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H 1210 GENERAL BILL/CS/CS by Rules & Calendar; Governmental Operations; Martin; Roberts; Drage; D.L. Jones; Clark and others (Similar CS/CS/S 1382, Compare H 64, H 303, H 366, CS/H 627, H 768, H 899, H 1354, H 1474, H 1484, S 192, S 360, S 630, S 686, S 973, S 1073, S 1144, CS/S 1322)

Local Govt./Code Enforcement Boards: (THIS BILL COMBINES H 1210, 1474, 1484) provides that any codes & ordinances may be enforced by local government code enforcement boards; provides that counties & municipalities may adopt alternative code enforcement systems using special masters; revises provisions re size & membership of code enforcement boards; provides that certain board orders may be filed in county public records & specifies effect thereof, etc. Amends F.S. Effective Date: 10/01/89.

03/23/89 HOUSE Prefiled

03/24/89 HOUSE Referred to Governmental Operations

04/04/89 HOUSE Introduced, referred to Governmental Operations -HJ 114; On Committee agenda—Governmental Operations, 04/06/89, 3:30 pm, 314-HOB—For ratification of referral to subcommittee

04/21/89 HOUSE On subcommittee agenda—Governmental Operations, 04/25/89, 3:45 pm, 217-HOB

04/25/89 HOUSE Subcommittee Recommendation: Favorable as a proposed CS; On Committee agenda—Governmental Operations, 04/27/89, 8:30 am, 314-HOB

04/27/89 HOUSE Preliminary Committee Action by Governmental Operations: Favorable as a CS combined with HB 1474 and HB 1484

05/09/89 HOUSE CS combines this bill and 1474 & 1484; Combined CS additional reference(s): Appropriations -HJ 514; Comm. Report: CS by Governmental Operations -HJ 443; CS read first time -HJ 441; Now in Appropriations -HJ 443

05/17/89 HOUSE Withdrawn from Appropriations -HJ 514; Placed on Calendar

05/25/89 HOUSE Withdrawn from Calendar, referred to Rules & Calendar -HJ 655; On Committee agenda—Rules & Calendar, 05/25/89, 1:00 pm, 413-C; Preliminary Committee Action by Rules & Calendar: Favorable as a CS

05/29/89 HOUSE Comm. Report: CS/CS by Rules & Calendar, placed on Calendar -HJ 774; CS read first time -HJ 771; Placed on Special Order Calendar

05/30/89 HOUSE Read second time; Read third time; CS passed; YEAS 103 NAYS 6 -HJ 876

05/30/89 SENATE In Messages

06/01/89 SENATE Received -SJ 688; Substituted for CS/CS/SB 1382; CS passed; YEAS 34 NAYS 1 -SJ 828

06/01/89 Ordered enrolled

06/20/89 Signed by Officers and presented to Governor

07/03/89 Approved by Governor; Chapter No. 89-268

NOTES: Above bill history from Division of Legislative Information's *FINAL LEGISLATIVE BILL INFORMATION, 1989 SESSIONS*. Staff Analyses for bills amended beyond final committee action may not be in accordance with the enacted law. Journal page numbers (HJ & SJ) refer to daily Journals and may not be the same as final bound Journals.

STORAGE NAME: h1210-f.go

DATE: July 6, 1989

**HOUSE OF REPRESENTATIVES
COMMITTEE ON GOVERNMENTAL OPERATIONS
FINAL STAFF ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: CS/CS/HB 1210, HB 1474, and HB 1484

RELATING TO: Local Government Code and Ordinance Enforcement

SPONSOR(S): Committees on Rules and Calendar, Governmental Operations and Representatives Martin, Roberts and others

EFFECTIVE DATE: October 1, 1989

DATE BECAME LAW: July 3, 1989

CHAPTER #: 89-268, Laws of Florida

COMPANION BILL(S): Compare SB 192, SB 360, SB 630, SB 686, SB 973, SB 1144; Similar SB 1073, SB 1382

OTHER COMMITTEES OF REFERENCE: (1) Appropriations
(2) Rules and Calendar

I. SUMMARY:

A. SHORT SUMMARY:

Chapter 162, Florida Statutes, authorizes the creation of local government code enforcement boards. Although this chapter has been amended at various times throughout the 1980's to streamline and clarify the code enforcement process, several additional changes have been recommended by certain local governments and local code enforcement officials.

The proposed committee substitute would revise various sections of chapter 162, Florida Statutes, to: (1) make it clear that any code or ordinance can be placed under the jurisdiction of code enforcement boards; (2) allow non-charter counties and municipalities (in addition to charter counties) to adopt alternate code enforcement systems to use special masters in place of or in addition to code enforcement boards; (3) modify provisions relating to repeat violators and allow for increased fines for repeat violations; (4) modify provisions relating to the composition of enforcement boards to allow five-member boards and the appointment of alternates; (5) modify provisions relating to liens imposed for violations to allow fines to accrue after liens are placed, allow a prevailing party to recover costs for foreclosure on a lien, and change the time period for the duration of a lien and when a lien may be foreclosed; and (6) revise procedures for notices related to violations.

The bill would authorize counties and municipalities to establish

a system of citations for civil infractions which are violations of codes and ordinances. This system would be supplemental and additional to other means of enforcing codes and ordinances. The bill also authorizes counties and municipalities to designate code inspectors and to authorize code inspectors to issue citations for violations of county or municipal codes and ordinances. This provision does not specify the type of infraction that a violation would be.

