

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: January 30, 1998 Revised: _____

Subject: Local Government Code Enforcement

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Schmith</u>	<u>Yeatman</u>	<u>CA</u>	<u>_____</u>
2.	<u>_____</u>	<u>_____</u>	<u>JU</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:

The bill provides for a stay of any action or penalty imposed by a local code enforcement board upon appeal of the board’s final administrative order to the circuit court, unless the circuit court finds there is a serious threat to the public health, safety or welfare. The bill also provides for a refund of any administrative penalty paid by the aggrieved party if the appeal is resolved in his or her favor.

This bill substantially amends section 162.11, Florida Statutes.

II. Present Situation:

Part I, chapter 162, Florida Statutes, is known as the “Local Government Code Enforcement Boards Act” and defines the authority and duties of local government code enforcement boards. Counties and municipalities are authorized to create administrative boards with authority to impose administrative fines and other noncriminal penalties to provide an equitable, expeditious, effective, and inexpensive method of enforcing any county and municipal codes and ordinances where pending or repeated violations exist. The local governing body may appoint one or more code enforcement boards and legal counsel for the code enforcement boards. In the case of municipal code enforcement boards, the members of such boards must be residents of the municipality and in the case of county code enforcement boards, members must be residents of the county. The number of members depends on the population of the county or municipality.

Section 162.06, F.S., provides that the code inspector is an authorized agent or employee of a county or municipality who must initiate enforcement proceedings for the violation of a code or ordinance before a code enforcement board. Board members are prohibited from initiating any enforcement proceedings. In a typical case, a code inspector must notify a violator and give

reasonable time to correct the violation. If the violation is not corrected within the time limit, the code inspector must notify the board and request a hearing before the board.

The board schedules a hearing in which written notice of such hearing is provided to the violator either by hand delivery or mail. The board is also authorized to, at its discretion, notice the violator by publication or posting. Should the violation be corrected, but recurs, or should the violation not be corrected by the time specified for correction by the code inspector, the case may be presented to the code enforcement board even if the violation has been corrected prior to the board hearing which must be stated in the notice.

If a repeat violation is found, the code inspector is required to notice the violator but is **not** required to give the violator a reasonable time to correct the violation. Upon notifying the violator, the code inspector must notify an enforcement board and request a hearing. The code enforcement board schedules a hearing and provides notice. The case may be presented to the enforcement board even if the repeat violation has been corrected prior to the board hearing which must be stated in the notice.

If the code inspector has reason to believe a violation or the condition causing the violation presents a serious threat to the public health, safety, and welfare, or the violation is irreparable or irreversible in nature, the code inspector must make a reasonable effort to notify the violator and is authorized to immediately notify the enforcement board and request a hearing.

Section 162.09, F.S., authorizes an enforcement board to impose fines upon a violator for failure to repair the property within the time or specifications required by the order of the board and for repeat violations of the code. A fine may not exceed \$250 per day for the first violation or \$500 per day for a repeat violation, and may additionally include all costs of repairs. If the board finds that the violation is irreparable or irreversible, it may impose a fine not to exceed \$5,000 per violation. The board shall consider the gravity of the violation, any actions taken by the violator to correct the violation, and any previous violations committed by the violator when determining the amount of the fine to be imposed.

Section 162.11, F.S., authorizes any aggrieved party, including the local governing body, to appeal a final administrative order of the enforcement board to the circuit court within 30 days of execution of the order. The appeal is not a de novo hearing, but rather a limited appellate review of the record created before the enforcement board. The statute does not provide for a stay of the local code enforcement board's action or fines levied during the pendency of the appeal. As such, the Florida Rules of Appellate Procedure provide that the aggrieved party has the burden to file a motion for a stay from the lower tribunal (here, the local code enforcement board).

III. Effect of Proposed Changes:

The bill amends s. 162.11, F.S., to provide for a stay of the local enforcement board's action, and any fines levied thereby, beginning on the date an aggrieved party files an appeal of the board's final administrative order. All administrative fines or other orders are held in abeyance until the

circuit court issues an order in the case. If the appeal is resolved in favor of the aggrieved party, any administrative fine levied until the time the appeal was filed shall be refunded to the aggrieved party, and any liens or other impediments placed against the property by the enforcement board shall be removed. If the appeal is resolved in favor of the enforcement board, the administrative penalty shall continue and the stay lifted on the date the circuit court issues its order. Finally, the bill provides that the stay shall not be granted if the circuit court finds that the violation poses a serious threat to the public health, safety or welfare.

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:

Property owners against whom an enforcement action is taken and who appeal that action to the circuit court, will be relieved of the burden to apply for a stay and will experience fiscal relief as administrative fines will not accumulate during the appeals process.

C. Government Sector Impact:

Local governments may lose revenues from fines levied for code violations which would otherwise accumulate during the pendency of an appeal.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

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