FINAL BILL ANALYSIS

BILL #: HB 7001

FINAL HOUSE FLOOR ACTION:
80 Y's 39 N's

SPONSOR: Rep. Workman

GOVERNOR'S ACTION: Approved

COMPANION BILLS: SB 174

SUMMARY ANALYSIS

HB 7001 passed the House on March 16, 2011, was subsequently passed by the Senate on March 30, 2011, and was approved by the Governor on April 27, 2011, chapter 2011-14, Laws of Florida. The bill reenacts portions of existing law most closely related to comprehensive planning and land development amended by chapter 2009-96, Laws of Florida, (CS/CS/SB 360) passed by the Legislature in 2009.

The bill states that it fulfills an important state interest. The portions of existing law reenacted by the bill address several areas related to comprehensive planning and land development including:

- Urban Service Areas and Dense Urban Land Areas (DULAs).
- Transportation Concurrency.
- Developments of Regional Impact (DRIs).
- Financial Feasibility Requirements.
- School Concurrency.
- Permit Extensions.
- Impact Fee Notice and Concurrent Zoning.
- Dispute Resolution.

See the "Current Situation" section for a detailed analysis of the portions of existing law reenacted by the bill.

The bill became law on April 27, 2011, chapter 2011-14, Laws of Florida, and those portions of the bill amended or created by chapter 2009-96, Laws of Florida, are retroactive to June 1, 2009. If a court of last resort finds retroactive application unconstitutional, the bill is to apply prospectively from April 27, 2011, the date the bill became law.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Current Situation
Legal Challenge to Chapter 2009-96, Laws of Florida, (CS/CS/SB 360)

Procedural Background
In 2009, the Legislature passed and the Governor signed into law CS/CS/SB 360, entitled "An Act Relating to Growth Management" and cited as the "Community Renewal Act." The House passed the final measure with a vote of 78-37 and the Senate passed the final measure with a vote of 30-7. The law was subsequently codified as chapter 2009-96, Laws of Florida.
In July of 2009, a group of Local Governments[1] filed a lawsuit in Leon County Circuit Court based on two counts. Count I alleged that CS/CS/SB 360 violated the single subject provision in Article III, section 6 of the Florida Constitution, and Count II alleged that CS/CS/SB 360 constituted an unfunded mandate on local governments in violation of Article VII, section 18(a) of the Florida Constitution.[2] The Governor and Secretary of State were named in the suit along with the Speaker of the House and the Senate President.

Due to the uncertainty that this lawsuit was creating among local governments, developers, and private interests, the Legislature in 2010 passed CS/SB 1752[3] that in part clarified portions of CS/CS/SB 360 to protect current actions taken under the law in case CS/CS/SB 360 was later overturned by the courts. CS/SB 1752 provided protection for certain actions taken regarding permit extensions, development of regional impact (DRI) exemptions, and comprehensive plan amendments relating to transportation concurrency exception areas (TCEAs).

In August of 2010, the trial court judge issued final summary judgment and held that Count I, the issue of single subject was moot because the Legislature had passed the adoption act[4] during the 2010 Regular Session to adopt previously enacted laws and statutes, thus curing any single subject issues. As to Count II, the trial court judge found that requiring local governments to adopt land use and transportation strategies to support and fund mobility within two years of designating a TCEA constituted an unconstitutional mandate on local governments. The trial court judge declared CS/CS/SB 360 unconstitutional in its entirety and ordered the Secretary of State to expunge the law from the official records of the State.

In September of 2010, the Legislature appealed the trial court judge's decision to the First District Court of Appeal and the Local Governments cross-appealed. The appeal resulted in an automatic stay of the trial court judge's decision meaning that chapter 2009-96, Laws of Florida, remained in effect as the case continued through the appellate process.[5]

In December of 2010, the First District Court of Appeal granted expedited review of the case. In filed briefs, the Legislature argued that the trial court judge erred in declaring a provision in

[1] The Local Governments originally filing suit included: City of Weston, Village of Key Biscayne, Town of Cutler Bay, Lee County, City of Deerfield Beach, City of Miami Gardens, City of Fruitland Park, and City of Parkland. Subsequently, the following other Local Governments intervened: City of Homestead, Cooper City, City of Pompano Beach, City of North Miami, Village of Palmetto Bay, City of Coral Gables, City of Pembroke Pines, Broward County, Levy County, St. Lucie County, Islamorada, Village of Islands, and Town of Lauderdale-By-The-Sea.
[2] *City of Weston v. Crist*, Case No. 09-CA-2639 (Fla. 2d Cir. Ct. 2010).
[3] Ch. 2010-147, L.O.F.
[4] Fla. SB 1780 (2010).
[5] Fla. R. App. P. 9.310(b)(2).

