

Bill No. CS/CS/HB 163, 2nd Eng.

Amendment No. ____

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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11	Senator Forman moved the following amendment:		
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13	Senate Amendment (with title amendment)		
14	Delete everything after the enacting clause		
15			
16	and insert:		
17	Section 1. Subsection (2) of section 125.69, Florida		
18	Statutes, 1998 Supplement, is amended to read:		
19	125.69 Penalties; enforcement by code inspectors.--		
20	(2) The board of county commissioners of each county		
21	may designate its agents or employees as code inspectors whose		
22	duty it is to assure code compliance. Any person designated		
23	as a code inspector may issue citations for violations of		
24	county codes and ordinances, respectively, or subsequent		
25	amendments thereto, when such code inspector has actual		
26	knowledge that a violation has been committed.		
27	(a) Prior to issuing a citation, a code inspector		
28	shall provide notice to the violator that the violator has		
29	committed a violation of a code or ordinance and shall		
30	establish a reasonable time period within which the violator		
31	must correct the violation. Such time period shall be no more		

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1 than 30 days. If, upon personal investigation, a code
2 inspector finds that the violator has not corrected the
3 violation within the time period, a code inspector may issue a
4 citation to the violator. A code inspector does not have to
5 provide the violator with a reasonable time period to correct
6 the violation prior to issuing a citation and may immediately
7 issue a citation if the code inspector has reason to believe
8 that the violation presents a serious threat to the public
9 health, safety, or welfare, or if the violation is irreparable
10 or irreversible.

11 (b) A citation issued by a code inspector shall state
12 the date and time of issuance, name and address of the person
13 in violation, date of the violation, section of the codes or
14 ordinances, or subsequent amendments thereto, violated, name
15 of the code inspector, and date and time when the violator
16 shall appear in county court.

17 (c) If a repeat violation is found subsequent to the
18 issuance of a citation, the code inspector is not required to
19 give the violator a reasonable time to correct the violation
20 and may immediately issue a citation. For purposes of this
21 subsection, the term "repeat violation" means a violation of a
22 provision of a code or ordinance by a person who has
23 previously been found to have violated the same provision
24 within 5 years prior to the violation, notwithstanding the
25 violations occurred at different locations.

26 (d) If the owner of property which is subject to an
27 enforcement proceeding before county court transfers ownership
28 of such property between the time the initial citation or
29 citations are issued and the date the violator has been
30 summoned to appear in county court, such owner shall:

31 1. Disclose, in writing, the existence and the nature

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1 of the proceeding to the prospective transferee.

2 2. Deliver to the prospective transferee a copy of the
3 pleadings, notices, and other materials relating to the county
4 court proceeding received by the transferor.

5 3. Disclose, in writing, to the prospective transferee
6 that the new owner will be responsible for compliance with the
7 applicable code and with orders issued in the county court
8 proceeding.

9 4. File a notice with the code enforcement official of
10 the transfer of the property, with the identity and address of
11 the new owner and copies of the disclosures made to the new
12 owner, within 5 days after the date of the transfer.

13
14 A failure to make the disclosure described in subparagraphs
15 1., 2., and 3. before the transfer creates a rebuttable
16 presumption of fraud. If the property is transferred before
17 the date the violator has been summoned to appear in county
18 court, the proceeding shall not be dismissed but the new owner
19 will be substituted as the party of record and thereafter
20 provided a reasonable period of time to correct the violation
21 before the continuation of proceedings in county court.

22 (e) If the code inspector has reason to believe a
23 violation or the condition causing the violation presents a
24 serious threat to the public health, safety, and welfare or if
25 the violation is irreparable or irreversible in nature, or if
26 after attempts under this section to bring a repeat violation
27 into compliance with a provision of a code or ordinance prove
28 unsuccessful, the local governing body may make all reasonable
29 repairs which are required to bring the property into
30 compliance and charge the owner with the reasonable cost of
31 the repairs along with the fine imposed pursuant to this

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1 section. Making such repairs does not create a continuing
2 obligation on the part of the local governing body to make
3 further repairs or to maintain the property and does not
4 create any liability against the local governing body for any
5 damages to the property if such repairs were completed in good
6 faith.

