

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Date: September 29, 1997 Revised: 10/7/97 _____

Subject: Assault & Battery Upon Code Inspectors

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Barrow</u>	<u>Miller</u>	<u>CJ</u>	<u>Fav/1 amendment</u>
2.	<u>_____</u>	<u>_____</u>	<u>WM</u>	<u>_____</u>
3.	<u>_____</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>
4.	<u>_____</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>
5.	<u>_____</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>

I. Summary:

SB 106 creates enhanced penalties for committing the offenses of assault, battery, aggravated assault, and aggravated battery upon a code inspector under chapter 162, *Florida Statutes*. The bill would take effect on October 1, 1998.

This bill creates the following section of the Florida Statutes: 784.083.

II. Present Situation:

Local Government Code Inspectors

Under Part I of Chapter 162, *Florida Statutes*, each county or municipality is authorized to create a local government code enforcement board to enforce local codes and ordinances within its jurisdiction. The types of codes and ordinances that a code inspector would monitor compliance would include, but is not limited to, such things as beautification, zoning, dangerous nuisances, habitability of an existing structure, minimum housing limitations, animal control, and solid waste collection. A local government may enact an ordinance that would give code enforcement boards, or special masters designated by the local governing body, or both, the authority to hold hearings and assess fines against violators of the respective county or municipal codes and ordinances. §162.03 (2), F.S.

In order to assure county or municipal code compliance, a county or municipality may authorize an agent or employee of the county or municipality to *monitor compliance of local codes*. §162.04 (2), F.S. Such agents or employees are called *code inspectors*. Code inspectors survey and inspect premises and property to ensure that code compliance exists. Code inspectors may

determine that a person has committed a code violation and initiate code enforcement proceedings through the code enforcement board. §162.06, F.S.

If a code inspector determines that a code has been violated, the code inspector must notify the violator that a violation has been found. §162.06 (2), F.S. A first-time violator must be given a reasonable time by the code inspector to correct the violation prior to reporting the violator to the code enforcement board. If the violation continues beyond the time allowed by the code inspector to correct the violation, the code inspector must notify the code enforcement board and request a hearing on the violation.

Upon a notification of non-compliance or failure to correct a violation to the enforcement board, an enforcement proceeding (hearing) will be scheduled to be heard by the enforcement board. Upon the scheduling of a hearing, the violator is provided written notice of the hearing. A hearing notice is authorized by statute to be provided in several ways.

The specific manner in which to give notice of a hearing to an alleged violator in a particular jurisdiction should be specified in the local jurisdiction's ordinance. Notice of a hearing to an alleged violator may be provided by certified mail with return receipt requested. §162.12, F.S. Notice may also be provided by hand by the sheriff or other law enforcement officer, code inspector, or other person designated by the local governing body. §162.12 (1), F.S. Written notice may also be left at the violator's usual place of residence with any person residing therein who is above 15 years of age if the hand-deliverer informs such person as to the contents of the notice. The code enforcement board may also approve notice to be given by once-a-week publication in a certain format in a newspaper of general circulation for four consecutive weeks or posting of such notice in a certain manner in at least two places for at least ten consecutive days. §162.12 (2), F.S.

A hearing before the code enforcement board contains testimony provided under oath by persons who are subpoenaed by the code enforcement board, such as the violator, the code inspector, and other witnesses. Although such hearings do not afford all of the protections that a court of law would provide, including the rules of evidence, fundamental due process is observed and must govern the proceedings. §162.07 (1) - (3), F.S. The code enforcement board issues findings of facts based on the evidence heard and conclusions of law. §162.07 (4), F.S. As a result, the majority of the present members of a quorum of the enforcement board must issue an order affording the appropriate relief. The order may require specific compliance action by a specified date.

If a code inspector notifies the code enforcement board that an order of the enforcement board has not been complied with by the set time or, upon finding that a repeat violation has been committed, the code enforcement board may impose a fine upon the violator for each day the violation continues as determined by the code inspector and without another hearing. §162.09(1), F.S. Fines for a first violation cannot exceed \$250 per day or \$500 per day for a repeat violation and may include all costs of repairs to correct the non-compliance. §162.09(2)(a), F.S. Other fines may be also addressed in statute for certain circumstances. A local governing body may

enforce the fines by filing a lien against the property and the violator. §§162.09 (3) and 162.10, F.S.