CS/CS/SB 360 an unfunded mandate and also erred in declaring chapter 2009-96, Laws of Florida, unconstitutional in its entirety; in addition, the Legislature argued that the Speaker of the House and the Senate President were not proper parties to the suit.[6] The Local Governments cross-appealed and argued that the trial court judge erred in refusing to consider their single subject challenge.[7]

HB 7001 was passed by the House of Representatives on March 16, 2011, by a vote of 80-39. The Senate passed the bill on March 30, 2011, by a vote of 30-7. The Governor signed the bill into law on April 27, 2011.[8]

In May of 2011, the First District Court of Appeal issued a written opinion reversing the trial court's final summary judgment declaring chapter 2009-96, Laws of Florida, unconstitutional in its entirety and remanding the case back to the trial court for dismissal. The Court in its opinion stated that the trial court should have granted the motion to dismiss because the named defendants were not proper parties to the lawsuit.[9]

Single Subject- *Article III, section 6, Florida Constitution*
The Florida Constitution states: "Every law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title."[10] The Florida Supreme Court said in *State v. Thompson*, 750 So. 2d 643, 646 (Fla. 1999) that the purposes of the single subject requirement are:

> (1) To prevent hodge-podge or "log-rolling" legislation, *i.e.*, putting two unrelated matters in one act;
>
> (2) To prevent surprise or fraud by means of provisions in bills about which the titles gave no intimation, and which might therefore be overlooked and carelessly and unintentionally adopted; and
>
> (3) To fairly apprise the people of the subjects of legislation that are being considered, in order that they may have opportunity of being heard thereon.

The Local Governments argued in their lawsuit that CS/CS/SB 360 addressed multiple subjects unrelated to its stated single subject of "growth management." It was argued that CS/CS/SB 360 contained three subjects: 1) growth management, 2) security cameras, and 3) tax exemptions and valuation methodologies relating to affordable housing.[11]

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[6] *See* Initial Brief of Appellants, *Atwater v. City of Weston*, No. 1D10-5094 (Fla. 1st DCA Dec. 20, 2010). In the trial court and on appeal, the Legislature has argued that it is not a properly consenting party to the lawsuit, and instead the Department of Community Affairs, the agency charged with the law's enforcement, is the proper party against whom the Local Governments' claims should be brought.
[7] Appendix to Answer and Cross-Initial Brief of Local Appellees, *Atwater v. City of Weston*, No. 1D10-5094 (Fla. 1st DCA Jan. 3, 2011).
[8] Ch. 2011-14, L.O.F.
[9] *See* Reversed- Authored Opinion, *Atwater v. City of Weston*, No. 1D10-5094 (Fla. 1st DCA May 2, 2011).
[10] Art. III, s. 6, Fla. Const.
[11] *City of Weston v. Crist*, No. 09-CA-2639 (Fla. 2d Cir. Ct. 2010).

Single subject defects that may have existed at the time of a law's passage can generally be cured by the Legislature's adoption of the statutes as the official law of Florida.[12] Alternatively, the Legislature can separate and reenact the separate provisions contained in the original chapter law as separate laws.[13]

Every regular session the Legislature enacts the adoption act, providing for adoption of previously enacted laws and statutes as the official statutory law of the state. The adoption of the Florida Statutes is designed to cure certain defects that existed in an act as originally passed. In 2010, the Legislature passed SB 1780 and adopted the 2010 Florida Statutes and the Governor signed the bill into law.[14] The 2010 Adoption Act adopted all statutes and material passed through the 2009 Regular Session and printed in the 2009 edition of the Florida Statutes.