7 (f)~~(e)~~ Nothing in this subsection shall be construed
8 to authorize any person designated as a code inspector to
9 perform any function or duties of a law enforcement officer
10 other than as specified in this subsection. A code inspector
11 shall not make physical arrests or take any person into
12 custody and shall be exempt from requirements relating to the
13 Special Risk Class of the Florida Retirement System, bonding,
14 and the Criminal Justice Standards and Training Commission, as
15 defined and provided by general law.

16 (g)~~(d)~~ The provisions of this subsection shall not
17 apply to the enforcement pursuant to ss. 553.79 and 553.80 of
18 building codes adopted pursuant to s. 553.73 as they apply to
19 construction, provided that a building permit is either not
20 required or has been issued by the county. For the purposes
21 of this paragraph, "building codes" means only those codes
22 adopted pursuant to s. 553.73.

23 (h)~~(e)~~ The provisions of this subsection may be used
24 by a county in lieu of the provisions of part II of chapter
25 162.

26 (i)~~(f)~~ The provisions of this subsection are
27 additional or supplemental means of enforcing county codes and
28 ordinances. Except as provided in paragraph (h)~~(e)~~, nothing in
29 this subsection shall prohibit a county from enforcing its
30 codes or ordinances by any other means.

31 Section 2. Subsection (2) of section 162.03, Florida

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1 Statutes, is amended to read:

2 162.03 Applicability.--

3 (2) A charter county, a noncharter county, or a
4 municipality may, by ordinance, adopt an alternate code
5 enforcement system which gives code enforcement boards or
6 special masters designated by the local governing body, or
7 both, the authority to hold hearings and assess fines against
8 violators of the respective county or municipal codes and
9 ordinances. A special master shall have the same status as an
10 enforcement board under this chapter. References in this
11 chapter to an enforcement board, except in s. 162.05, shall
12 include a special master if the context permits.

13 Section 3. Subsection (5) of section 162.04, Florida
14 Statutes, is amended to read:

15 (5) "Repeat violation" means a violation of a
16 provision of a code or ordinance by a person who ~~whom the code~~
17 ~~enforcement board~~ has been previously found through a code
18 enforcement board or any other quasi-judicial or judicial
19 process, to have violated or who has admitted violating the
20 same provision within 5 years prior to the violation,
21 notwithstanding the violations occur at different locations.

22 Section 4. Subsection (5) is added to section 162.06,
23 Florida Statutes, to read:

24 162.06 Enforcement procedure.--

25 (5) If the owner of property which is subject to an
26 enforcement proceeding before an enforcement board, special
27 master, or court transfers ownership of such property between
28 the time the initial pleading was served and the time of the
29 hearing, such owner shall:

30 (a) Disclose, in writing, the existence and the nature
31 of the proceeding to the prospective transferee.

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1 (b) Deliver to the prospective transferee a copy of
2 the pleadings, notices, and other materials relating to the
3 code enforcement proceeding received by the transferor.

4 (c) Disclose, in writing, to the prospective
5 transferee that the new owner will be responsible for
6 compliance with the applicable code and with orders issued in
7 the code enforcement proceeding.

8 (d) File a notice with the code enforcement official
9 of the transfer of the property, with the identity and address
10 of the new owner and copies of the disclosures made to the new
11 owner, within 5 days after the date of the transfer.

12
13 A failure to make the disclosures described in paragraphs (a),
14 (b), and (c) before the transfer creates a rebuttable
15 presumption of fraud. If the property is transferred before
16 the hearing, the proceeding shall not be dismissed, but the
17 new owner shall be provided a reasonable period of time to
18 correct the violation before the hearing is held.

