of...
three successive meetings without cause and without prior
approval of the chairman, the board shall declare the member's
office vacant shall automatically forfeit his appointment, and
the local governing body's eft shall promptly fill such
vacancy. The members shall serve in accordance with
ordinances of the local governing body's eft charter and
may be suspended and removed for cause as provided in such the
eity eode of ordinances for removal of members of eity boards.

(3) The members of the enforcement board shall elect a
chairman from among its members. The presence of four or more
members shall constitute a quorum of the enforcement board.
Members shall serve without compensation, but may be
reimbursed for such travel, mileage, and per diem expenses as
may be authorized by the local governing body or as otherwise
provided by law.

(4) The local governing body's eft attorney shall
either be counsel to the code enforcement board or shall
represent the municipality or county's eft by presenting cases
before the board, but in no case shall the local governing
body's eft attorney serve in both capacities.

Section 6. Section 166.057, Florida Statutes, is
amended to read:

166.057 Conduct of hearing.--
(1) The chairman of the enforcement board may call
hearings of the enforcement board; hearings may also be called
by written notice signed by at least three members of the
enforcement board. At any hearing the enforcement board may
set a future hearing date. The enforcement board shall attempt to convene no less frequently than once every 2
months, but it may meet more or less often as the demand
necessitates. Minutes shall be kept of all hearings by the
enforcement board, and all hearings and proceedings shall be open to the public. The local governing body shall provide clerical and administrative personnel as may be reasonably required by the enforcement board for the proper performance of its duties.

(2) Each case before the enforcement board shall be presented by the local governing body attorney or by a member of the administrative staff of the local governing body.

(3) The enforcement board shall proceed to hear the cases on the agenda for that day. All testimony shall be under oath and shall be recorded. The enforcement board shall take testimony from the code inspector and alleged violator. Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern said proceedings.

(4) At the conclusion of the hearing, the enforcement board shall issue findings of fact, based on evidence of record, and conclusions of law and shall issue an order affording the proper relief consistent with powers granted herein. The finding shall be by motion approved by a majority of those present and voting, except that at least four members of the enforcement board must vote in order for the action to be official. The record shall be presented to the court on appeal and shall be subject to review.

Section 7. Section 166.058, Florida Statutes, is amended to read:

166.058 Powers of the enforcement board.--The enforcement board shall have the power to:

(1) Adopt rules for the conduct of its hearings.
(2) Subpoena alleged violators and witnesses to its hearings. Subpoenas may be served by the sheriff of the county or police department of the municipality.  

(3) Subpoena evidence.  

(4) Take testimony under oath.  

(5) Issue orders having the force of law commanding whatever steps are necessary to bring a violation into compliance.

Section 8. Section 166.059, Florida Statutes, is amended to read:

166.059 Administrative fines; liens.--The enforcement board, upon notification by the code inspector that a previous order of the enforcement board has not been complied with by the set time, may order the violator to pay a fine not to exceed $250 $599 for each day the violation continues past the date set for compliance. A certified copy of an order imposing a fine may be recorded in the public records and thereafter shall constitute a lien against the land on which the violation exists or, if the violator does not own the land, upon any other real or personal property owned by the violator. After 1 year from the filing of any such lien which remains unpaid, the enforcement board may authorize the local governing body city attorney to foreclose on the lien.

Section 9. Section 166.060, Florida Statutes, is created to read:

166.060 Duration of lien.--No lien provided by the Local Government Code Enforcement Boards Act shall continue for a longer period than 2 years after the certified copy of an order imposing a fine has been recorded, unless within that time an action to foreclose on the lien is commenced in a court of competent jurisdiction. The continuation of the lien
effected by the commencement of the action shall not be good
against creditors or subsequent purchasers for valuable
consideration without notice, unless a notice of lis pendens
is recorded.

Section 10. Section 166.061, Florida Statutes, is
amended to read:

166.061 Appeals.--An aggrieved party, including the
local governing body, may appeal a final administrative ruling
or order of the enforcement board to the by certiorari in
circuit court. An appeal shall be filed within 30 days of the
execution of the order to be appealed.

Section 11. Section 166.063, Florida Statutes, is
created to read:

166.063 Provisions of act supplemental.--Nothing
contained in ss. 166.051-166.062 shall prohibit a local
governing body from enforcing its codes by any other means.
It is the legislative intent of ss. 166.051-166.062 to provide
an additional or supplemental means of obtaining compliance
with local codes.