In August of 2010, the trial court judge issued summary judgment and found that the single subject issue was moot because the Legislature passed the statutory adoption act during the 2010 Regular Session, the Governor signed it into law, and the law took effect on June 29, 2010. The adoption act thus cured any single subject defects that existed with CS/CS/SB 360, and the law is no longer subject to challenge on the grounds that it violates the single subject requirement.[15]

In briefs filed on appeal with the First District Court of Appeal, the Local Governments argued that the trial court judge erred in refusing to consider their single subject challenge.[16] The appellate court did not discuss the merits of the single subject argument in its opinion, but instead reversed the trial court and found that the motion to dismiss should have been granted because the named defendants were not proper parties to the lawsuit.[17]

Mandates- *Article VII, section 18(a), Florida Constitution*
The Florida Constitution provides 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 the law satisfies one of the following conditions:

- The Legislature appropriates funds or provides a funding source not available to the local government on February 1, 1989;
- The law requiring the expenditure is approved by a two-thirds vote of the membership of each house;
- The expenditure is required to comply with a law that applies to all persons similarly situated, including state and local governments; or
- The law is either required to comply with a federal requirement or required for eligibility for a federal entitlement, which federal requirement specifically contemplates actions by counties or municipalities for compliance.[18]

[12] *Salters v. State*, 758 So. 2d 667, 670 (Fla. 2000).
[13] *See Martinez v. Scanlan,* 582 So. 2d 1167, 1172 (Fla. 1991).
[14] Ch. 2010-3, L.O.F.
[15] *See State v. Johnson*, 616 So. 2d 1 (Fla. 1993); *Loxahatchee River Envtl. Control Dist. v. Sch. Bd. of Palm Beach County*, 515 So 2d 217 (Fla. 1987); *State v. Combs*, 388 So. 2d 1029 (Fla. 1980).
[16] Appendix to Answer and Cross-Initial Brief of Local Appellees, *Atwater v. City of Weston*, No. 1D10-5094 (Fla. 1st DCA Jan. 3, 2011).
[17] *See* Reversed- Authored Opinion, *Atwater v. City of Weston*, No. 1D10-5094 (Fla. 1st DCA May 2, 2011).
[18] Art. VII, s.18(a), Fla. Const.

Article VII, section 18(d) of the Florida Constitution provides an exemption for laws that have an insignificant fiscal impact. The Legislature has interpreted "insignificant fiscal impact" to mean an amount not greater than the average statewide population for the applicable fiscal year times ten cents; the average fiscal impact, including any offsetting effects over the long term, is also considered.[19]

The Local Governments argued in their lawsuit that CS/CS/SB 360 contained a number of provisions that constituted an unfunded mandate.[20] Among the alleged mandate provisions was a portion of Section 4 of CS/CS/SB 360 that required local governments with a designated transportation concurrency exception area (TCEA) to adopt into their local comprehensive plan, within two years, land use and transportation strategies to support and fund mobility. It was argued by the Local Governments that amending the comprehensive plan as required by one of the provisions in Section 4 of CS/CS/SB 360 requires local governments "to spend funds or to take an action requiring the expenditure of funds." The Legislature argued that if the Section 4 provision of CS/CS/SB 360 was an unfunded mandate it would not be unconstitutional because it would be "insignificant" under Article VII, section 18(d), based on the legislative definition.[21] The Legislature additionally pointed to potential cost savings that local governments may realize from some of the provisions of CS/CS/SB 360, which would further relieve any burdens on local governments as a result of CS/CS/SB 360.[22]

The trial court judge rejected the Legislature's argument and granted summary judgment on this provision alone declaring it an unconstitutional mandate; because although the Legislature determined the law fulfilled an important state interest it did not pass CS/CS/SB 360 by a two-thirds vote of the membership of the House and Senate and it did not meet any of the other exceptions for passing a mandate under Article VII, section 18(a).[23]

In briefs filed on appeal with the First District Court of Appeal, the Legislature argued that the trial court judge erred in his decision regarding the unfunded mandate issue.[24] The appellate court did not discuss the merits of the unfunded mandate argument in its opinion, but instead reversed the trial court and found that the motion to dismiss should have been granted because the named defendants were not proper parties to the lawsuit.[25]

Growth Management in Florida

Florida's Growth Management Act, known officially as "The Local Government Comprehensive Planning and Land Development Regulation Act," was adopted by the Legislature in 1985.[26] Since it was adopted, the Act has been amended in some way almost every year, but most notably in 1995, 2005, and 2009. The Act requires all counties and municipalities to adopt Local Government Comprehensive Plans in order to guide future growth and development. Plan policies establish fundamental development standards.