19 Section 5. Subsections (1) and (3) of section 162.09,
20 Florida Statutes, are amended, and paragraph (d) is added to
21 subsection (2) of that section, to read:

22 162.09 Administrative fines; costs of repair; liens.--

23 (1) An enforcement board, upon notification by the
24 code inspector that an order of the enforcement board has not
25 been complied with by the set time or, upon finding that a
26 repeat violation has been committed, may order the violator to
27 pay a fine in an amount specified in this section for each day
28 the violation continues past the date set by the enforcement
29 board for compliance or, in the case of a repeat violation,
30 for each day the repeat violation continues, beginning with
31 the date the repeat violation is found to have occurred by the

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1 code inspector. In addition, if the violation is a violation
 2 described in s. 162.06(4), the enforcement board shall notify
 3 the local governing body, which may make all reasonable
 4 repairs which are required to bring the property into
 5 compliance and charge the violator with the reasonable cost of
 6 the repairs along with the fine imposed pursuant to this
 7 section. Making such repairs does not create a continuing
 8 obligation on the part of the local governing body to make
 9 further repairs or to maintain the property and does not
 10 create any liability against the local governing body for any
 11 damages to the property if such repairs were completed in good
 12 faith. If a finding of a violation or a repeat violation has
 13 been made as provided in this part, a hearing shall not be
 14 necessary for issuance of the order imposing the fine. If,
 15 after due notice and hearing, a code enforcement board finds a
 16 violation to be irreparable or irreversible in nature, it may
 17 order the violator to pay a fine as specified in paragraph
 18 (2)(a).

19 (2)(a) A fine imposed pursuant to this section shall
 20 not exceed \$250 per day for a first violation and shall not
 21 exceed \$500 per day for a repeat violation, and, in addition,
 22 may include all costs of repairs pursuant to subsection (1).
 23 However, if a code enforcement board finds the violation to be
 24 irreparable or irreversible in nature, it may impose a fine
 25 not to exceed \$5,000 per violation.

26 (b) In determining the amount of the fine, if any, the
 27 enforcement board shall consider the following factors:

- 28 1. The gravity of the violation;
- 29 2. Any actions taken by the violator to correct the
- 30 violation; and
- 31 3. Any previous violations committed by the violator.

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1 (c) An enforcement board may reduce a fine imposed
2 pursuant to this section.

3 (d) A county or a municipality having a population
4 equal to or greater than 50,000 may adopt, by a vote of at
5 least a majority plus one of the entire governing body of the
6 county or municipality, an ordinance that gives code
7 enforcement boards or special masters, or both, authority to
8 impose fines in excess of the limits set forth in paragraph
9 (a). Such fines shall not exceed \$1,000 per day per violation
10 for a first violation, \$5,000 per day per violation for a
11 repeat violation, and up to \$15,000 per violation if the code
12 enforcement board or special master finds the violation to be
13 irreparable or irreversible in nature. In addition to such
14 fines, a code enforcement board or special master may impose
15 additional fines to cover all costs incurred by the local
16 government in enforcing its codes and all costs of repairs
17 pursuant to subsection (1). Any ordinance imposing such fines
18 shall include criteria to be considered by the code
19 enforcement board or special master in determining the amount
20 of the fines, including, but not limited to, those factors set
21 forth in paragraph (b).

22 (3) A certified copy of an order imposing a fine, or a
23 fine plus repair costs, may be recorded in the public records
24 and thereafter shall constitute a lien against the land on
25 which the violation exists and upon any other real or personal
26 property owned by the violator. Upon petition to the circuit
27 court, such order shall be enforceable ~~may be enforced~~ in the
28 same manner as a court judgment by the sheriffs of this state,
29 including execution and levy against the personal property of
30 the violator, but such order shall not be deemed to be a court
31 judgment except for enforcement purposes. A fine imposed

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1 pursuant to this part shall continue to accrue until the
2 violator comes into compliance or until judgment is rendered
3 in a suit to foreclose on a lien filed pursuant to this
4 section, whichever occurs first. A lien arising from a fine
5 imposed pursuant to this section runs in favor of the local
6 governing body, and the local governing body may execute a
7 satisfaction or release of lien entered pursuant to this
8 section. After 3 months from the filing of any such lien which
9 remains unpaid, the enforcement board may authorize the local
10 governing body attorney to foreclose on the lien. No lien
11 created pursuant to the provisions of this part may be
12 foreclosed on real property which is a homestead under s. 4,
13 Art. X of the State Constitution.