Section 12. Subsection (1) of section 26.012, Florida
Statutes, is amended to read:

26.012 Jurisdiction of circuit court.--
(1) Circuit courts shall have jurisdiction of appeals
from county courts except appeals of county court orders or
judgments declaring invalid a state statute or a provision of
the State Constitution. Circuit courts shall have
jurisdiction of appeals from final administrative orders of
local government code enforcement boards.

Section 13. This act shall take effect July 1, 1982.
STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN COMMITTEE SUBSTITUTE FOR SENATE BILL 350

1. The code enforcement board is to consist of seven members.

2. The enforcement board may impose a fine of $250 per day for violators who have failed to comply with a board order.

3. An action to foreclose on a lien must be commenced within two years after the certified copy of an order imposing a fine has been recorded or the lien becomes invalid.

4. A notice of lis pendens must be recorded when a foreclosure action on a lien is begun in order for the lien to be good against creditors or subsequent purchasers.

Committee on

[Signature]
Chairman or Staff Director

C14(4-74) (File 2 copies with Committee Substitutes)
SUBJECT: Local Government Code Enforcement Boards

I. SUMMARY:

A. Present Situation:

In 1980, the "Municipal Code Enforcement Boards Act" (ss. 166.051-166.062, F.S.) was passed, which granted municipalities the authority to establish boards to provide "an equitable, expeditious, effective, and inexpensive method of enforcing the various occupational license, fire, building, zoning, sign, and related technical codes in force in municipalities (Statement of Intent, s. 166.052, F.S.).

For municipalities which have code enforcement boards, the procedure for enforcement is as follows: When a violation of the codes is found, the code inspector must notify the violator and give him a reasonable time to correct the violation. If it is not corrected within the time specified, the inspector must notify the board and request a hearing. Written notice is mailed to the alleged violator. Minutes are kept of the hearing, which is open to the public. The case is presented to the board by the city attorney or by a member of the administrative staff of the municipality. All testimony is given under oath and is recorded. At the conclusion of the hearing, the board issues findings of fact, based on evidence of record, and conclusions of law, and an order granting the proper relief, consistent with its powers, is issued. A party may appeal to circuit court. The board has the power to impose a fine of $500 for each day that a violator refuses to comply with the board's order. The fine, if not paid, will be a lien against the land on which the violation exists, if a certified copy of the order is recorded in the public records. Board members may be reappointed from term to term upon approval of the city council, the term being 3 years.

The code enforcement board consists of six members appointed from the following professions whenever possible: an architect, a businessman, an engineer, a general contractor, a subcontractor, and a realtor.

Violations of county ordinances are prosecuted in county court, by the State Attorney, as municipal violations used to be in cities which now have code enforcement boards.

B. Effect of Proposed Changes:

The bill authorizes counties, as well as municipalities, to create these administrative boards. The Act's title is changed to "Local Government Code Enforcement Boards Act."

Many of the changes in the bill consist of inserting the word "county" with the word "municipality" and similar changes.
The substantive changes are as follows: Counties or municipalities may create or abolish a Local Government Code Enforcement Board. "Local governing body" is defined. Board members may be reappointed for one successive term upon approval of the local governing body. All hearings and proceedings shall be open to the public.

The fine for noncompliance with a board order is reduced to $250 per day. If a certified copy of an order imposing a fine is recorded in the public records and the violator does not own the land on which the violation exists, a lien may attach to any other real or personal property owned by the violator.

Once the order is recorded, an action to foreclose on the lien must be commenced within two years or the lien becomes invalid. A notice of lis pendens must be recorded in order for the lien to be good against creditors or subsequent purchasers once a foreclosure action is begun. It is made explicit that the local governing body may appeal an order of the enforcement board. It is established that ss. 166.051-166.062, F.S., do not prohibit a local governing body from enforcing its codes by any other means. Section 26.012, F.S., is amended to give circuit courts jurisdiction of appeals from final administrative orders of local government code enforcement boards. The board would have seven members, one of whom would be a licensed real estate salesperson or broker (instead of "realtor").

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

If the enforcement board mechanism is less expensive than prosecution in the county court, local taxpayers could realize a savings. The total amount of such savings is indeterminable because the difference in cost between the two methods is unknown and the new method of enforcement is optional.

B. Government:

The bill could result in a savings to the state in those instances where a county which now relies on the State Attorney's Office to prosecute ordinance violations (and finance the same) switches to the optional method.

