

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

BILL: CS/SB 60

INTRODUCER: Community Affairs Committee and Senator Bradley

SUBJECT: County and Municipal Code Enforcement

DATE: March 2, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hackett</u>	<u>Ryon</u>	<u>CA</u>	Fav/CS
2.	<u>Ponder</u>	<u>McVaney</u>	<u>GO</u>	Favorable
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 60 prohibits county and municipal code inspectors from initiating an investigation into violations of city or county codes or ordinances based upon an anonymous complaint. It also requires that an individual making a complaint of a potential violation provide his or her name and address to the local government body before an investigation may occur.

The prohibition does not apply if the code inspector has reason to believe the alleged violation presents an imminent threat to public health, safety, or welfare or imminent destruction of habitat or sensitive resources.

The bill takes effect July 1, 2021.

II. Present Situation:

County and Municipal Code Enforcement

Code enforcement is a function of local government and affects people's daily lives. Its purpose is to enhance the quality of life and economy of local government by protecting the health, safety, and welfare of the community.¹ Local governments possess a constitutional right to self-

¹ Section 162.02, F.S.

government.² Local codes and ordinances allow local governments to enforce regulations on a variety of matters ranging from zoning, tree cutting, nuisances, and excessive noise.³

Chapters 125, 162, and 166 of the Florida Statutes⁴ provide counties and municipalities with a mechanism to enforce its codes and ordinances. These statutes are offered as permissible code enforcement mechanisms, but are not binding to local governments, which may use any enforcement mechanism they choose, or combination thereof.⁵

In each statutory mechanism, a local government designates code inspectors or code enforcement officers, tasked with investigating potential code violations, providing notice of violations, and issuing citations for noncompliance. Beyond these specified duties, the statutory scheme makes clear that code inspectors lack the authority to perform the functions or duties of a law enforcement officer.⁶

Code Enforcement Boards Act (Part I, Ch. 162, F.S.)

The Local Government Code Enforcement Boards Act (Act), located in Part I of ch. 162, F.S., allows each county and municipality to create by ordinance one or more local government code enforcement board. A code enforcement board is an administrative board made up of members appointed by the governing body of a county or municipality with the authority to hold hearings and impose administrative fines and other noncriminal penalties for violations of county or municipal codes or ordinances. Members of the enforcement boards⁷ must be residents of the respective municipality or county and, whenever possible, must include an architect, a businessperson, an engineer, a general contractor, a subcontractor, and a realtor.⁸

Code enforcement boards have the power to:

- Adopt rules for the conduct of its hearings;
- Subpoena alleged violators, witnesses, and evidence to its hearings;
- Take testimony under oath; and
- Issue orders that have the force of law to command steps necessary to bring a violation into compliance.⁹

Section 162.06, F.S., establishes the procedures for local governments to address violations of various codes using a code enforcement board. It begins with the county or municipal code inspector¹⁰ who initiates code enforcement procedures by notifying the violator and giving him

² Art. VIII, Fla. Const.

³ Violations of the Florida Building Code, however, are enforced pursuant to ss. 553.79 and 553.80, F.S., and not within the scope of this bill or the sections of law analyzed herein. *See* s. 125.69(g), F.S.

⁴ Chapter 125 Part II (county self-government), Chapter 162 Part 1 (the Code Enforcement Boards Act), Chapter 162 Part 2 (supplemental procedures), and s. 166.0415, F.S. (city ordinance enforcement).

⁵ Sections 125.69(4)(i), 162.13, 162.21(8), and 166.0415(7), F.S.

⁶ Section 125.69(4)(f), F.S.;

⁷ Code enforcement boards are either five-member or seven-member boards. If a local government has a population over 5,000 persons, the board must be a seven-member board.

⁸ Section 162.05(2), F.S.

⁹ Section 162.08, F.S.