Local Government Code Enforcement Officers

Under Part II of Chapter 162, *Florida Statutes*, each county or municipality is authorized to designate any employee or agent to *enforce codes and ordinances* pertaining to land use regulation within its jurisdiction. §162.21, F.S. The training and qualifications of code enforcement officers is determined by the local governing body. Code enforcement officers *may include*, but are not limited to, code inspectors, law enforcement officers, animal control officers, or firesafety inspectors. §162.21 (2), F.S. However, designation as a code enforcement officer does not by itself provide the code enforcement officer with the power of arrest nor does it subject the code enforcement officer to the provisions of §§943.085 - 943.255, *Florida Statutes*, which are the standards, training, and certification of law enforcement and correctional officers through the Florida Department of Law Enforcement.

If a code enforcement officer has reasonable cause to believe that a local code or ordinance has been violated, the code enforcement officer must provide written notice to the person that a violation of a local code or ordinance has been committed. §§162.21 (2) (b) and 162.23 (2), F.S. The code enforcement establishes a reasonable time, not less than 5 days and not to exceed 30 days, for the violator to correct the violation. Written notice and time to correct the violation is not required to be provided by the code enforcement officer prior to writing a citation or notice to appear for a repeat violation or if the violation poses a serious threat to the public health, safety, or welfare or the violation is irreparable or irreversible.

If a code enforcement officer, upon personal investigation, determines that the person has not corrected the problem that was reported to the violator, the code enforcement officer may cite the violator for a civil infraction in violation of a local code or ordinance. Section 162.21 (2) (c), *Florida Statutes*, specifically provides for the information that is minimally required in a civil citation for a local code or ordinance violation. The information on the citation that will be provided to a violator includes a *notice to appear* in county court on the charge and the option to pay a civil penalty or fine for the code infraction according to a penalty schedule established by the local government not to exceed \$500. §§162.21 (5) and 162.23, F.S. Upon being cited for a violation by a code enforcement officer, a violator must pay the fine on the citation or appear in court on the date provided to contest the violation through the court system.

Florida Law Enforcement Protection Act and Assault and Battery on Law Enforcement Officers

Section 775.0823, *Florida Statutes*, the Law Enforcement Protection Act, provides enhanced penalties for violent offenses committed upon victims who are law enforcement officers, correctional officers, state attorneys, assistant state attorneys, justices, or judges that arise out of or in the scope of the victim's duties. Law enforcement officers who are covered by this Act are specifically those officers who are defined in section 943.10 (1), (2), (3), (6), (7), (8), or (9),

Florida Statutes. The definition under that section includes law enforcement officers who are certified in Florida through the accreditation of the Criminal Justice Standards and Training Commission and have the vested authority to bear arms and make arrests, certified correctional officers, certified correctional probation officers, as well as part-time and auxiliary law enforcement officers and correctional officers. The Law Enforcement Protection Act provides enhanced penalties and penalty directives for violent offenses such as first and second-degree murder, attempted murder, manslaughter, kidnapping, aggravated battery, and aggravated assault.

Section 784.07, *Florida Statutes*, provides for reclassification of offenses and enhanced penalties for the offenses of aggravated assault, aggravated battery, assault, and battery committed upon law enforcement officers. Under this section, “law enforcement officer” is defined to include a sworn law enforcement officer, a correctional officer, a correctional probation officer, and a part-time or auxiliary law enforcement officer or correctional officer as defined in section 943.10, *Florida Statutes*. It also includes any county probation officer; employee or agent of the Department of Corrections who supervises or provides services to inmates; an officer of the Parole Commission; and law enforcement personnel of the Game and Fresh Water Fish Commission, the Department of Environmental Protection, or the Department of Law Enforcement. This law also extends to cover firefighters, which includes firesafety code inspectors for the state, county or municipal governments. Traffic infraction enforcement officers and parking enforcement specialists engaged in the lawful performance of his or her duties is also covered for offenses to be reclassified.