The bill would allow local code compliance or enforcement employees to enforce the state's litter law and to administer state law relating to lost or abandoned property. The bill would also allow the Department of Natural Resources to delegate its powers for removal of abandoned vessels to local governments. Finally, the bill would revise state law relating to the issuance of inspection warrants to provide that cause for issuance of a warrant is deemed to exist if standards for a routine area inspection are satisfied or if there is reason to believe that a violation exists.

B. PRESENT SITUATION:

Chapter 162, Florida Statutes, authorizes the creation of local government code enforcement boards. The intent of the act is to provide an "equitable, expeditious, effective, and inexpensive method of enforcing the codes and ordinances in force in counties and municipalities, where a pending or repeated violation continues to exist, including, but not limited to, occupational license, fire, building, zoning, and sign codes." (s. 162.02, Florida Statutes). Counties and municipalities may, by ordinance, create or abolish seven-member code enforcement boards. Charter counties may, by ordinance, be exempt from the provisions of chapter 162, Florida Statutes, and may, by ordinance, adopt alternate code enforcement systems giving code enforcement boards or designated special masters the authority to hold hearings and assess fines.

In general, chapter 162, Florida Statutes, establishes the following code enforcement procedures:

- (1) Code inspectors, upon finding a code violation, must notify the violator and provide a reasonable time for correction. If the violation continues beyond the time specified for correction, the inspector requests a hearing before the code enforcement board. The enforcement board schedules a hearing on the violation and notifies the violator of the time, place, and nature of the hearing. Code inspectors may immediately request an enforcement hearing without giving the violator time to correct the violation if they believe the violation presents an immediate threat to the public health, safety, or welfare.
- (2) At the enforcement hearing, the alleged violation is presented to the code enforcement board. At the conclusion of a hearing, if the code enforcement board finds that a violation has occurred, it may issue an order that recognizes

the violation, directs the violator to correct the violation by a date certain, and notifies the violator that a fine will be imposed if the violation is not corrected by that date. If the code inspector finds that the violation has not been corrected by the date specified in the board's order, the inspector notifies the board of this noncompliance, and the board may then impose a fine. A hearing is not necessary to impose a fine.

Any notices required under this process must be provided by certified mail, hand delivered, or left at the violator's residence with a person who is a member of the violator's family. The code enforcement board may order a violator to pay a fine not to exceed \$250 for each day the violation continues past the date set for compliance by the board or for each time the board finds a repeated violation. A certified copy of an order imposing a fine may be recorded in the public records and constitutes a lien against the land on which the violation exists and upon any other property owned by the violator. No lien may be foreclosed on real property which qualifies as a homestead under the State Constitution. The duration of a lien is for a 5-year period, unless action is taken to foreclose on the lien within that time.

Chapter 162, Florida Statutes, has been amended at various times throughout the 1980's to streamline the code enforcement process, clarify procedures for enforcing codes and ordinances, and address particular issues such as enforcement for repeat violations. Several additional changes have been suggested by certain local governments and local code enforcement officials. These changes involve the following issues.

Types of codes and ordinances subject to the code enforcement process. Current law provides that the jurisdiction of code enforcement boards includes, "but is not limited to, occupational license, fire, building, zoning, and sign codes." Despite this inclusive language, some local governments have been reluctant to place the enforcement of other codes and ordinances under the jurisdiction of code enforcement boards without explicit direction as to the types of codes and ordinances that may be included.

Authorization of alternate enforcement systems. Charter counties are currently authorized to adopt alternate systems of code enforcement using designated special masters to hear violations of county codes and ordinances. Use of such a system allows for consideration of complicated or technical violations by one qualified individual in a relatively short period of time, as opposed to often lengthy board hearings. Other local governments have expressed an interest in using this type of process.

Number of code enforcement board members. Code enforcement boards must consist of seven members, and alternates may not be appointed for board members. Smaller local governments have experienced difficulty in establishing code enforcement boards of seven members due to the nature and size of their population. Other local governments with code enforcement boards have

sometimes had difficulty in conducting hearings because of the absence of a quorum, thus resulting in further delays in the enforcement process.

Powers of code enforcement boards. Current law allows code enforcement boards to subpoena violators and witnesses to their hearings and to subpoena evidence. Because the law provides generally that boards may "subpoena evidence" without specifying that evidence is to be subpoenaed to hearings, concerns have been raised that violators may request boards to use their subpoena power outside of the hearing process to obtain evidence for use by the violator.

Repeat violations. Although current law provides certain powers to code enforcement boards to guard against repeat violations of codes and ordinances, local governments have experienced problems in ensuring that repeat violations do not occur. Part of this problem is because there is no clear definition of what a "repeat violation" is in chapter 162, Florida Statutes. Repeat violators may bring an initial violation into compliance and avoid a fine, then repeat the same violation. If this occurs, some local governments believe that it is necessary to initiate the entire code enforcement process again to attempt to bring repeat violators into compliance or to fine such violators. In addition, repeat violators are subject to the \$250 limitation on fines for violations, regardless of the number of times the violation is repeated.

Liens resulting from fines. Once a lien has been filed as a result of a fine imposed for a code or ordinance violation, the fine does not continue to accrue for each day a violator remains out of compliance. Violators may find it easier to pay a smaller fine rather than comply with a board order if they know that the fine will not increase after the lien is filed. Current law also does not specifically allow a prevailing party to receive costs or attorney's fees incurred as a result of foreclosure action on a lien imposed as a result of a fine for code violations.