¹⁰ Section 162.04(2), F.S., defines the term “code inspector” to mean “any authorized agent or employee of the county or municipality whose duty it is to assure code compliance.”

or her reasonable time to correct the violation. If the violation continues to exist after such time period as specified by the code inspector,¹¹ then the inspector will notify the code enforcement board and request a hearing.¹²

In each case heard before a code enforcement board, the case is presented, and testimony is taken from both the code inspector and alleged violator.¹³ At the conclusion of the hearing, the board issues findings of fact and provides an order stating the proper relief granted.¹⁴ If a violator fails to abide by an order of the code enforcement board, the board may order the violator to pay a fine for each day that the repeat violation occurs.¹⁵ All final administrative orders of the code enforcement board may be appealed to the circuit court 30 days after execution of the order.¹⁶

As an alternative to a code enforcement board, the Act allows counties and municipalities to adopt an alternate code enforcement system that gives code enforcement officials or special magistrates the authority to hold hearings and assess fines against violators of respective codes or ordinances.¹⁷ Each of these methods are offered by statute as devices to be used at the local governments' discretion, but a local government may use any method they choose to enforce codes and ordinances.¹⁸

Supplemental Code Enforcement Procedures (Part II, Ch. 162, F.S.)

Part II of ch. 162, F.S., presents local governments with supplemental methods for enforcing codes and ordinances without establishing a code enforcement board. The statutes allow counties and municipalities to designate some of its employees or agents as code enforcement officers¹⁹ authorized to enforce county or municipal codes or ordinances.

A code enforcement officer may issue a citation to a person when, based upon personal investigation, the officer has reasonable cause to believe that the person has committed a civil infraction in violation of a duly enacted code or ordinance and that the county court will hear the charge.²⁰ However, prior to issuing a citation, a code enforcement officer must provide notice to the person that the person has committed a violation of a code or ordinance and provide a

¹¹ The code inspector does not need to provide the violator reasonable time to remedy the violation if it is a repeat violation; the violation presents a serious threat to the public health, safety, and welfare; or the violation is irreparable or irreversible in nature.

¹² A hearing may also be called by written notice signed by at least three members of a seven-member enforcement board or signed by at least two members of a five-member enforcement board.

¹³ Section 162.07(2)-(3), F.S.

¹⁴ Section 162.07(4), F.S.

¹⁵ Section 162.09(1), F.S. Such fines may not exceed \$250 per day for a first violation and may not exceed \$500 per day for a repeat violation. However, a county or municipality may pass an ordinance to increase the fine thresholds if approved by a majority plus one vote.

¹⁶ Section 162.11, F.S.

¹⁷ Section 162.03, F.S.

¹⁸ The Attorney General has opined that "once a municipality has adopted the procedures of ch. 162, F.S., to enforce its municipal codes and ordinances, it may not alter or amend those statutorily prescribed procedures but must utilize them as they are set forth in the statutes." Opp. Atty Gen. 2000-53. A local government may, however, maintain a chapter 162 code enforcement board and still decide to enforce a particular violation by bringing a charge in county court, or any other means provided by law. *Goodman v. County Court in Broward County, Fla.* 711 So.2d 587 (Fla 4th DCA 1998).

¹⁹ Section 162.21(1), F.S., defines the term "code enforcement officer" to mean "any designated employee or agent of a county or municipality whose duty it is to enforce codes and ordinances enacted by the county or municipality."

²⁰ Section 162.21(3)(a), F.S.

reasonable time period, no more than 30 days, within which the person must correct the violation. If, upon personal investigation, a code enforcement officer finds that the person has not corrected the violation within the time period, the officer may issue a citation.²¹

Counties and municipalities that choose to enforce codes or ordinances under the provisions of Part II must enact an ordinance establishing the code enforcement procedures. The ordinance, among other requirements, must provide procedures for the issuance of a citation by a code enforcement officer. A violation of a code or an ordinance enforced under Part II is a civil infraction and carries a maximum civil penalty of \$500.²²

Part II further allows counties and municipalities to enforce code violations by filing a civil action in the county or circuit court, in the absence of a magistrate or code enforcement board.

Enforcement of County Ordinance Violations (s. 125.69, F.S.)

Section 125.69, F.S., sets forth a process counties may use to enforce county ordinances. Under this statute, violations of ordinances shall be prosecuted in the same manner as misdemeanors: in county court, punishable by a fine up to \$500, imprisonment up to 60 days, or both. The statute also allows counties to designate code enforcement officers, who may investigate violations and issue citations in a manner similar to s. 162.21, F.S., discussed above.

Enforcement of City Ordinance Violations (s. 166.0415, F.S.)