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[19] *See* Legislative Leadership Memorandum Addressing the Implementation of Constitutional Language Referring to Mandates (issued by Senate President Margolis and House Speaker Wetherell, March 1991); House Memorandum Addressing the Implementation of Constitutional Language Referring to Mandates (issued by House Speaker Webster, March 1997); 2009 Intergovernmental Impact Report, pp. 58-77.
[20] *City of Weston v. Crist*, No. 09-CA-2639 (Fla. 2d Cir. Ct. 2010).
[21] *Id*.
[22] *Id*.
[23] *Id*.
[24] *See* Initial Brief of Appellants, *Atwater v. City of Weston*, No. 1D10-5094 (Fla. 1st DCA Dec. 20, 2010).
[25] *See* Reversed- Authored Opinion, *Atwater v. City of Weston*, No. 1D10-5094 (Fla. 1st DCA May 2, 2011).
[26] *See* ch. 163, pt. II, F.S.

Each comprehensive plan contains chapters or "elements" that address future land use (and future land use map), housing, transportation, infrastructure, coastal management, conservation, recreation and open space, intergovernmental coordination, and capital improvements (and a 5-year capital improvement schedule).

The "concurrency" provision is a key component of the Act as it requires the local government to ensure that facilities and services are available concurrent with the impacts of development. Florida's Growth Management Act authorizes the Department of Community Affairs (DCA), the state's land planning agency, to review comprehensive plans and plan amendments for compliance with the Act. Other state and regional entities also review local government plans and amendments and provide comments to the Department. For most amendments, local governments are only allowed to amend their comprehensive plans twice a year.

Community Renewal Act of 2009 (Comprehensive Planning and Land Development Provisions):

Urban Service Area
Section 163.3164(29), F.S., was amended and changed "existing urban service area" to "urban service area." Urban service area is defined to mean, "built-up areas where public facilities and services, including, but not limited to, central water and sewer capacity and roads, are already in place or are committed in the first 3 years of the capital improvement schedule." For counties that qualify as "dense urban land areas" urban service areas also include:

- The nonrural area of a county which has adopted into the county charter a rural area designation, or
- Areas identified in the comprehensive plan as urban service areas or urban growth boundaries on or before July 1, 2009.

Local governments, when designating an urban service area, are allowed to use the alternative state review process in section 163.32465, F.S.

Dense Urban Land Area (DULA)
The "dense urban land area" was created and defined as:

- A municipality that has an average of at least 1,000 people per square mile of land area and a minimum total population of at least 5,000;
- A county, including the municipalities located therein, which has an average of at least 1,000 people per square mile of land area; or
- A county, including the municipalities located therein, which has a population of at least 1 million.

CS/CS/SB 360 required the Office of Economic and Demographic Research to annually calculate the population and density criteria needed to determine which jurisdictions qualify as dense urban land areas. If a local government has had an annexation, contraction, or new incorporation, the Office of Economic and Demographic Research shall determine the population density using the new jurisdictional boundaries. Starting July 1, 2009, and every year thereafter, the Office of Economic and Demographic Research is required to submit to the state land planning agency a list of jurisdictions that meet the dense urban land area designation

requirements. It is the responsibility of the state land planning agency to publish the list of jurisdictions on its website within 7 days of receiving the list.[27]

Concurrency

Concurrency is a key part of growth management in Florida. Concurrency requires public facilities and services to be available concurrent with the impacts of development. Concurrency in Florida is required for sanitary sewer, solid waste, drainage, potable water, parks and recreation, schools and transportation. Concurrency in Florida is tied to provisions in the Growth Management Act requiring the adoption of level of service standards, addressing existing service deficiencies, and providing infrastructure to accommodate new growth reflected in the comprehensive plan. Rule 9J-5.0055(3), Florida Administrative Code, establishes the minimum requirements for satisfying concurrency. Local governments are charged with setting levels-of-service standards within their jurisdiction, and if levels-of-service standards are not met, development permits may not be issued without an applicable exception. For example, a new development leading to traffic that exceeds the level-of-service for a roadway may be prohibited from moving forward unless improvements are scheduled within three years of the development's commencement, or the development is located in a transportation concurrency exception area (TCEA), or it meets other criteria or exceptions provided by law and the comprehensive plan.

