

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 Judiciary Committee

BILL: SB 172

INTRODUCER: Senator Bennett

SUBJECT: Security Cameras

DATE: January 24, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wolfgang	Yeatman	CA	Favorable
2.	O'Connor	Maclure	JU	Pre-meeting
3.			BC	
4.				
5.				
6.				

I. Summary:

In response to ongoing litigation, this bill reenacts a section of law created by ch. 2009-96, Laws of Fla., (SB 360 (2009 Regular Session)) to eliminate any possible question that it could be subjected to a single-subject¹ challenge or struck down as an unconstitutional unfunded mandate.² The bill does not change the law, but reaffirms the change to the law made in 2009 by SB 360 that prevents local governments from requiring that a business spend funds for security cameras. The section does not limit the ability of a county, municipality, airport, seaport, or other local governmental entity to adopt standards for security cameras.

This bill reenacts section 163.31802, Florida Statutes.

II. Present Situation:

In 2009, the Legislature passed, and the Governor signed into law, Senate Bill 360, titled “An act relating to growth management” or the “Community Renewal Act” (SB 360).³ This bill made a wide array of changes to Florida’s growth management laws. A number of local governments challenged the law on constitutional grounds. Specifically, the complaint raises two counts: first, that SB 360 violates the single-subject provision of the Florida Constitution; and, second, that the bill is an unfunded mandate on local governments.⁴ The circuit court found that the single-subject issue was moot but granted a verdict of summary judgment striking down SB 360 as an

¹ FLA. CONST. art. III, s. 6.

² FLA. CONST. art. VII, s. 18(a).

³ Chapter 2009-96, Laws of Fla.

⁴ *City of Weston v. Crist*, Case No. 09-CA-2639 (Fla. 2d Jud. Cir. 2010).

unconstitutional mandate.⁵ The court ordered the Secretary of State to expunge the law from the official records of the state. The case is being appealed to the First District Court of Appeal, and the law is in effect while the appeal is pending. A motion to expedite the proceedings has been granted.⁶

Single-Subject Rule

Article III, Section 6 of the State Constitution requires every law to “embrace but one subject and matter properly connected therewith.” The subject shall be briefly expressed in the title.⁷ The purpose of this requirement is to prevent logrolling, which combines multiple unrelated measures in one bill in order to secure passage of a measure that is unlikely to pass on its own merits.⁸ The requirement does not unduly restrict the scope or operation of a law. The single subject may be as broad as the Legislature chooses if the matters contained in the law have a natural or logical connection.⁹ The requirement is violated if a law is written to accomplish separate and disassociated objects of legislative intent.¹⁰ A violation of the one-subject limitation renders inoperative any provision contained in an act which is not fairly included in the subject expressed in the title or which is not properly connected with that subject.¹¹ Among the multitude of cases on the subject, the Florida Supreme Court has held that tort law and motor-vehicle-insurance law were sufficiently related to be included in one act without violating the one-subject limitation,¹² but that a law containing changes in the workers’ compensation law and legislation concerning comprehensive economic development violated the one-subject limitation.¹³

The Florida Supreme Court has held that the adoption of the Florida Statutes as the official statutory law of the state cures any violation of the multiple-subject limitation which is contained in a law compiled in the Florida Statutes.¹⁴ The Florida Statutes are adopted annually during each regular session through an adoption act.¹⁵ The litigants in the SB 360 case argued that the three subjects in the bill are: growth management, security cameras, and affordable housing.¹⁶ During the 2010 Regular Session, SB 1780 adopted the Florida Statutes. Therefore, the circuit court determined that the single-subject challenge to SB 360 was rendered moot.¹⁷

⁵ *Id.*

⁶ *Atwater v. City of Weston*, Case No. 1D10-5094 (Fla. 1st DCA 2010).

⁷ *Franklin v. State*, 887 So. 2d 1063, 1072 (Fla. 2004).

⁸ *Santos v. State*, 380 So. 2d 1284 (Fla. 1980).

⁹ *Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693 (Fla. 1969).

¹⁰ *State ex rel. Landis v. Thompson*, 163 So. 270 (Fla. 1935).

¹¹ *Ex parte Knight*, 41 So. 786 (Fla. 1906).

¹² *State v. Lee*, 356 So. 2d 276 (Fla. 1978).

¹³ *Martinez v. Scanlan*, 582 So. 2d 1167 (Fla. 1991).

¹⁴ *State v. Combs*, 388 So. 2d 1029 (Fla. 1980), and *State v. Johnson*, 616 So. 2d 1 (Fla. 1993).

¹⁵ Senate Committee on Rules, *Senate Bill 1780 Analysis* (Feb. 10, 2010), available at <http://www.flsenate.gov/data/session/2010/Senate/bills/analysis/pdf/2010s1780.rc.pdf> (last visited Jan. 19, 2011).

¹⁶ *City of Weston v. Crist*, Case No. 09-CA-2639 (Fla. 2d Jud. Cir. 2010).