Filing of corrective orders. Certain local governments have expressed an interest in being able to file corrective orders (i.e., orders of a board directing a violator to correct a violation by a time certain or face the imposition of a fine) issued by an enforcement board in the public records of a county. Filing of such an order would put a subsequent purchaser or owner of property upon which a violation has occurred on notice that a violation exists. This may make it more difficult for a violator to "switch" property ownership during the period set for compliance by a board order to avoid payment of a fine or to avoid correcting a violation. This practice has been prevalent in some areas, particularly with respect to violations relating to substandard housing.

Citation authority. Chapter 162, Florida Statutes, does not establish procedures for counties or municipalities to establish citation systems for code or ordinance enforcement, whereby designated local enforcement personnel may issue a citation to a

violator of a local code or ordinance ordering the violator to either pay a certain fine or schedule an appearance in court. Establishment of such procedures, or other similar procedures for issuance of a citation, has been suggested by certain local governments and local code enforcement officials as a means for providing an additional immediate deterrent to violations of codes and ordinances, and for streamlining the enforcement process. Brevard County has obtained this authority through a special act that provides for such a system. Local governments do have the authority to provide animal control officers and firesafety inspectors with citation authority under ss. 828.27 and 633.052, Florida Statutes, respectively.

Cause for issuance of inspection warrants. Sections 933.20 - 933.30, Florida Statutes, establish procedures for the issuance and use of inspection warrants. Inspection warrants are issued for inspections relating to state or local laws or rules relating to municipal or county building, fire, safety, plumbing, electrical, health, minimum housing, and zoning standards. Cause for issuance of inspection warrants is deemed to exist if standards for conducting a routine or area inspection are satisfied with respect to a particular place and if there is reason to believe that a nonconformity exists that constitutes a violation of certain state or local laws or rules relating to municipal or county standards. A question has been raised as to whether it is necessary for both circumstances to exist prior to the issuance of a warrant, particularly if an inspection is part of a routine program of inspections.

Enforcement of litter, abandoned property, and abandoned vessel laws. State law requires the state's litter and abandoned property laws to be enforced and administered by law enforcement officers. Under the Florida Litter Law, local governments may designate park or recreation department employees as "law enforcement officers" for the purposes of enforcing litter laws. The state's abandoned property laws do not provide for this type of designation. Certain local governments have expressed an interest in being able to designate code inspectors or code enforcement officers to enforce and administer these laws to allow law enforcement officers to spend more time on more pressing duties.

State law pertaining to removal of abandoned and derelict vessels (boats) provides that the Department of Natural Resources (DNR) is the agency of the state authorized to remove abandoned or derelict vessels from public waters as necessary. The DNR is not authorized to delegate its powers to remove abandoned or derelict vessels to local governments.

C. EFFECT OF PROPOSED CHANGES:

The bill would amend s. 162.02, Florida Statutes, to delete any reference to the specific types of codes and ordinances under the jurisdiction of code enforcement boards. This would make it clear that local governments can place the enforcement of any local code or ordinance under the jurisdiction of code

enforcement boards. Deletion of the current language that lists the types of codes or ordinances that may be placed under the jurisdiction of enforcement boards does not mean that these codes or ordinances cannot be enforced by code enforcement boards.

The bill would amend s. 162.03, Florida Statutes, to allow non-charter counties and municipalities (in addition to charter counties) to, by ordinance, adopt an alternate code enforcement system using code enforcement boards or designated special masters, or both, to conduct hearings and assess fines. The bill would also delete language from this section that allows charter counties to, by ordinance, exempt themselves from the provisions of chapter 162, Florida Statutes. This language is unnecessary because the use of the provisions of part I of chapter 162, Florida Statutes, is at a local government's option. The act provides an additional or supplemental means of enforcing local codes and ordinances. Deletion of this language does not affect the ability of a charter county to enforce its codes and ordinances as it is otherwise authorized.

The bill would amend s. 162.04, Florida Statutes, to provide a definition of "repeat violation". A repeat violation would be defined as a violation of a provision of a code or ordinance by a person who has previously been found by a code enforcement board to have violated the same provision within the previous five years.

The bill would amend s. 162.05, Florida Statutes, to provide that counties or municipalities with populations of 5,000 or less could establish five-member or seven-member code enforcement boards. Local governments with populations greater than 5,000 would be required to establish seven-member boards. The bill would provide for staggered terms of five-member code enforcement boards, and would establish procedures by which existing seven-member code enforcement boards may be reduced to five-member boards under certain conditions. The bill would also allow up to two alternates to be appointed to any code enforcement board to serve in the absence of board members.

The bill would amend s. 162.06, Florida Statutes, to provide that, in the case of repeat violations: (1) code inspectors are to notify repeat violators of the repeat violation but do not have to provide the violator with a reasonable time to correct the violation, and shall notify the board of the repeat violation and request a hearing; and (2) the repeat violation case may be presented to the board even if the violation has been corrected before the board hearing.

The bill would amend s. 162.07, Florida Statutes, to provide that corrective orders issued by an enforcement board may be recorded in the public records. Such orders would serve as notice to subsequent purchasers, successors in interest, or assigns that a violation exists. The orders would be binding on a violator and, if the violation concerns real property, would be binding on any subsequent purchasers, successors in interest, or assigns. If such an order is recorded and the violation is corrected within

the time specified in the order, the board would be required to issue an order acknowledging compliance that would also be entered into the public records.

The bill would amend s. 162.08, Florida Statutes, to provide that enforcement boards have the power to subpoena evidence to their hearings. This is consistent with the boards' power to subpoena witnesses and violators to their hearings.