Expenses related to a code enforcement board are of the following nature: official travel and per diem for board members; clerical and administrative personnel provided by the city to conduct board business; city attorney or administrative staff member to present the cases to the board.

III. COMMENTS:

A companion bill, HB 421, has been introduced in the House this session.

IV. AMENDMENTS

None
I. SUMMARY:

A. Present Situation:

Chapter Law 80-300 created the "Municipal Code Enforcement Boards Act," presently codified at ss. 166.051-166.062, F.S. Section 160.051 states: "It is the intent of this act to ... provide an equitable, expeditious, effective, and inexpensive method of enforcing the various occupational license, fire, building, zoning, sign, and related technical codes in force in municipalities."

Currently, the act applies only to the incorporated areas of municipalities in the state. Creation of the board is optional. In municipalities that do not have such boards, violations are prosecuted in county court by the state attorney, as are violations of county ordinances.

The board, if created, shall, whenever possible, consist of an architect, a businessman, an engineer, a general contractor, a subcontractor, and a realtor. The members must be residents of the municipality and are elected for 3-year terms. They may be reappointed from term to term by the chairman. Members are not compensated, but may be reimbursed for such travel, mileage, and per diem as authorized by the city council.

The procedure for enforcement is as follows: When a violation of a code is found, the code inspector must notify the violator and give him a reasonable time to correct the violation. If it is not corrected within the time specified, the inspector must notify the board and request a hearing. Written notice of the hearing must normally be provided to the accused. If, however, the violation comprises a serious threat to the public health, safety and welfare, the hearing may be conducted without notifying the violator. Minutes are kept of the hearing, which is open to the public. The case is presented to the board by the city attorney or by a member of the administrative staff of the municipality. All testimony is given under oath and is recorded. At the conclusion of the hearing, the board issues findings of fact, based on evidence of record, and conclusions of law, and an order granting the proper relief, consistent with its powers, is issued. An aggrieved party may appeal to circuit court. The record must be presented to the court of appeal and is subject to review.

Currently, the board has the power to impose a fine of $500 for each day that a violator refuses to comply with the board's order. The fine, if not paid, will be a lien against the land on which the violation exists, if a certified copy of the order is recorded in the public records. The city attorney may foreclose on the lien after 1 year.

B. Effect of Proposed Changes:

This bill would expand the current act to include counties of the state. The title is changed to "Local Government Code Enforcement Boards Act." Most of the changes authorized by this bill consist of deleting and inserting language to convert the act to the wider application. There are, however, some substantive changes:
I. B. Effect of Proposed Changes: (continued)

This bill would authorize the local governments to abolish the board by ordinance.

The members would now be permitted to be reappointed for only one successive term.

An additional member is added to the board to total seven (7) members, which would include the various professions now represented. The "realtor," however, is replaced by "a licensed real estate salesperson or broker."

All hearings and proceedings would be open to the public.

The provision requiring the record to be provided on appeal and subjected to review is deleted.

The fine for noncompliance with the board's order is reduced to $250 per day. The authorized lien is extended to cover real and personal property of the violator if the violator does not own the land on which the violation exists.

A new section is created to provide that the lien shall expire after 2 years unless a foreclosure action has been commenced. The continuation of the lien effected by the commencement of the action is not good against creditors or subsequent purchasers for valuable consideration without notice, unless a notice of lis pendens is recorded.

A provision is inserted to allow the local governing body to appeal a final administrative order of the board.

The bill provides that nothing in the act shall prohibit a local governing body from enforcing its codes by any other means.

Section 26.012, Jurisdiction of the Circuit Courts, is amended to give jurisdiction over appeals of final board orders.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public: None.

B. Government:

If the procedure contemplated by the act and this bill are in fact less expensive than prosecution in county court, some savings may be realized if this procedure is adopted. While members are not compensated outside of travel and per diem expenses, support personnel must be compensated.

III. COMMENTS:

A similar House bill, HB 421, has been placed on the House Special Order Calendar.