Often, transportation concurrency requirements create unintended consequences. For example, transportation concurrency in urban areas is often times more costly and functionally difficult than in non-urban areas. As a result, transportation concurrency incentivizes urban sprawl and discourages development in urban areas. This conflicts with the goals and policies of the state comprehensive plan. Further, there are many viable alternative forms of transportation that can be employed in urban areas that are more efficient than widening roads.

Transportation Concurrency

A number of provisions related to transportation concurrency were modified by CS/CS/SB 360 in an effort to address concerns that the concurrency requirements inhibit economic growth and development in urban areas.

CS/CS/SB 360 designated new transportation concurrency exception areas (TCEAs) in:

- A municipality that qualifies as a dense urban land area;
- An urban service area that has been adopted into the local comprehensive plan and is located within a county that qualifies as a dense urban land area;
- A county, including the municipalities located therein, which has a population of at least 900,000 and qualifies as a dense urban land area, but does not have an urban service area designated in the local comprehensive plan.

Municipalities that do not qualify as a dense urban land area were permitted to designate the following areas as TCEAs in its local comprehensive plan:

- urban infill (defined in s. 163.3164, F.S.),
- community redevelopment areas (defined in s. 163.340, F.S.),
- downtown revitalization areas (defined in s. 163.3164, F.S.),
- urban infill and redevelopment (under s. 163.2517, F.S.), or

[27] *See* 2010 List of Local Governments Qualifying as Dense Urban Land Areas, *available at* http://www.dca.state.fl.us/fdcp/DCP/Legislation/2010/CountiesMunicipalities.cfm (last visited June 2, 2011). In 2009, there were 246 local governments that qualified as DULAs. In 2010, there were 245 local governments qualifying as DULAs. Palm Coast was on the prior year's list (2009), but no longer meets the criteria. No other jurisdictions were added in 2010.

- urban service areas (defined in s. 163.3164, F.S.) or areas within a designated urban service boundary (defined under s. 163.3177(14), F.S.).

Counties that do not qualify as a dense urban land area were permitted to designate the following areas as TCEAs in its local comprehensive plan:

- urban infill (defined in s. 163.3164, F.S.),
- urban infill and redevelopment (under s, 163.2157, F.S.), or
- urban service areas (defined in s. 163.3164, F.S.).

A local government's comprehensive plan and plan amendments for land uses within a TCEA were automatically deemed to meet the requirement to achieve and maintain level-of-service standards for transportation. Any local government plan amendment to designate an urban service area as a TCEA was exempted from the twice-a-year restriction on plan amendments. CS/CS/SB 360 did not designate any TCEAs in Broward County or Miami-Dade County.[28]

CS/CS/SB 360 required local governments with a designated TCEA, within two years after the designated area becomes exempt, to adopt into its local comprehensive plan land use and transportation strategies to support and fund mobility within the exception area, including alternative modes of transportation. If a local government fails to adopt a mobility plan, it may face sanctions set forth in s. 163.3184(11)(a) and (b).[29] Although adopting a comprehensive plan amendment is likely to produce some cost to local governments, likely varying widely by jurisdiction, this cost may be offset largely by the savings local governments achieve through the designation of new TCEAs that are automatically deemed to meet level-of-service standards for transportation, and the flexibility local governments now have with the ability to adopt more efficient and cost-saving transportation strategies within the excepted areas.

CS/CS/SB 360 contained language that states that the designation of a TCEA does not limit a local government's home rule power to adopt ordinances or impose fees, nor does it affect any contract or agreement entered into or development order rendered before the creation of a TCEA except as provided in s. 380.06(29)(e).

The Office of Program Policy Analysis and Government Accountability (OPPAGA) is required by February 1, 2015, to submit to the Senate President and House Speaker a report on the new TCEAs created by CS/CS/SB 360. The report is to specifically address methods that the local governments have used to implement and fund transportation strategies to achieve the purposes of TCEA, and the effects of the strategies on mobility, congestion, urban design, the density and intensity of land use mixes, and network connectivity plans used to promote urban infill, redevelopment, or downtown revitalization.