The bill would amend s. 162.09, Florida Statutes, to provide that a code enforcement board, upon finding that a repeat violation has been committed, may order a fine of up to \$500 for each day a repeat violation continues past the date of notice to the violator of the repeat violation. The bill also would provide that a board may reduce a fine.

The bill would provide that if a lien is placed against a violator's property as a result of a fine, the fine continues to accrue until a violator comes into compliance or the foreclosure on a lien is settled, whichever occurs first. The bill also would allow the code enforcement board to authorize the local government to foreclose on a lien after three months instead of the current six months. As is true under current law, liens could not be foreclosed on homestead property. The bill would provide that upon petition to the circuit court, a board order imposing a fine may be enforced in the same manner as a court judgment by the sheriffs of the state.

The bill would amend s. 162.10, Florida Statutes, to provide that a prevailing party is entitled to recover all costs, including attorney's fees, incurred in a foreclosure on a lien. The bill also would extend the period of time for which a lien continues from the current 5-year period to a 20-year period. This is consistent with the period of time for liens of judgments pursuant to s. 55.081, Florida Statutes.

The bill would amend s. 162.12, Florida Statutes, to allow for notices to an alleged violator to be left with any person residing in the violator's residence rather than just a member of the violator's family.

The bill would provide two procedures to local governments for issuance of citations by code inspectors or code enforcement officers. First, the bill would create s. 162.21, Florida Statutes, as part II of chapter 162, Florida Statutes, to allow counties and municipalities to designate "code enforcement officers" who can issue citations for violations of county codes and ordinances which the officer has reasonable cause to believe have occurred. A code enforcement officer must give the violator a reasonable time to correct the violation before the officer issues a citation. The officer may issue a citation if the officer has reason to believe that the violation presents a serious threat to the public health, safety, or welfare, or if it is irreparable or irreversible. The provisions of this section of the bill do not apply to the enforcement of building codes adopted under s. 553.73, Florida Statutes, if a building permit

is not required or has already been issued. The bill would provide that persons cited for violations are to be charged with civil infractions and assessed civil penalties which are established by the local government. Procedures for the contents of and for issuing these citations would also be provided. A person cited for a violation could pay the civil penalty or could schedule an appearance in county court to contest the citation. The procedures established under this part would be additional and supplemental to other means by which local governments are authorized to enforce their codes and ordinances, and would not prohibit them from enforcing their codes and ordinances by any other means.

Second, the bill would amend s. 125.69, Florida Statutes, and create s. 166.0415, Florida Statutes, to allow counties and municipalities, respectively, to designate employees as code inspectors to issue citations for violations of county or municipal codes and ordinances when a code inspector has actual knowledge that a violation has been committed. A code inspector must give the violator a reasonable time to correct the violation before the inspector issues a citation. The inspector may issue a citation if the inspector has reason to believe that the violation presents a serious threat to the public health, safety, or welfare, or if it is irreparable or irreversible. The provisions of this section of the bill would not apply to the enforcement of building codes adopted under s. 553.73, Florida Statutes, if a building permit is not required or has already been issued. Other than the content of such citations, no other specific procedures are provided for their issuance. Violations of ordinances or codes are not designated as a particular type of infraction. The bill would provide that these provisions could be used by counties or municipalities in lieu of the provisions of part II of chapter 162, Florida Statutes, which is created by the bill. The procedures established under these sections would be additional or supplemental to other means by which local governments are authorized to enforce their codes and ordinances, and would not prohibit them from enforcing their codes and ordinances by any other means.

The bill would amend s. 403.413, Florida Statutes (the Florida Litter Law) to provide that employees of local governments who provide for code compliance or enforcement may enforce the state's litter law. The bill also would create s. 705.1015, Florida Statutes, to provide that employees of local governments who provide for code compliance or enforcement may administer provisions pertaining to locating, processing, and disposing of lost or abandoned property. In both instances, designation of the local government's code compliance or enforcement employees to enforce or administer these provisions would not provide such employees with the authority to bear arms or make arrests. The bill would amend s. 823.11, Florida Statutes, relating to the Department of Natural Resources' (DNR) power to designate and remove abandoned boats, to allow DNR to enter into an agreement with a local government to delegate this power to the local government upon a finding that the local government is competent to carry out such responsibilities.

The bill would amend s. 933.22, Florida Statutes, to provide that cause to issue an inspection warrant relating to enforcement of certain state or local laws or rules relating to municipal or county standards shall exist if standards for a routine area inspection are satisfied or there is reason to believe that a violation exists. The bill would also expand the types of state or local laws or rules relating to municipal or county standards for which inspection warrants may be issued to include environmental, animal control, and land use standards.

D. SECTION-BY-SECTION ANALYSIS:

Section 1 -- Amends s. 162.02, Florida Statutes; deletes any reference to the specific types of codes and ordinances that may be enforced by local government code enforcement boards under the Local Government Code Enforcement Boards Act to make it clear that any code or ordinance can be considered under such jurisdiction.

Section 2 -- Amends s. 162.03, Florida Statutes; provides that non-charter counties and municipalities (in addition to charter counties) may adopt alternative code enforcement systems using code enforcement boards or special masters, or both; deletes language pertaining to a charter county's ability to exempt itself from the provisions of part I of chapter 162.

Section 3 -- Amends s. 162.03, Florida Statutes; defines "repeat violation".

Section 4 -- Amends s. 162.05, Florida Statutes; revises provisions relating to size of code enforcement boards to allow five-member boards; allows for the appointment of alternates to a board.