¹⁷ *Id.*

Mandates

Article VII, Section 18(a) of the Florida Constitution states that no county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take an action requiring the expenditure of funds unless the Legislature has determined that such law fulfills an important state interest and it meets one of these exceptions:

- The Legislature appropriates funds or provides a funding source not available for such county or municipality on February 1, 1989;
- The expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments; or
- The law is required to comply with a federal requirement.

Subsection (d) provides a number of exemptions. If none of the constitutional exceptions or exemptions apply, and if the bill becomes law, cities and counties are not bound by the law¹⁸ unless the Legislature has determined that the bill fulfills an important state interest and approves the bill by a two-thirds vote of the membership of each house.

At issue in the SB 360 challenge is the exemption for an insignificant fiscal impact. The Legislature interprets insignificant fiscal impact to mean an amount not greater than the average statewide population for the applicable fiscal year times 10 cents; the average fiscal impact, including any offsetting effects over the long term, is also considered.¹⁹

On a motion for summary judgment, the circuit court of the Second Judicial Circuit decided that SB 360 violated the mandate provision of the Florida Constitution because certain local governments would be required to amend their comprehensive plans within two years to incorporate land use and transportation strategies to support and fund mobility.

Preemption

Under their broad home rule powers, municipalities and charter counties may legislate concurrently with the Legislature on any subject that has not been expressly preempted to the state.²⁰ Express preemption of a municipality's power to legislate requires a specific statement; preemption cannot be made by implication nor by inference.²¹ A local government cannot forbid what the Legislature has expressly licensed, authorized, or required, nor may it authorize what

¹⁸ Although the constitution says “[n]o county or municipality shall be bound by any general law” that is a mandate, the circuit court’s ruling was much broader in that it ordered SB 360 expunged completely from the official records of the state.

¹⁹ Guidelines issued in 1991 by then Senate President Margolis and Speaker of the House Wetherell (1991); Comm. on Comprehensive Planning, Local and Military Affairs, The Florida Senate, *Review of Legislative Staff Guidelines for Screening Bills for Mandates on Florida Counties and Municipalities* (Interim Report 2000-24) (Sept. 1999), available at http://www.flsenate.gov/data/Publications/2000/Senate/reports/interim_reports/pdf/00-24ca.pdf (last visited Jan. 19, 2011).

²⁰ See, e.g., *City of Hollywood v. Mulligan*, 934 So. 2d 1238 (Fla. 2006); *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So. 2d 1011 (Fla. 2d DCA 2005).

²¹ *Id.*

the Legislature has expressly forbidden.²² The Legislature can preempt counties' broad authority to enact ordinances and may do so either expressly or by implication.²³

Local Ordinances Requiring Security Cameras

The Convenience Business Security Act²⁴ creates security standards for late-night convenience businesses, including the requirement that every convenience business²⁵ shall be equipped with a "security camera system capable of recording and retrieving an image to assist in offender identification and apprehension."²⁶ A political subdivision of this state may not adopt, for convenience businesses, security standards that differ from the statutory requirement in the provisions of the Act. All differing standards are preempted and superseded by general law.²⁷

Section 163.31802, F.S., created by SB 360, preempts local governments from having in place ordinances or rules requiring that a business expend funds for security cameras unless specifically required by general law. The section does not limit the ability of a county, municipality, airport, seaport, or other local governmental entity to adopt standards for security cameras. The preemption is broader than the Convenience Business Security Act in that it targets all businesses, but narrower in that it only stops local governments from requiring businesses to expend funds on security cameras (whereas the Act applies to a wider array of security requirements). Therefore, under the law as amended by SB 360, convenience businesses have a statutory requirement to have security cameras, but local governments could not require other businesses to pay for security cameras. Some local governments did have ordinances in place at the time that may be interpreted as requiring security cameras for more than just convenience businesses.²⁸

²² *Rinzler v. Carson*, 262 So. 2d 661 (Fla. 1972); *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So. 2d 1011 (Fla. 2d DCA 2005).

²³ *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So. 2d 1011 (Fla. 2d DCA 2005).

²⁴ Sections 812.1701-812.175, F.S.

²⁵ Section 812.171, F.S., defines a "convenience business" as "any place of business that is primarily engaged in the retail sale of groceries, or both groceries and gasoline, and that is open for business at any time between the hours of 11 p.m. and 5 a.m. The term 'convenience business' does not include: (1) A business that is solely or primarily a restaurant. (2) A business that always has at least five employees on the premises after 11 p.m. and before 5 a.m. (3) A business that has at least 10,000 square feet of retail floor space. The term 'convenience business' does not include any business in which the owner or members of his or her family work between the hours of 11 p.m. and 5 a.m."

²⁶ Section 812.173, F.S.

²⁷ Section 812.1725, F.S.