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[28] S. 4, ch. 2009-96, Laws of Fla., amending s. 163.3180(5), F.S. "5. Transportation concurrency exception areas… do not apply to designated transportation concurrency districts located within a county that has a population of at least 1.5 million, has implemented and uses a transportation-related concurrency assessment to support alternative modes of transportation, including, but not limited to, mass transit, and does not levy transportation impact fees within the concurrency district. 6. Transportation concurrency exception areas… do not apply in any county that has exempted more than 40 percent of the area inside the urban service area from transportation concurrency for the purpose of urban infill."

[29] S. 163.3184(11)(a), F.S. provides possible sanctions including that the Administration Commission may direct state agencies not to provide funds to increase the capacity of roads, bridges, or water and sewer systems within the boundaries of the non-compliant local governments, and that the local non-compliant government may be ineligible for certain grant programs. § 163.3184(11)(b) provides additional possible sanctions for local governments required to include a coastal management element in its comprehensive plan.

CS/CS/SB 360 also provided a waiver for transportation concurrency requirements on the Strategic Intermodal System for certain Office of Tourism, Trade, and Economic Development (OTTED) qualified job creation projects.

Local governments designating a TCEA under s.163.3180(5)(b)7, F.S., outside of the dense urban land area TCEAs designated under CS/CS/SB 360, must continue to adopt long-term strategies to support and fund mobility within the designated exception areas, including alternative modes of transportation.[30] The local government is also required to consult with the state land planning agency and the Department of Transportation to assess the impact that the proposed exception area is expected to have on the adopted level-of-service standards established for regional transportation facilities identified pursuant to s. 186.507, F.S., including the Strategic Intermodal System (SIS) and other roadway facilities.

School Concurrency

School concurrency allows for coordinated planning between school boards and local governments in planning and permitting developments that will impact school capacity and utilization rates. In 2005, the Legislature required local governments and school boards to adopt a school concurrency system (chapter 2005-290, Laws of Florida) in order to implement a comprehensive focus on school planning. Prior to this, school concurrency was optional.

As part of implementing school concurrency, local governments were required by December 1, 2008, to adopt a Public Schools Facilities Element in their comprehensive plan and update their existing public school interlocal agreements. Most counties and municipalities met this deadline; however, those that did not were faced with a penalty of being prohibited from adopting any comprehensive plan amendments that increased residential density.

CS/CS/SB 360 made changes to the penalties for local governments and school boards that failed to enter into an approved interlocal agreement or implement school concurrency. The penalty that prohibited non-compliant local governments and school boards from adopting plan amendments that increase residential density was removed and now non-compliant local governments and school boards are referred to the Administration Commission. The Administration Commission may impose financial sanctions.[31]

CS/CS/SB 360 allowed for an expanded small county school concurrency waiver. The state land planning agency may allow for a projected 5-year capital outlay student growth rate to exceed 10 percent when the projected 10-year capital outlay student enrollment is less than 2,000 students and the capacity rate for all schools within the district will not exceed 100 percent in the tenth year.

[30] S. 163.3180(5)(d)1, F.S. (2010).

[31] Prior to CS/CS/SB 360, local governments and school boards that failed to adopt the public school facilities element, failed to enter into an approved interlocal agreement, or failed to amend their comprehensive plan to implement school concurrency were prohibited from adopting any comprehensive plan amendments that increased residential density until the requirements were complete. This penalty was removed by CS/CS/SB 360.

Local governments that fail to enter into an approved interlocal agreement or implement school concurrency may be subject to the sanctions in s. 163.3184(11)(a) and (b), F.S., including: loss of funds from state agencies to increase the capacity of roads, bridges, or water and sewer systems, loss of eligibility for certain grant programs, plus additional possible sanctions for local governments required to include a coastal management element in their comprehensive plan. School boards not in compliance face possible financial sanctions and monitoring provided for in s. 1008.32(4), F.S.

CS/CS/SB 360 also required school districts to include the capacity of relocatables for purposes of school concurrency when determining whether levels-of-service have been achieved, and the construction of charter schools were permitted to be counted as proportionate-share mitigation for school concurrency.