Section 5 -- Amends s. 162.06, Florida Statutes; provides authority of a code inspector and code enforcement boards with respect to repeat violations.

Section 6 -- Amends s. 162.07, Florida Statutes; conforms this section to previous amendments authorizing five-member code enforcement boards; provides that corrective orders of an enforcement board may be filed in the public records.

Section 7 -- Amends s. 162.08, Florida Statutes; provides that enforcement boards have the power to subpoena evidence to their hearings.

Section 8 -- Amends s. 162.09, Florida Statutes; provides for increased fines for repeat violations of codes and ordinances; authorizes enforcement boards to reduce fines; revises provisions for enforcement of liens for fines imposed; allows fines to continue to accrue once a lien has been imposed; revises the time period after which foreclosure on a lien is authorized from six months to three months; provides that circuit courts may be petitioned for the enforcement of board orders imposing a fine.

Section 9 -- Amends s. 162.10, Florida Statutes; extends the duration of liens for fines imposed from five years to twenty years; provides for recovery of costs by a prevailing party in actions to foreclose on liens.

Section 10 -- Amends s. 162.12, Florida Statutes; allows delivery of notices required under the Local Government Code Enforcement Boards Act to persons residing in a violator's residence.

Section 11 -- Creates s. 162.21, Florida Statutes; authorizes counties and municipalities to designate code enforcement officers to enforce codes and ordinances; authorizes such officers to issue citations for violations and provides requirements with respect thereto; provides requirements regarding codes and ordinances to be enforced under these provisions; provides a penalty for refusal to accept a citation.

Sections 12 and 13 -- Amends s. 125.69 and creates s. 166.0415, Florida Statutes; authorizes counties and municipalities to designate code inspectors; provides for issuance of citations for violations of county or municipal codes and ordinances and provides requirements with respect thereto; limits duties of code inspectors.

Section 14 -- Creates s. 403.413(6), Florida Statutes; authorizes county and municipal employees whose duty it is to ensure code compliance or enforcement to enforce the Florida Litter Law, with certain restrictions.

Section 15 -- Amends s. 705.101, Florida Statutes, to conform to amendments made in Section 17.

Section 16 -- Creates s. 705.1015, Florida Statutes; authorizes county and municipal employees whose duty it is to ensure code compliance or enforcement to administer provisions relating to lost or abandoned property, with certain restrictions.

Section 17 -- Amends s. 823.11, Florida Statutes; authorizes the Department of Natural Resources to delegate to local governments its powers relating to the removal of abandoned or derelict vessels.

Section 18 -- Amends s. 933.20, Florida Statutes; revises provisions which authorize the issuance of inspection warrants with respect to specified violations to include violations of additional state and local laws and rules relating to municipal or county standards.

Section 19 -- Amends s. 933.22, Florida Statutes; revises provisions relating to when cause is deemed to exist for issuance of inspection warrants; adds other types of laws and rules relating to municipal or county standards for which inspection warrants may be issued.

Section 20 -- Amends s. 933.26, Florida Statutes; revises provisions which authorize the issuance of inspection warrants with respect to specified violations to include violations of additional state and local laws and rules relating to municipal or county standards.

Section 21 -- Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring or First Year Start-Up Effects:

None.

2. Recurring or Annualized Continuation Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Appropriations Consequences:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring or First Year Start-Up Effects:

See Fiscal Comments.

2. Recurring or Annualized Continuation Effects:

See Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

See Fiscal Comments.

2. Direct Private Sector Benefits:

See Fiscal Comments.

3. Effects on Competition, Private Enterprise, and Employment Markets:

None.

D. FISCAL COMMENTS:

The bill should result in greater efficiency and effectiveness in local government code and ordinance enforcement as follows:

- (1) If they elect to do so, local governments should realize cost savings by using special masters instead of full enforcement boards to hear enforcement cases. Special masters should be able to hear more cases in less time than enforcement boards.
- (2) The code enforcement process involving repeat violations would be streamlined if persons commit less repeat violations because they know that they will be brought before a board without being given a lengthy compliance period and if they know that fines for repeat violations may be higher than normal fines for violations.
- (3) Use of the citation authority provided in the bill should provide an additional deterrent to violations of local codes and ordinances, thus resulting in decreased violations, greater compliance with local codes and ordinances, and reduced costs because of decreased need to conduct lengthy code enforcement procedures.

Local governments may experience some increased costs for enforcing codes and ordinances if a substantial number of additional codes and ordinances are brought under the jurisdiction of code enforcement boards or if a substantial number of citations are contested. This should be offset, however, by savings brought about by streamlining the enforcement process and by fines imposed through the citation process.

Certain individuals and businesses in the private sector which are frequent violators will probably experience increased costs for fines resulting from repeat violations and fines imposed by citations. Better enforcement of local codes and ordinances should help prevent violators, particularly repeat violators, from having an unfair economic advantage (lower maintenance and compliance costs) over businesses and individuals which comply with local codes and ordinances.

III. LONG RANGE CONSEQUENCES:

The bill is consistent with the following goal of the State Comprehensive Plan:

(21) GOVERNMENTAL EFFICIENCY.--

- (a) Goal.--Florida governments shall economically and efficiently provide the amount and quality of services required by the public.

IV. COMMENTS:

The bill is related to the mission statement of the House

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DATE: July 6, 1989
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Governmental Operations Committee which requires the committee to "examine the issues related to state imposition of programs on local governments and recommend solutions to the conflicts between state goals and local governments' ability and willingness to pay."

The provisions of the bill are not specifically addressed by the findings of the Policy Statement of the 1989-1990 Legislative Issues Conference.