14 Section 6. Subsection (1) and paragraph (b) of
15 subsection (2) of section 162.12, Florida Statutes, are
16 amended to read:

17 162.12 Notices.--

18 (1) All notices required by this part shall be
19 provided to the alleged violator by:

20 (a) Certified mail, return receipt requested, provided
21 if such notice is sent under this paragraph to the owner of
22 the property in question at the address listed in the tax
23 collector's office for tax notices, and at any other address
24 provided to the local government by such owner and is returned
25 as unclaimed or refused, notice may be provided by posting as
26 described in subparagraphs (2)(b)1. and 2. and by first class
27 mail directed to the addresses furnished to the local
28 government with a properly executed proof of mailing or
29 affidavit confirming the first class mailing; by

30 (b) Hand delivery by the sheriff or other law
31 enforcement officer, code inspector, or other person

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1 designated by the local governing body; ~~or by~~

2 (c) Leaving the notice at the violator's usual place
3 of residence with any person residing therein who is above 15
4 years of age and informing such person of the contents of the
5 notice; or

6 (d) In the case of commercial premises, leaving the
7 notice with the manager or other person in charge.

8 (2) In addition to providing notice as set forth in
9 subsection (1), at the option of the code enforcement board,
10 notice may also be served by publication or posting, as
11 follows:

12 (b)1. In lieu of publication as described in paragraph
13 (a), such notice may be posted ~~for~~ at least 10 days prior to
14 the hearing, or prior to the expiration of any deadline
15 contained in the notice, in at least two locations, one of
16 which shall be the property upon which the violation is
17 alleged to exist and the other of which shall be, in the case
18 of municipalities, at the primary municipal government office,
19 and in the case of counties, at the front door of the
20 courthouse in said county.

21 2. Proof of posting shall be by affidavit of the
22 person posting the notice, which affidavit shall include a
23 copy of the notice posted and the date and places of its
24 posting.

25
26 Evidence that an attempt has been made to hand deliver or mail
27 notice as provided in subsection (1), together with proof of
28 publication or posting as provided in subsection (2), shall be
29 sufficient to show that the notice requirements of this part
30 have been met, without regard to whether or not the alleged
31 violator actually received such notice.

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1 Section 7. Subsection (2) of section 162.23, Florida
2 Statutes, is amended to read:

3 162.23 Notice to appear.--

4 (2) Prior to issuing a notice to appear, a code
5 enforcement officer shall provide written notice to the person
6 that the person has committed a violation of a code or
7 ordinance and shall establish a reasonable time period within
8 which the person must correct the violation. Such time period
9 shall be no fewer than 5 days and no more than 30 days. If,
10 upon personal investigation, a code enforcement officer finds
11 that the person has not corrected the violation within the
12 prescribed time period, a code enforcement officer may issue a
13 notice to appear to the person who has committed the
14 violation. A code enforcement officer is not required to
15 provide the person with a reasonable time period to correct
16 the violation prior to issuing a notice to appear and may
17 immediately issue a notice to appear if a repeat violation is
18 found, or if the code enforcement officer has reason to
19 believe that the violation presents a serious threat to the
20 public health, safety, or welfare or that the violator is
21 engaged in violations of an itinerant or transient nature, as
22 defined by local code or ordinance within the jurisdiction, or
23 if the violation is irreparable or irreversible.

24 Section 8. Paragraphs (b) and (c) of subsection (1) of
25 section 125.0103, Florida Statutes, 1998 Supplement, are
26 amended and new paragraphs (d) and (e) are added to that
27 subsection to read:

28 125.0103 Ordinances and rules imposing price controls;
29 findings required; procedures.--

30 (1)

31 (b) The provisions of this section shall not prevent

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1 the enactment by local governments of public service rates
2 otherwise authorized by law, including water, sewer, solid
3 waste, public transportation, taxicab, or port rates, rates
4 for towing of vehicles from or immobilization of vehicles on
5 private property, or rates for removal and storage of wrecked
6 or disabled vehicles from an accident scene or the removal and
7 storage of vehicles if the owner or operator is incapacitated,
8 unavailable, leaves the procurement of wrecker service to the
9 law enforcement officer at the scene, or otherwise does not
10 consent to the removal of the vehicle.

