

1987

## Session Law 87-391

Florida Senate & House of Representatives

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### Recommended Citation

House of Representatives, Florida Senate &, "Session Law 87-391" (1987). *Staff Analysis*. 755.  
<https://ir.law.fsu.edu/staff-analysis/755>

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SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. <u>Herrick KH</u>	<u>Buck OB</u>	1. <u>ECCA</u>	<u>FAV</u>
2. _____	_____	2. _____	_____
3. _____	_____	3. _____	_____
4. _____	_____	4. _____	_____

SUBJECT:

Enforcement of Local Government Codes

BILL NO. AND SPONSOR:

SB 792 by Senators Vogt and Deratany

I. SUMMARY:

A. Present Situation:

Chapter 162, F.S. (1986 Supp.), provides for local government operation of code enforcement boards. The intent of the Local Government Code Enforcement Boards Act is to promote, protect and improve the health, safety, and welfare of the citizens of the counties and municipalities of Florida by authorizing the creation of administrative boards in counties and municipalities to provide an equitable, expeditious, effective, and inexpensive method of enforcing the codes and ordinances which have no criminal penalty. The following is an outline of the current situation with regard to the four changes to ch. 162, F.S. (1986 Supp.), proposed by this bill:

1. Currently, the law allows code enforcement inspectors to notify persons of violations and give violators a "reasonable time" to correct the violation. The current statutes also provide for hearings to be conducted by the code enforcement board. The law provides for code enforcement board jurisdiction for violations which are corrected and then recur prior to the meeting of the code enforcement board. The law, however, does not provide for jurisdiction if a violation is not corrected by the time specified for correction by the code inspector, but is corrected prior to the meeting of the code enforcement board. Because of the lack of this jurisdiction, individuals may completely disregard the reasonable time set by the code inspector knowing that the code enforcement board will not retain jurisdiction of the case.

2. Currently, the law provides for an expedited hearing if a violation presents "a serious threat to the public health, safety or welfare." In practice, code enforcement officers and code enforcement boards are frequently faced with violations which affect property and are irreparable or irreversible in nature. For example, an individual may undertake mass land clearing, but because the violation arguably does not present a serious threat to public health, safety or welfare, the code enforcement board is powerless to take immediate action other than pursuing the civil injunction. During the interim time period, the violator may continue to clear property, resulting in permanent damage to the property.

3. Currently, the law does not consider the rights of alleged violators by providing for factors to be considered by code enforcement boards in determining the amount of fines.

4. Currently, the law does not provide for notice of a violation in the instance where the violator cannot be found.

B. Effect of Proposed Changes:

This bill amends the Local Government Code Enforcement Boards Act to provide that:

1. If a violation is not corrected by the time specified by the code inspector, the case will be presented to the enforcement board even if the violation has been corrected before the board hearing.
2. If a violation is irreparable or irreversible in nature, the code inspector must make a reasonable effort to notify the violator and may immediately request the enforcement board for a hearing.
3. The enforcement board must consider specified factors when determining the amount of any fine it orders.
4. In addition to the requirement that a notice required by the act be served by certified mail, return receipt requested, or by hand delivery, this bill expands those currently available notices to allow notices to be served pursuant to the provisions of Florida Rules of Civil Procedure, Rule 1.070, i.e., service by publication as permitted by law.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

To the extent that this bill expedites the code enforcement process in a fair and consistent manner, violators will experience the associated costs of such violations. The bill should have a net positive economic impact on the public by ensuring that the health, safety and welfare of the citizens of the counties and municipalities in Florida are protected.

B. Government:

This bill should result in a net positive economic impact on government by better enabling local governments to fulfill their code enforcement responsibilities.

III. COMMENTS:

An identical HB 930 has been filed for the 1987 Legislative Session.

IV. AMENDMENTS:

None.

STORAGE NAME: 87-csh0930GSA

Date: April 21, 1987

Revised: May 7, 1987

Final: \_\_\_\_\_

HOUSE OF REPRESENTATIVES  
COMMITTEE ON COMMUNITY AFFAIRS  
STAFF ANALYSIS

BILL #: CS/HBs 0930 & 1125

RELATING TO: Local government codes and code enforcement boards

SPONSOR(S): Representatives Goode, Bloom, Canady, Rush & others

EFFECTIVE DATE: October 1, 1987

COMPANION BILL(S): SB 0792 & SB 0707

OTHER COMMITTEES OF REFERENCE: (1) None

(2) \_\_\_\_\_

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I. SUMMARY OF HB 0930:

This bill amends sections 162.06, 162.09, and 162.12, Florida Statutes, 1986 Supplement, relating to county or municipal code enforcement.