V. SIGNATURES:

SUBSTANTIVE COMMITTEE:

Prepared by:

David Hawley
David Hawley

Staff Director:

Barry Kling
Barry Kling

APPROPRIATIONS:

Prepared by:

RULES AND CALENDAR:

Patricia Greene

Staff Director:

Cliff Nilson

REVISED: _____

BILL NO. CS/CS/SB 1382DATE: May 18, 1989Page 1

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. <u>Hetrick</u>	<u>Buck</u>	1. <u>CA</u>	<u>Fav/CS</u>
2. <u>Wiehle</u>	<u>Smawley</u>	2. <u>JCI</u>	<u>Fav/CS</u>
3. _____	_____	3. _____	_____
4. _____	_____	4. _____	_____

SUBJECT:

Local Government

BILL NO. AND SPONSOR:

CS/CS/SB 1382 by
Judiciary-Civil and CA and
Senator Meek

I. SUMMARY:

A. Present Situation:

Chapter 162, Florida Statutes, authorizes the creation of local government code enforcement boards. The intent of the act is to provide an "equitable, expeditious, effective, and inexpensive method of enforcing the codes and ordinances in force in counties and municipalities, where a pending or repeated violation continues to exist, including, but not limited to, occupational license, fire, building, zoning, and sign codes" (s.162.02, F.S.). Counties and municipalities may, by ordinance, create or abolish 7-member code enforcement boards. Charter counties may, by ordinance, be exempt from the provisions of ch.162, F.S., and may adopt alternate code enforcement systems giving code enforcement boards or designated special masters the authority to hold hearings and assess fines.

In general, ch.162, F.S., establishes the following code enforcement procedures:

- (1) Code inspectors, upon finding a code violation, must notify the violator and provide a reasonable time for correction. If the violation continues beyond the time specified for correction, the inspector requests a hearing before the code enforcement board. The enforcement board schedules a hearing on the violation and notifies the violator of the time, place, and nature of the hearing. Code inspectors may immediately request an enforcement hearing without giving the violator time to correct the violation if they believe the violation presents an immediate threat to the public health, safety, or welfare.
- (2) At the enforcement hearing, the alleged violation is presented to the code enforcement board. At the conclusion of a hearing, if the code enforcement board finds that a violation has occurred, it may issue an order that recognizes the violation, directs the violator to correct the violation by a date certain, and notifies the violator that a fine will be imposed if the violation is not corrected by that date. If the code inspector finds that the violation has not been corrected by the date specified in the board's order, the inspector notifies the board of this noncompliance, and the board may then impose a fine. A hearing is not necessary to impose a fine.

Any notices required under this process must be provided by certified mail, hand delivered, or left at the violator's residence with a person who is a member of the violator's family. The code enforcement board may order a violator to pay a fine not to exceed \$250 for each day the violation continues past the date set for compliance by the board or for each time

the board finds a repeated violation. A certified copy of an order imposing a fine may be recorded in the public records and constitutes a lien against the land on which the violation exists and upon any other property owned by the violator. No lien may be foreclosed on real property which qualifies as a homestead under the State Constitution. The duration of a lien is for a 5-year period, unless action is taken to foreclose on the lien within that time.

Chapter 162, F.S., has been amended at various times throughout the 1980's to streamline the code enforcement process, clarify procedures for enforcing codes and ordinances, and address particular issues such as enforcement for repeat violations. Several additional changes have been suggested by certain local governments and local code enforcement officials. These changes involve the following issues.

Types of codes and ordinances subject to the code enforcement process. Current law provides that the jurisdiction of code enforcement boards includes, "but is not limited to, occupational license, fire, building, zoning, and sign codes." Despite this inclusive language, some local governments have been reluctant to place the enforcement of other codes and ordinances under the jurisdiction of code enforcement boards without explicit direction as to the types of codes and ordinances that may be included.

Authorization of alternate enforcement systems. Charter counties are currently authorized to adopt alternate systems of code enforcement using designated special masters to hear violations of county codes and ordinances. Use of such a system allows for consideration of complicated or technical violations by one qualified individual in a relatively short period of time, as opposed to often lengthy board hearings. Other local governments have expressed an interest in using this type of process.

Number of code enforcement board members. Code enforcement boards must consist of seven members, and alternates may not be appointed for board members. Smaller local governments have experienced difficulty in establishing code enforcement boards of seven members due to the nature and size of their population. Other local governments with code enforcement boards have sometimes had difficulty in conducting hearings because of the absence of a quorum, thus resulting in further delays in the enforcement process.

Powers of code enforcement boards. Current law allows code enforcement boards to subpoena violators and witnesses to their hearings and to subpoena evidence. Because the law provides generally that boards may "subpoena evidence" without specifying that evidence is to be subpoenaed to hearings, concerns have been raised that violators may request boards to use their subpoena power outside of the hearing process to obtain evidence for use by the violator.

Repeat violations. Although current law provides certain powers to code enforcement boards to guard against repeat violations of codes and ordinances, local governments have experienced problems in ensuring that repeat violations do not occur. Part of this problem is because there is no clear definition of what a "repeat violation" is in ch.162, F.S. Repeat violators may bring an initial violation into compliance and avoid a fine, then repeat the same violation. If this occurs, some local governments believe that it is necessary to initiate the entire code enforcement process again to attempt to bring repeat violators into compliance or to fine such violators. In addition, repeat violators are subject to the \$250 limitation on fines for violations, regardless of the number of times the violation is repeated.