IV. AMENDMENTS: None.
Committee Substitute for Senate Bill 350, passed as Committee Substitute for House Bill 421 (Chapter 82-37), expands the Municipal Code Enforcement Boards Act, which is intended to promote, protect, and improve the health, safety, and welfare of the citizens of the municipalities of this state by providing an equitable, expeditious, effective, and inexpensive method of enforcing the various occupational license, fire, building, zoning, sign, and related technical codes in force in municipalities, to include counties. The title has been changed to Local Government Code Enforcement Boards Act. The significant changes to the act are as follows: local governments are authorized to create or abolish the board by ordinance; the members may be reappointed for only one successive term rather than from term to term; an additional member is added to the board to total seven (7) members; all proceedings, in addition to all hearings, are required to be open to the public; the provision requiring the record to be provided on appeal and subject to review is deleted; the fine for noncompliance with the board's order is reduced from $500 to $250 per day; the lien is extended to cover real and personal property of the violator if the violator does not own the land on which the violation exists, and may be enforced in the same manner as a court judgment by the sheriff of this state, including levy against the personal property, but shall not be deemed otherwise to be a judgment of a court except for enforcement purposes; the lien shall expire after two years unless a foreclosure action has been commenced; the local governing body is authorized to appeal a final administrative order of the board to the circuit court; and nothing in the act shall prohibit a local governing body from enforcing its codes by any other means.
A bill to be entitled
An act relating to local code enforcement boards; amending ss. 26.012(1), 166.051-166.055, 166.057-166.061, Florida Statutes; creating s. 166.063, Florida Statutes; authorizing counties to create code enforcement boards; providing a short title; providing intent; providing applicability; providing definitions; providing for membership and organization of boards; limiting reappointment of members; providing hearing procedures; providing powers of boards; providing for fines and liens; reducing maximum fine; providing for liens against real and personal property of violator other than property where violation occurred under specified circumstances; providing for appeals to the circuit court; providing that provisions of act are supplemental; providing an effective date.

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

Section 1. Section 166.051, Florida Statutes, is amended to read:

166.051 Short title.--Sections 166.051-166.063 shall be known and may be cited as the "Local Government Code Enforcement Boards Act."

Section 2. Section 166.052, Florida Statutes, is amended to read:

166.052 Intent.--It is the intent of this act 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 to provide an equitable, expeditious, effective, and inexpensive method of enforcing the various occupational license, fire, building, zoning, sign, and related technical codes in force in counties and municipalities, including, but not limited to, occupational license, fire, building, zoning, and sign codes.

Section 3. Section 166.053, Florida Statutes, is amended to read:

166.053 Applicability.--

(1) This act shall apply to the incorporated areas of every municipality in this state. Each county or municipality may, at its option, create or abolish by ordinance a Local Government Code Enforcement Board as provided herein.

(2) Charter counties may, by county ordinance, be exempted from the provisions of this act.

Section 4. Section 166.054, Florida Statutes, is amended to read:

166.054 Definitions.--

(1) "Local governing body" means the governing body of the county or municipality, however designated. "City council" means the legislative body of the municipality.

(2) "Code inspector" means any authorized agent or employee of the county or municipality whose duty it is to assure code compliance.

(3) "Local governing body City attorney" means the legal counselor for the county or municipality.

(4) "Enforcement board" means the Local Government Code Enforcement Board.

CODING: Words in block through type are deletions from existing law; words underlined are additions.
Section 5. Section 166.055, Florida Statutes, is amended to read:

166.055 Municipal code Enforcement board; organization.--

(1) The local governing body may appoint a six-member code enforcement board and legal counsel for the enforcement board. Members of the enforcement board shall be residents of the municipality in the case of an municipal board, or residents of the county in the case of a county board. Appointments shall be made in accordance with applicable law and ordinances the city charter on the basis of experience or interest in the fields of zoning and building control. The membership of the enforcement board shall, whenever possible, consist of an architect, a businessman, an engineer, a general contractor, a subcontractor, and a realtor.

(2) The initial appointments to the enforcement board shall be as follows:

(a) Two members appointed for a term of 1 year.
(b) Two members appointed for a term of 2 years.
(c) Two members appointed for a term of 3 years.

Thereafter, all appointments shall be made for a term of 3 years. Any member may be reappointed for one successive term upon approval of the local governing body. Appointments to fill any vacancy on the enforcement board shall be for the remainder of the unexpired term of office. If any member who fails to attend two of three successive meetings without cause and without prior approval of the chairman, the board shall declare the member's office vacant shall automatically forfeit his appointment, and
the local governing body esty council shall promptly fill such
vacancy. The members shall serve in accordance with
ordinances of the local governing body esty charter and
may be suspended and removed for cause as provided in such the
esty code of ordinances for removal of members of esty boards.