11 (c) Counties must establish maximum rates ~~fees~~ which
12 may be charged on the towing of vehicles from or
13 immobilization of vehicles on private property, removal and
14 storage of wrecked or disabled vehicles from an accident scene
15 or for the removal and storage of vehicles, if in the event
16 the owner or operator is incapacitated, unavailable, leaves
17 the procurement of wrecker service to the law enforcement
18 officer at the scene, or otherwise does not consent to the
19 removal of the vehicle, if the county rates are established by
20 resolution and are determined by the use and implementation of
21 a rational mathematical and scientific formula reflecting the
22 costs of providing towing or immobilization services to the
23 private sector.

24 (d) If a municipality establishes maximum rates for
25 the towing from, or immobilization of vehicles on private
26 property, as described in paragraph (b), the county's maximum
27 rates shall not apply within the municipality if the municipal
28 rates are established by resolution and are determined by the
29 use and implementation of a rational mathematical and
30 scientific formula reflecting the costs of providing towing or
31 immobilization services to the private sector.

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1 (e) All maximum rates set by counties, municipalities,
 2 or other local government entities for towing vehicles from or
 3 immobilization of vehicles on private property, which were not
 4 established by resolution and were not determined by the use
 5 and implementation of a rational mathematical and scientific
 6 formula reflecting the costs of providing towing or
 7 immobilization services to the private sector are immediately
 8 rescinded.

9 Section 9. Paragraphs (b) and (c) of subsection (1) of
 10 section 166.043, Florida Statutes, 1998 Supplement, are
 11 amended and paragraphs (d) and (e) are added to that
 12 subsection to read:

13 166.043 Ordinances and rules imposing price controls;
 14 findings required; procedures.--

15 (1)

16 (b) The provisions of this section shall not prevent
 17 the enactment by local governments of public service rates
 18 otherwise authorized by law, including water, sewer, solid
 19 waste, public transportation, taxicab, or port rates, rates
 20 for towing of vehicles from or immobilization of vehicles on
 21 private property, or rates for removal and storage of wrecked
 22 or disabled vehicles from an accident scene or the removal and
 23 storage of vehicles if the owner or operator is incapacitated,
 24 unavailable, leaves the procurement of wrecker service to the
 25 law enforcement officer at the scene, or otherwise does not
 26 consent to the removal of the vehicle.

27 (c) Counties must establish maximum rates ~~fees~~ which
 28 may be charged on the towing of vehicles from or
 29 immobilization of vehicles on private property, removal and
 30 storage of wrecked or disabled vehicles from an accident scene
 31 or for the removal and storage of vehicles, in the event the

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1 owner or operator is incapacitated, unavailable, leaves the
2 procurement of wrecker service to the law enforcement officer
3 at the scene, or otherwise does not consent to the removal of
4 the vehicle if the county fees are established by resolution
5 and are determined by the use and implementation of a rational
6 mathematical and scientific formula reflecting the costs of
7 providing either towing or immobilization services to the
8 private sector.

9 (d) If a municipality establishes maximum rates for
10 the towing from, or immobilization of vehicles on private
11 property, as described in paragraph (b), the county's maximum
12 rates established under s. 125.0103 shall not apply within the
13 municipality if the municipal rates are established by
14 resolution and are determined by the use and implementation of
15 a rational mathematical and scientific formula reflecting the
16 costs of providing towing or immobilization services to the
17 private sector.

18 (e) All maximum rates set by counties, municipalities,
19 or other local government entities for towing vehicles from or
20 immobilization of vehicles on private property, which were not
21 established by resolution and were not determined by the use
22 and implementation of a rational mathematical and scientific
23 formula reflecting the costs of providing towing or
24 immobilization services to the private sector are immediately
25 rescinded.

26 Section 10. The provisions of this act are declared to
27 be severable. If any provision of section 8 or section 9 of
28 this act are determined to be invalid, such invalidity shall
29 not affect the validity of the remaining sections of this act,
30 which sections express the primary intent of the Legislature
31 in enacting this act.