Liens resulting from fines. Once a lien has been filed as a result of a fine imposed for a code or ordinance violation, the fine does not continue to accrue for each day a violator remains out of compliance. Violators may find it easier to pay a smaller fine rather than comply with a board order if they know that the fine will not increase after the lien is filed. Current law also does not specifically allow a prevailing party to receive costs or attorney's fees incurred as a result of foreclosure action on a lien imposed as a result of a fine for code violations.

Filing of corrective orders. Certain local governments have expressed an interest in being able to file corrective orders (i.e., orders of a board directing a violator to correct a violation by a time certain or face the imposition of a fine) issued by an enforcement board in the public records of a county. Filing of such an order would put a subsequent purchaser or owner of property upon which a violation has occurred on notice that a violation exists. This may make it more difficult for a violator to "switch" property ownership during the period set for compliance by a board order to avoid payment of a fine or to avoid correcting a violation. This practice has been prevalent in some areas, particularly with respect to violations relating to a substandard housing.

Citation authority. Chapter 162, F.S., does not establish procedures for counties or municipalities to establish citation systems for code or ordinance enforcement, whereby designated local enforcement personnel may issue a citation to a violator of a local code or ordinance ordering the violator to either pay a certain fine or schedule an appearance in court. Establishment of such procedures, or other similar procedures for issuance of a citation, has been suggested by certain local governments and local code enforcement officials as a means for providing an additional immediate deterrent to violations of codes and ordinances, and for streamlining the enforcement process. Brevard County has obtained this authority through a special act that provides for such a system. Local governments do have the authority to provide animal control officers and firesafety inspectors with citation authority under ss.828.27 and 633.053, F.S., respectively.

Cause for issuance of inspection warrants. Sections 933.20-933.30, F.S., establish procedures for the issuance and use of inspection warrants. Inspection warrants are issued for inspections relating to state or local laws or rules relating to municipal or county building, fire, safety, plumbing, electrical, health, minimum housing, and zoning standards. Cause for issuance of inspection warrants is deemed to exist if standards for conducting a routine or area inspection are satisfied with respect to a particular place and if there is reason to believe that a nonconformity exists that constitutes a violation of certain state or local laws or rules. A question has been raised as to whether it is necessary for both circumstances to exist prior to the issuance of a warrant, particularly if an inspection is part of a routine program of inspections.

Enforcement of litter, abandoned property, and abandoned vessel laws. State law requires the state's litter and abandoned property laws to be enforced and administered by law enforcement officers. Under the Florida Litter Law, local governments may designate park or recreation department employees as "law enforcement officers" for the purposes of enforcing litter laws. The state's abandoned property laws do not provide for this type of designation. Certain local governments have expressed an interest in being able to designate code inspectors or code enforcement officers to enforce and administer these laws to allow law enforcement officers to spend more time on more pressing duties.

State law pertaining to removal of abandoned and derelict vessels (boats) provides that the Department of Natural Resources (DNR) is the agency of the state authorized to remove abandoned or derelict vessels from public waters as necessary. The DNR is not authorized to delegate its powers to remove abandoned or derelict vessels to local governments.

B. Effect of Proposed Changes:

The bill would amend s.162.02, F.S., to delete any reference to the specific types of codes and ordinances under the jurisdiction of code enforcement boards. This would make it clear that local governments can place the enforcement of any local code or ordinance under the jurisdiction of code enforcement boards. Deletion of the current language that lists the types of codes or ordinances that may be placed under the jurisdiction of enforcement boards does not mean that these codes or ordinances cannot be enforced by code enforcement boards.

The bill would amend s.162.03, F.S., to allow non-charter counties and municipalities, by ordinance, to adopt an alternate code enforcement system using code enforcement boards or designated special masters, or both, to conduct hearings and assess fines.

The bill would amend s.162.04, F.S., to provide a definition of "repeat violation." A repeat violation would be defined as a violation of a provision of a code or ordinance by a person who has previously been found by a code enforcement board to have violated the same provision within the previous five years.

The bill would amend s.162.05, F.S., to provide that counties or municipalities with populations of less than 5,000 persons could establish 5-member or 7-member code enforcement boards. Local governments with populations of 5,000 or more persons would be required to establish 7-member boards. The bill would provide for staggered terms of members of code enforcement boards, and would establish procedures by which existing 7-member code enforcement boards may be reduced to 5-member boards under certain conditions. The bill would also allow up to two alternates to be appointed to any code enforcement board to serve in the absence of board members.

The bill would amend s.162.06, F.S., to provide that, in the case of repeat violations: (1) code inspectors are to notify repeat violators of the repeat violation but do not have to provide the violator with a reasonable time to correct the violation, and shall notify the board of the repeat violation and request a hearing; and (2) the repeat violation case may be presented to the board even if the violation has been corrected before the board hearing.

The bill would amend s.162.07, F.S., to provide that corrective orders issued by an enforcement board may be recorded in the public records. Such orders would serve as notice to subsequent purchasers, successors in interest, or assigns that a violation exists. The orders would be binding on a violator and, if the violation concerns real property, would be binding on any subsequent purchasers, successors in interest, or assigns. If such an order is recorded and the violation is corrected within the time specified in the order, the board would be required to issue an order acknowledging compliance that would also be entered into the public records.

The bill would amend s.162.08, F.S., to provide that enforcement boards have the power to subpoena evidence to their hearings. This is consistent with the boards' power to subpoena witnesses and violators to their hearings.