Developments of Regional Impact (DRIs)
A "development of regional impact" or DRI is defined in section 380.06, F.S., as "any development which, because of its character, magnitude, or location, would have a substantial effect upon the health, safety, or welfare of citizens of more than one county." Section 380.06, F.S., provides for both state and regional review of local land use decisions involving DRIs. Regional planning councils coordinate the review process with local, regional, state and federal agencies and recommend conditions of approval or denial to local governments. DRIs are also reviewed by the Department of Community Affairs (DCA) for compliance with state law and to identify the regional and state impacts of large-scale developments. The local governments receive recommendations from DCA for approving, suggesting mitigation conditions, or not approving proposed developments.

CS/CS/SB 360 exempted from the DRI review process developments within:

- A municipality that qualifies as a dense urban land area,
- An urban service area that has been adopted into the local comprehensive plan and is located within a county that qualifies as a dense urban land area;
- A county, including the municipalities located therein, which has a population of at least 900,000 and qualifies as a dense urban land area but does not have an urban service area designated in its comprehensive plan.

CS/CS/SB 360 also allowed proposed developments, in certain designated areas of counties and municipalities that do not qualify as dense urban land areas, to be exempt from the DRI review process.

Municipalities that do not qualify as a dense urban land area were permitted to designate any of the following areas in its local comprehensive plan and any proposed development within the designated area is exempt from the DRI process:

- urban infill (defined in s. 163.3164, F.S.),
- community redevelopment areas (defined in s. 163.340, F.S.),
- downtown revitalization areas (defined in s. 163.3164, F.S.),
- urban infill and redevelopment (under s. 163.2517, F.S.), or
- urban service areas (defined in s. 163.3164, F.S.) or areas within a designated urban service boundary (defined under s. 163.3177(14), F.S.).

Counties that do not qualify as a dense urban land area were permitted to designate any of the following areas in its local comprehensive plan and any proposed development within the designated area is exempt from the DRI process:

- urban infill (defined in s. 163.3164, F.S.),
- urban infill and redevelopment (under s, 163.2157, F.S.), or
- urban service areas (defined in s. 163.3164, F.S.).

CS/CS/SB 360 required developments located partially outside exempt DRI review process areas to undergo DRI review. Previously approved DRIs or pending applications for development approval when the exemption takes place are allowed to continue the DRI process or rescind the DRI development order. A development that has a pending application for a

comprehensive plan amendment and that elects not to continue DRI review is exempt from the limitation on plan amendments for the year following the effective date of the exemption.

In exempt areas, local governments still have to submit the development order to the state land planning agency for any project that would be larger than the 120 percent of any applicable DRI threshold and would require DRI review but for the exemption. The state land planning agency still has the right to challenge such development orders for consistency with the local comprehensive plan.

If a local government qualifies as a dense urban land area for DRI exemption purposes and later becomes ineligible for designation as a dense urban land area, developments within that area having a complete, pending application for authorization to commence development may maintain the exemption if the developer is continuing the application process in good faith or if the development is approved. The rights of any person to complete any development that has been authorized as a DRI are not limited or modified by the subsection. The exemption from the DRI process does not apply within any area of critical state concern, within the boundary of the Wekiva Study Area, or within 2 miles of the boundary of the Everglades Protection Area.

CS/CS/SB 360 exempted from the twice-a-year restriction on plan amendments, amendments to make areas exempt from the DRI process under section 380.06(29), F.S. CS/CS/SB 360 required transportation level of service standards for a DRI to be the same as for transportation concurrency in accordance with section 163.3180, F.S. CS/CS/SB 360 allowed certain OTTED Innovation Incentive Program projects that are exempt from DRI review to remain exempt even when part of a larger project that is subject to DRI review.

Financially Feasible Capital Improvements Element (CIE)

In order to maintain a financially feasible 5-year schedule of capital improvements, the Legislature in 2005 required local governments to adopt an annual capital improvements schedule (CIE). Each local government is required to submit an annual update of its capital improvements element to demonstrate it is maintaining a financially feasible 5-year schedule of capital improvements.[32] The 5-year schedule of capital improvements must include specific capital projects necessary to achieve and maintain level-of-service standards identified in other areas of the comprehensive plan, reduce existing deficiencies, provide for necessary replacements, and meet future demand during the time period covered by the schedule. Failure to update can result in penalties such as a prohibition from making future land use map amendments, ineligibility for certain grant programs, or ineligibility for revenue-sharing funds.