Section 166.0415, F.S. provides a mechanism specific to municipalities wishing to enforce their ordinances and codes using code inspectors. This statute is functionally identical to s. 162.21, F.S., discussed above. The statute allows municipalities to designate code enforcement officers authorized to enforce municipal codes or ordinances, following the investigation, notice, and citation scheme set out in s. 162.21, F.S.

Anonymous and Identified Complaints

Investigations usually begin with a complaint or tip from the public - typically by phone or online form - or a code enforcement officer personally observing an alleged violation while performing his or her duties. As code enforcement is inherently an exercise in home rule by local governments, procedures for collecting complaints vary throughout the state. In most areas, complaints may be made anonymously, while in some jurisdictions, a complainant must identify themselves.²³ Code inspectors accept any information given to them in the complaints and, generally using their own judgment, may investigate the allegations made.

²¹ Section 162.21(3)(b), F.S.

²² Section 162.21(5), F.S.

²³ For one such example, Collier County changed their code enforcement regulations to require that a name and phone number must be provided along with a complaint “unless the concern is an emergency that immediately threatens the public health and safety or could cause catastrophic consequences.” Collier County, Report a Code Violation <https://www.colliercountyfl.gov/your-government/divisions-a-e/code-enforcement/report-a-code-violation> (accessed December 28, 2020).

Florida has extensive public records laws, known as Sunshine Laws.²⁴ Any document held by an agency, including local governments, is public record and therefore must be produced for inspection upon request by anyone. Any information given by a complainant to the local government, including their name, address, and contact information, is public record barring an individual's exercise of an exemption that applies to them, such as those for state attorneys, judges, and guardians ad litem.²⁵

III. Effect of Proposed Changes:

The bill amends the county and municipal code enforcement statutes to address the transparency of complaints made to code inspectors working for local governments and local code enforcement boards alleging violations of city and county codes and ordinances. Specifically, the bill prohibits code inspectors and code enforcement officers from initiating a code enforcement investigation based upon an anonymous complaint. Additionally, an individual making a complaint of a potential violation must provide his or her name and address to the local government body before an investigation may occur.

The prohibition in the bill does not apply if the code inspector has reason to believe the alleged violation presents an imminent threat to public health, safety, or welfare or imminent destruction of habitat or sensitive resources.

The bill provides an effective date of July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

²⁴ See, generally, s. 119.01(1), F.S., the Public Records Act. “[i]t is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.”

²⁵ See ss. 119.071(4) and (5), F.S.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Local governments may experience a minor cost in updating codes and ordinance enforcement mechanisms to comply with this bill, but this cost will in most cases be absorbed by current operations.

Local governments may experience a reduction in complaints filed due to individuals not wanting to provide personal identifying information. Thus, this may lead to less resources being utilized by local code enforcement.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Chapter 119 prohibits the public disclosure of certain personal identifying information relating to code enforcement officers including. Specifically, the following information related to current or former code enforcement officers is exempt:

- Home addresses;
- Telephone numbers;
- Social Security numbers; and
- Photographs.²⁶

In the statement of public necessity for this exemption the Legislature found that:

The responsibilities of these employees regularly take them into areas of neglect, abuse, and personal danger. Citations issued in response to

²⁶ Section 119.071(4)(d)1.i, F.S. The exemption also extends to the In addition, the exemption extends to the names, home addresses, telephone numbers, social security numbers, photographs, and places of employment of the spouses and children of such personnel. Finally, the names and locations of schools and day care facilities attended by the children of such personnel are also included within the scope of the exemption exempts the home addresses, telephone numbers, dates of birth, and photographs of current or former code enforcement officers.

violations that they encounter often lead to retribution by the offenders. Their personal files are reviewed on numerous occasions by code violators seeking information relating to code enforcement officers and their families. The disclosure of this personal information has led to threats, acts of violence, and unwarranted risk to the officers and their families.

VIII. Statutes Affected:

This bill substantially amends sections 125.69, 162.06, 162.13, 162.21, and 166.0415 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Community Affairs on February 2, 2021:

The amendment provides that the prohibition does not apply if the code inspector has reason to believe the alleged violation presents an imminent threat to public health, safety, or welfare or imminent destruction of habitat or sensitive resources.

- B. **Amendments:**

None.