The bill would amend s.162.09, F.S., to provide that a code enforcement board, upon finding that a repeat violation has been committed, may order a fine of up to \$500 for each day a repeat violation continues past the date of notice to the violator of the repeat violation. The bill also would provide that a board may reduce a fine.

The bill would provide that if a lien is placed against a violator's property as a result of a fine, the fine continues to accrue until a violator comes into compliance or a judgment is rendered in the foreclosure suit, whichever occurs first. The bill also would allow the code enforcement board to authorize the local government to foreclose on a lien after three months instead of the current six months. As is true under current law, liens could not be foreclosed on homestead property. The bill would provide that enforcement boards may petition the circuit court for enforcement of a board order imposing a fine in the same manner as a court judgment by the sheriffs of the state.

The bill would amend s.162.10, F.S., to provide that a prevailing party in a foreclosure suit is entitled to recover all costs incurred in the suit, including reasonable attorney's fees. The bill also would extend the period of time for which a lien continues from the current 5-year period to a 20-year period. This is consistent with the period of time for liens of judgments pursuant to s.55.081, F.S.

The bill would amend s.162.12, F.S., to allow for notices to an alleged violator to be left with any person residing in the violator's residence rather than just a member of the violator's family.

The bill would provide two procedures to local governments for issuance of citations by code inspectors or code enforcement officers. First, the bill would create s.162.21, F.S., as part II of ch.162, F.S., to allow counties and municipalities to designate "code enforcement officers" who can issue citations for violations of county codes and ordinances which the inspector has reasonable cause to believe have occurred. Prior to issuing a citation, the code enforcement officer would have to provide notice of the violation and establish a time period within which the violation could be corrected. If the violation was not corrected within the time prescribed, a citation could be issued. The code enforcement officer would not have to allow time for correction if he had reason to believe the violation presented a serious threat to the public health, safety, or welfare or if the violation was irreparable or irreversible. The bill would provide that persons cited for violations are to be charged with civil infractions and assessed civil penalties which are established by the local government. Procedures for the contents of and for issuing these citations would also be provided. A person cited for a violation could pay the civil penalty or could schedule an appearance in county court to contest the citation. The procedures established under this part would be additional and supplemental to other means by which local governments are authorized to enforce their codes and ordinances, and would not prohibit them from enforcing their codes and ordinances by any other means.

Second, the bill would amend s.125.69, F.S., and create s.166.0415, F.S., to allow counties and municipalities, respectively, to designate employees as code inspectors to issue citations for violations of county or municipal codes and ordinances when such code inspector has actual knowledge of a violation. Other than the content of such citations, no other specific procedures are provided for their issuance. Violations of ordinances or codes are not designated as a particular type of infraction. The bill would provide that these provisions could be used by counties or municipalities in

lieu of the provisions of part II of ch.162, F.S., which is created by the bill.

The bill would amend s.403.413, F.S. (the Florida Litter Law) to provide that employees of local governments who provide for code compliance or enforcement may enforce the state's litter law. The bill also would create s.705.1015, F.S., to provide that employees of local governments who provide for code compliance or enforcement may administer provisions pertaining to locating, processing, and disposing of abandoned property. In both instances, designation of the local government's code compliance employees to enforce or administer these provisions would not authorize or provide such employees with the authority to bear arms or make arrests.

The bill would amend s.823.11, F.S., relating to the Department of Natural Resources' (DNR) power to designate and remove abandoned boats, to allow DNR to enter into an agreement with a local government to delegate this power to the local government.

The bill would amend s.933.20, s.933.22, and s.933.26, F.S., to provide that cause to issue an inspection warrant relating to enforcement of certain state or local laws or rules relating to municipal or county standards shall exist if standards for a routine area inspection are satisfied or there is reason to believe that a violation exists. The bill would also expand the types of state or local laws or rules relating to municipal or county standards for which inspection warrants may be issued to include environmental, animal control, and land use standards.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

Certain individuals and businesses in the private sector which are frequent violators will probably experience increased costs for fines resulting from repeat violations and fines imposed by citations. Better enforcement of local codes and ordinances should help prevent violators, particularly repeat violators, from having an unfair economic advantage (lower maintenance and compliance costs) over businesses and individuals which comply with local codes and ordinances.

B. Government:

The bill should result in greater efficiency and effectiveness in local government code and ordinance enforcement as follows:

- (1) If they elect to do so, local governments should realize cost savings by using special masters instead of full enforcement boards to hear enforcement cases. Special masters should be able to hear more cases in less time than enforcement boards.
- (2) The code enforcement process involving repeat violations would be streamlined if persons commit less repeat violations because they know that they will be brought before a board without being given a lengthy compliance period and if they know that fines for repeat violations may be higher than normal fines for violations.
- (3) Use of the citation authority provided in the bill should provide an additional deterrent to violations of local codes and ordinances, thus resulting in decreased violations, greater compliance with local codes and ordinances, and reduced costs because of decreased need to conduct lengthy code enforcement procedures.

Local governments may experience some increased costs for enforcing codes and ordinances if a substantial number of additional codes and ordinances are brought under the jurisdiction of code enforcement boards or if a substantial number of citations are contested. This should be offset, however, by savings brought about by streamlining the enforcement process and by fines imposed through the citation process.

III. COMMENTS:

None.


IV. AMENDMENTS:

None.

STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
CS/SB 1382

The committee substitute requires the code enforcement officer to give notice of the violation and allow time for correction before issuing a citation.

The committee substitute makes technical changes.

Committee on Judiciary-Civil

Staff Director

(FILE THREE COPIES WITH THE SECRETARY OF THE SENATE)