The bill provides that in the case of violations to a county or municipal code (which would include, but not be limited to, occupational license, fire, building, zoning and sign codes) the code inspector shall notify the violator and if, after a reasonable amount of time the violation has not been corrected, the inspector shall request a hearing of the local government code enforcement board and shall provide the violator with a written notice of the hearing. If the violation is corrected and then recurs or if it is not corrected by the time specified by the inspector, the case will be presented to the board even if the violation is corrected before the hearing. If the violation is irreparable or irreversible, the inspector must try to notify the violator and immediately request a hearing. The board may consider specific factors in determining the amount of any fine to a violator. Such factors shall be: (1) the gravity of the violation, (2) any actions taken by the violator for correction, and (3) any previous violations committed by the violator. Finally, any required notices shall be provided by certified mail, hand delivery or served pursuant to Rule 1.070 of the Florida Rules of Civil Procedure.

Currently, chapter 162, Florida Statutes, 1986 Supplement, provides for local government operation of code enforcement boards. The intent of the boards is to promote, protect, and improve the health, safety and welfare of the citizens of Florida by authorizing the creation of administrative boards for counties and cities to provide an equitable, expeditious, effective and inexpensive method of enforcing the codes and ordinances which have no criminal penalty.

II. ECONOMIC IMPACT OF HB 0930:

A. Public:

This bill would have an impact only upon violators of such codes and the amount would be determined by the type of violation and response.

B. Government:

Local government could incur additional cost for hearing and notice to violators. However, such cost could be offset by fines collected for such violations.

III. STATE COMPREHENSIVE PLAN IMPACT OF HB 0930:

This bill does not have any impact on the State Comprehensive Plan.

IV. COMMENTS ON HB 0930:

An identical bill (SB 0792) has been filed in the Senate.

V. SUMMARY OF HB 1125:

This bill would change current law to provide that fines imposed as a result of code enforcement violations shall be superior to all other liens upon property except for liens for ad valorem taxes or special assessments. It would require publication of hearing notices as an alternative to hand delivery or mailing, and requires notice to all persons and entities holding mortgages on the property on which the violation occurs.

Currently, section 162.06 (2), Florida Statutes, requires that notice of a code enforcement hearing be hand delivered or mailed to the violator. Section 162.09, Florida Statutes, provides that once a certified copy of an order imposing a fine is recorded in the public records, it constitutes a lien against the land owned by the violator. Such a lien may be enforced in the same manner as a court judgment by the sheriffs of the state including levy against personal property. If the fine remains unpaid after six months, the enforcement board may authorize foreclosure on the lien, except that no such lien may be foreclosed on homestead property.

This bill would amend section 162.06 (2), Florida Statutes, to allow any lien arising from the imposition of a fine for a violation occurring on or after October 1, 1987 (the effective date of the bill), to be second in rank immediately after any lien for ad valorem taxes. Sections 162.06 (2) and 162.12, Florida Statutes, are amended to allow publication of hearing notices to violators and all persons and entities holding mortgages on the property on which the violation occurs, in those situations where certified mail or hand delivery would be impractical. Publication shall be provided as required by chapter 49, Florida Statutes, (dealing with constructive service of process).

VI. ECONOMIC IMPACT OF HB 1125:

A. Public:

Those members of the public whose liens would become inferior to the enforcement board lien would be adversely affected by this bill; however, the public as a whole would benefit from the decrease in public funds required to correct violations where the property owner refuses to do so.

B. Government:

Local governments will benefit from this bill because it would give enforcement liens superiority to all liens, but for ad valorem tax liens. Thus, when a violator's property is liquidated, the enforcement board's lien will have a better chance of being satisfied.

VII. STATE COMPREHENSIVE PLAN IMPACT OF HB 1125:

This bill would have no direct impact upon the State Comprehensive Plan.

VIII. COMMENTS ON HB 1125:

It should be emphasized that this bill decreases the chances for banks and savings and loans institutions to obtain full compensation when they foreclose on property which has a code enforcement lien attached that must be satisfied prior to satisfaction of the the bank/mortgage holder.

IX. AMENDMENTS:

House Bill 1125 was amended in subcommittee to remove all reference to superiority of enforcement liens, and the requirement that notice of the lien be given to persons and entities holding mortgages on the property on which the violation occurs.

The notice sections of HB 0930 and HB 1125 were amended to allow publication or posting, in addition to hand delivery or mailing of the notice. Proof of publication is required in accord with ss. 50.041 and 50.501, Florida Statutes.

The full committee adopted the amendments, combined HB 0930 and HB 1125, and made the combined bills a committee substitute.

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