(3) The members of the enforcement board shall elect a
chairman from among its members. The presence of four or more
members shall constitute a quorum of the enforcement board.
Members shall serve without compensation, but may be
reimbursed for such travel, mileage, and per diem expenses as
may be authorized by the local governing body or as otherwise
provided by law esty council.

(4) The local governing body esty attorney shall
either be counsel to the code enforcement board or shall
represent the municipality or county esty by presenting cases
before the board, but in no case shall the local governing
body esty attorney serve in both capacities.

Section 6. Section 166.057, Florida Statutes, is
amended to read:

166.057 Conduct of hearing.--

(1) The chairman of the enforcement board may call
hearings of the enforcement board; hearings may also be called
by written notice signed by at least three members of the
enforcement board. At any hearing the enforcement board may
set a future hearing date. The enforcement board shall shew
attempt to convene no less frequently than once every 2
months, but it may meet more or less often as the demand
necessitates. Minutes shall be kept of all hearings by the
enforcement board, and all hearings and proceedings shall be
open to the public. The local governing body esty council
shall provide clerical and administrative personnel as may be

CODING: Words in struck through type are deletions from existing law; words underlined are additions.
reasonably required by the enforcement board for the proper performance of its duties.

(2) Each case before the enforcement board shall be presented by the local governing body or by a member of the administrative staff of the local governing body.

(3) The enforcement board shall proceed to hear the cases on the agenda for that day. All testimony shall be under oath and shall be recorded. The enforcement board shall take testimony from the code inspector and alleged violator. Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern said proceedings.

(4) At the conclusion of the hearing, the enforcement board shall issue findings of fact, based on evidence of record, and conclusions of law and shall issue an order affording the proper relief consistent with powers granted herein. The finding shall be by motion approved by a majority of those present and voting, except that at least three members of the enforcement board must vote in order for the action to be official. The record shall be presented to the court on appeal and shall be subject to review.

Section 7. Section 166.058, Florida Statutes, is amended to read:

166.058 Powers of the enforcement board.--The enforcement board shall have the power to:

(1) Adopt rules for the conduct of its hearings.

(2) Subpoena alleged violators and witnesses to its hearings. Subpoenas may be served by the sheriff of the county or police department of the municipality.

(3) Subpoena evidence.

(4) Take testimony under oath.

CODING: Words in struck through type are deletions from existing law; words underlined are additions.
(5) Issue orders having the force of law commanding whatever steps are necessary to bring a violation into compliance.

Section 8. Section 166.059, Florida Statutes, is amended to read:

166.059 Administrative fines; liens.--The enforcement board, upon notification by the code inspector that a previous order of the enforcement board has not been complied with by the set time, may order the violator to pay a fine not to exceed $100 $599 for each day the violation continues past the date set for compliance. A certified copy of an order imposing a fine may be recorded in the public records and thereafter shall constitute a lien against the land on which the violation exists or, if the violator does not own the land, upon any other real or personal property owned by the violator. After 1 year from the filing of any such lien which remains unpaid, the enforcement board may authorize the local governing body to foreclose on the lien.

Section 9. Section 166.061, Florida Statutes, is amended to read:

166.061 Appeals.--An aggrieved party, including the local governing body, may appeal a final administrative order of the enforcement board to the circuit court. An appeal shall be filed within 30 days of the execution of the order to be appealed.

Section 10. Section 166.063, Florida Statutes, is created to read:

166.063 Provisions of act supplemental.--Nothing contained in ss. 166.051-166.062 shall prohibit a local governing body from enforcing its codes by any other means. It is the legislative intent of ss. 166.051-166.062 to provide
an additional or supplemental means of obtaining compliance
with local codes.

Section 11. Subsection (1) of section 26.012, Florida
Statutes, is amended to read:

26.012 Jurisdiction of circuit court.--

(1) Circuit courts shall have jurisdiction of appeals
from county courts except appeals of county court orders or
judgments declaring invalid a state statute or a provision of
the State Constitution. Circuit courts shall have
jurisdiction of appeals from final administrative orders of
local government code enforcement boards.

Section 12. This act shall take effect July 1, 1982.

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SENATE SUMMARY

Authorizes counties to establish code enforcement boards
in the same manner as municipalities may establish such
boards. Provides that a fine imposed by such a board
constitutes a lien against any real or personal property
owned by the violator if the violator does not own the
property on which the violation occurred. Limits
reappointment of members to one successive term. Reduces
maximum fine that may be imposed by a local code
enforcement board from $500 to $100.

CODING: Words in struck through type are deletions from existing law; words underlined are additions.