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1 Section 11. This act shall take effect October 1,
2 1999.

3
4

5 ===== T I T L E A M E N D M E N T =====

6 And the title is amended as follows:

7 Delete everything before the enacting clause

8

9 and insert:

10

 A bill to be entitled

11

 An act relating to local government code

12

 enforcement; amending s. 125.69, F.S.;

13

 providing an exception from certain notice

14

 requirements under certain circumstances;

15

 requiring owners of property subject to an

16

 enforcement proceeding to disclose certain

17

 information prior to transfer of such property;

18

 creating a presumption of fraud under certain

19

 circumstances; authorizing local governing

20

 bodies to make certain repairs under certain

21

 circumstances; providing for absence of

22

 liability for such repairs under certain

23

 circumstances; amending s. 162.03, F.S.;

24

 specifying the status of special masters;

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 amending s. 162.04, F.S.; revising a

26

 definition; amending s. 162.06, F.S.; requiring

27

 owners of property subject to enforcement

28

 proceedings to provide disclosure and notice to

29

 prospective transferors under certain

30

 circumstances; providing a rebuttable

31

 presumption; providing for continuation of

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1 enforcement proceedings under certain
2 circumstances; providing procedures; amending
3 s. 162.09, F.S.; specifying that certain
4 actions taken by a local government do not
5 create continuing obligations or liabilities
6 under certain circumstances; authorizing
7 certain counties or municipalities to adopt
8 ordinances granting code enforcement boards or
9 special masters authority to impose certain
10 fines in excess of those authorized by law;
11 specifying limitations; providing requirements;
12 clarifying enforcement of orders imposing
13 certain fines or costs; amending s. 162.12,
14 F.S.; revising prescribed methods for providing
15 certain notices; clarifying the time period for
16 posting certain notices; amending s. 162.23,
17 F.S.; providing an additional exception to
18 requirements to provide reasonable time to
19 correct violations under certain circumstances;
20 amending ss. 125.0103 and 166.043, F.S.;

21 authorizing local governments to enact public
22 service rates for certain activities; providing
23 for inapplicability of county rates for such
24 activities in certain municipalities; providing
25 severability; providing an effective date.

26
27 WHEREAS, Florida's procedures for local government code
28 enforcement are meant to secure speedy compliance with local
29 codes and ordinances while protecting the rights of property
30 owners and the public health, safety, and welfare, and

31 WHEREAS, the procedures set forth in chapter 162,

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1 Florida Statutes, contain several alternative methods of code
2 enforcement for local governments to choose from, but the
3 choices are in need of some clarification regarding
4 legislative intent, and

5 WHEREAS, it was intended by the Legislature that the
6 procedure for a special master or hearing officer was to be in
7 all respects the equivalent of the procedure for a code
8 enforcement board, and

9 WHEREAS, substantial delay has been encountered in code
10 enforcement proceedings when the owner of a noncomplying
11 property transferred ownership to a third party, with some
12 local governments being required to begin the entire code
13 enforcement process all over again with respect to the new
14 owner, which was not the intent of the Legislature, and

15 WHEREAS, some local governments have been reluctant to
16 use their power to repair unsafe noncomplying property because
17 of concerns about future liability, and

18 WHEREAS, creating a presumption of receipt of a notice
19 sent by certified mail, return receipt requested, when
20 properly addressed to the owner, would alleviate the current
21 problem of violators evading or greatly delaying code
22 enforcement proceedings by refusing to sign for such notice,
23 and

24 WHEREAS, some local governments are construing the
25 posting procedure contained in s. 162.12(2), Florida Statutes,
26 as mandating that they must prove that the notice so posted
27 was continuously present for the entire 10-day posting period,
28 and some violators were frustrating the intent of the posting
29 provision by removing and secreting the posted notice before
30 the 10 days had expired, which was not the intent of the
31 Legislature, and

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1 WHEREAS, it is the intent of the Legislature to cure
2 the ambiguities and loopholes in chapter 162, Florida
3 Statutes, just described, NOW, THEREFORE,
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