²⁸ There are several local governments that have ordinances that are not explicitly limited to convenience stores: Boca Raton Ordinances Part II, s. 4-6 (requiring security cameras for nightclubs); DeBary Ordinances Art. II, s. 18-34 (requiring security cameras for late-night businesses); Deltona Ordinances Art. II, s. 22-33 (requiring security cameras for late-night businesses); Fort Pierce Regulations Art. XIII, s. 9-367 (requiring security cameras in all late night stores); Homestead Ordinances Art. I, s. 16-5 (requiring security cameras for small late-night restaurants); Jacksonville Ordinances Title V, s. 177-301 (requiring security cameras for grocery stores and restaurants); Jacksonville Ordinances Title VI, s. 111-310 (enabling Sheriff to purchase cameras for small businesses to meet requirements of Chapter 177); Oakland Park Ordinances Art. III, s. 24-39 (requiring security cameras for new and existing hotels); Orange County Ordinances Art. IV, s. 38-79 (requiring security cameras for freestanding carwashes); Sunrise Ordinances Art. II, s. 3-11 (requiring security cameras to obtain an extended hours license for food service establishments); Volusia County Ordinances Art. II, s. 26-36 (requiring security cameras for all late-night businesses, stores, or operations); West Melbourne Ordinances Art. III, s. 98-362 (requiring security cameras for nightclubs); West Melbourne Ordinances Art. IV, s. 98-963 (requiring interior and exterior security cameras for nightclubs).

III. Effect of Proposed Changes:

Litigation has called into question the constitutional validity of SB 360 (2009 Regular Session), which made many changes to Florida's growth management laws. This bill retains the 2010 statutes in their current state and reenacts the provision of SB 360 (the creation of s. 163.31802, F.S.) related to security cameras. Senate Bills 174 and 176 reenact the other parts of SB 360. By reenacting these bills separately, clearly adhering to the constitutional requirements, the Legislature hopes to cure any specter of a single-subject violation. More specifically, the bill reenacts the provisions adopted in 2009 that prevent local governments from requiring that a business spend funds for security cameras. The bill will take effect upon becoming a law and shall operate retroactively to June 1, 2009.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill is not a mandate as it reenacts current law. The original security-camera provision in SB 360 did not require local governments to spend funds and, therefore, was not a mandate. As noted in the Present Situation portion of this bill analysis, however, a circuit court granted a verdict of summary judgment striking down SB 360 in its entirety as an unconstitutional mandate because, under the measure, certain local governments would be required to amend their comprehensive plans within two years to incorporate land use and transportation strategies to support and fund mobility. The case is being appealed to the First District Court of Appeal.²⁹

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

This bill specifically applies its provisions retroactively to June 1, 2009, the effective date of SB 360 (2009 Regular Session). Retroactive operation is disfavored by courts and generally "statutes are prospective, and will not be construed to have retroactive operation unless the language employed in the enactment is so clear it will admit of no other construction."³⁰ The Florida Supreme Court has articulated four issues to consider when determining whether a statute may be retroactively applied:

²⁹ One of the issues raised on appeal is that the trial court erroneously declared SB 360 unconstitutional in its entirety and should have severed only the offending language. Brief for Appellants at 26, *Atwater v. City of Weston*, Case No. 1D10-5094 (Fla. 1st DCA 2010).

³⁰ Norman J. Singer and J.D. Shambie Singer, *Prospective or retroactive interpretation*, 2 SUTHERLAND STATUTORY CONSTR. s. 41:4 (6th ed. 2009).

- Is the statute procedural or substantive?
- Was there an unambiguous legislative intent for retroactive application?
- Was a person's right vested or inchoate?
- Is the application of the statute to these facts unconstitutionally retroactive?³¹

The general rule of statutory construction is that a procedural or remedial statute may operate retroactively, but that a substantive statute may not operate retroactively without clear legislative intent. Substantive laws either create or impose a new obligation or duty, or impair or destroy existing rights, and procedural laws enforce those rights or obligations.³²

Notwithstanding a determination of whether the provisions in the bill are procedural or substantive, the bill makes it clear that it is the Legislature's intent to apply the law retroactively. "Where a statute expresses clear legislative intent for retroactive application, courts will apply the provision retroactively."³³ A court will not follow this rationale, however, if applying a statute retroactively will impair vested rights, create new obligations, or impose new penalties.³⁴ A court would be unlikely to bar the retroactive application of this section as impairing vested rights, creating new obligations, or imposing new penalties because it reenacts current law. As an additional protection, the bill specifies that if retroactive application were held unconstitutional by a court of last resort, it would then apply prospectively.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

³¹ *Weingrad v. Miles*, 29 So. 3d 406, 409 (Fla. 3d DCA 2010) (internal citations omitted).

³² See *Alamo Rent-A-Car, Inc. v. Mancusi*, 632 So. 2d 1352, 1358 (Fla. 1994); *In re Florida Rules of Criminal Procedure*, 272 So. 2d 65, 65 (Fla. 1972).

³³ *Weingrad*, 29 So. 3d at 410.

³⁴ *Id.* at 411.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