Under section 784.07, *Florida Statutes*, if the victim of aggravated battery, aggravated assault, battery, or assault is one of the aforementioned persons, the charge will be reclassified as follows:

- (a) assault - second degree misdemeanor to first degree misdemeanor;
- (b) battery - first degree misdemeanor to third degree felony;
- (c) aggravated assault - third degree felony to second degree felony; and
- (d) aggravated battery - second degree felony to first degree felony.

If a person who is convicted of a battery under this section is in possession of a firearm or destructive device, the offender must be sentenced to a minimum mandatory term of imprisonment of three years. If a person who is convicted of a battery under this section is in possession of a semiautomatic firearm and its high-capacity detachable box magazine or a machine gun, the offender must be sentenced to a minimum mandatory term of imprisonment of eight years.

For the offenses that are sentenced pursuant to the sentencing guidelines, if the primary offense is a violation of the Law Enforcement Protection Act under section 775.0823 (2), attempted first degree murder, the subtotal sentence points are multiplied by a factor of 2.5. If the primary offense is a violation of section 775.0823 (3), (4), (5), (6), (7), or (8), the subtotal sentence points are multiplied by a factor of 2.0. If the primary offense is a violation of section 784.07 (3) or section 775.0875 (1), or of the Law Enforcement Protection Act under section 775.0823 (9) or (10), the subtotal sentence points are multiplied by a factor of 1.5.

III. Effect of Proposed Changes:

The offenses of assault, battery, aggravated assault, and aggravated battery upon a code inspector would each be reclassified as a degree higher than the offenses are currently classified for such offenses to be committed upon any person. The reclassification would apply to offenses committed on or after October 1, 1998.

Under this bill, if the victim of aggravated battery, aggravated assault, battery, or assault is a code inspector, the charge would be reclassified as follows:

- (a) assault - second degree misdemeanor to first degree misdemeanor;
- (b) battery - first degree misdemeanor to third degree felony;
- (c) aggravated assault - third degree felony to second degree felony; and
- (d) aggravated battery - second degree felony to first degree felony.

The offenses encompassed by this bill would be reclassified for such offenses that are committed upon code inspectors, who are those persons authorized by a local government to *assure code compliance* under Part I of chapter 162, *Florida Statutes*. Code inspectors under chapter 162, *Florida Statutes*, that assure compliance of local codes and ordinances, such as beautification, zoning, dangerous nuisances, solid waste collection, animal control, and minimum housing, would be covered by the enhanced penalties of this bill.

It appears that building code inspectors, who are covered under chapter 468, *Florida Statutes*, but proceed under the civil citation method under chapter 162 for the enforcement of obtaining building permits where it is required, would also be included for coverage under this bill. However, violations for a permit that is already issued would be handled under a permitting process that is different than the code enforcement board process delineated in Part I of chapter 162, *Florida Statutes*. Thus, it is likely that there would not be coverage of enhanced penalties for assaults and batteries committed on a building code inspector who is seeking compliance with permits that are already issued, would not be covered.

Firesafety inspectors, who are covered under chapter 633, *Florida Statutes*, already have coverage for enhanced penalties for assault and battery under §784.07, *Florida Statutes*. Likewise, law enforcement officers who also ensure code and ordinance compliance under chapter 162, *Florida Statutes*, are also covered and protected by enhanced penalties for assault and battery under §784.07, *Florida Statutes*.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The impact on the prison system and the court system is indeterminate, but is anticipated to be insignificant.

VI. Technical Deficiencies:

None.

VII. Related Issues:

According to Rick Wolfe, the immediate past president of the Florida Association of Code Enforcement, there have been many incidences of violence exhibited against code enforcement officers, including homicide. He stated that the 1,500-member association has supported this legislation for the last several years. It is his opinion that the utilization of the term “code inspector” is all-encompassing as far as the goal the association is attempting to reach by this legislation. He stated that practically speaking, the term “code inspectors” is very broad and is basically interchangeable with the term “code enforcement officer” for purposes of covering those persons who need the additional protection of enhanced penalties for being the victim of assault or battery.

VIII. Amendments:

#1 by Criminal Justice:

Clarifies that the enhancement of penalties applies when the code inspector was victimized while engaged in the lawful performance of his or her duties.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