When first enacted into law, the required capital improvements element update or amendment had to be adopted and transmitted to the state land planning agency by December 1, 2007. The Legislature later extended that date to December 1, 2008. In early 2009, a majority of local governments had failed to submit their financial feasibility reports by the December 1, 2008 deadline.

In order to be financially feasible, the CIE must identify sufficient revenues to fund the 5-year schedule of capital improvements. Because of the economic downturn, local governments have had difficulty meeting this requirement. CS/CS/SB 360 extended the deadline for local governments to comply with the financial feasibility requirement from December 1, 2008, to December 1, 2011.

[32] S. 163.3177(3)(b)1, F.S.

Additionally, CS/CS/SB 360 specified that a local government's comprehensive plan and plan amendments for land uses within a TCEA are automatically deemed to meet the requirement to achieve and maintain level-of-service standards for transportation.

Permit Extensions
In recognition of the difficult real estate market facing Florida, CS/CS/SB 360 provided a retroactive 2-year extension and renewal for permits that had an expiration date of September 1, 2008, through January 1, 2012, from the date of expiration for:

- any permit issued by the Department of Environmental Protection or a Water Management District pursuant to part IV of chapter 373, F.S.;
- any local government-issued development order or building permit; and
- buildout dates, including a buildout date extension previously granted under section 380.016(19)(c), F.S.

CS/CS/SB 360 also specifically provided for the conversion from the construction phase to the operation phase upon completion of construction. The commencement and completion dates for any required mitigation associated with a phased construction project were extended such that mitigation takes place in the same timeframe relative to the phase as originally permitted. Those with valid permits or other authorization that are eligible for the two-year extension were required to notify the authorizing agency in writing no later than December 1, 2009, identifying the specific authorization for which the holder intended to use the extension and the anticipated timeframe for acting on the authorization.

The two-year extensions did not apply to a permit or authorization:

- under any programmatic or regional general permit issued by the Army Corps of Engineers;
- held by an owner or operator determined to be in significant noncompliance with the conditions of the permit;
- that would delay or prevent compliance with a court order if extended.

Permits extended continued to be governed by the rules in effect at the time the permit was issued, except when it can be demonstrated that the rules in effect at the time would create an immediate threat to public safety or health.

This provision applied to any modification of the plans, terms, and conditions of the permit that lessens the environmental impact, except that any such modification could not extend the time limit beyond two additional years.

Impact Fees
CS/CS/SB 360 specified that a county or municipality is not required to wait 90 days to decrease, suspend, or eliminate an impact fee.

Concurrent Zoning and Comprehensive Plan Amendment Changes
CS/CS/SB 360 required, at the request of an applicant, for zoning and comprehensive plan amendment changes to be considered concurrently in order to shorten the approval process.

Municipal Boundary Changes
CS/CS/SB 360 required municipalities that change their boundaries to send a copy of the changes along with a statement specifying the population census effect and the affected land area to the Office of Economic and Demographic Research.

Intergovernmental Dispute Resolution Process
CS/CS/SB 360 made intergovernmental mediation mandatory instead of optional.

Regional Planning Council Dispute Resolution Process
CS/CS/SB 360 required the dispute resolution process of the regional planning councils to include mandatory, instead of voluntary, mediation or similar process if disputing parties fail to resolve their disputes first through voluntary meetings.

Definition of "In Compliance"
CS/CS/SB 360 amended the definition of "in compliance" to correct for a technical error.

Mobility Fee Study
CS/CS/SB 360 instructed DCA and DOT to continue their mobility fee studies and submit a joint report to the Legislature no later than December 1, 2009. This report was completed and submitted to the Legislature.[33]

Statement of Important State Interest
CS/CS/SB 360 included the statement that the Legislature finds that this act fulfills an important state interest.

CS/SB 1752 (2010)
Due to the uncertainty that the lawsuit challenging CS/CS/SB 360 was creating among local governments, developers, and private interests, the Legislature in 2010 passed Committee Substitute for Senate Bill 1752 (CS/SB 1752) to clarify portions of CS/CS/SB 360 and to protect current actions taken under the law in case CS/CS/SB 360 was later overturned by the courts. CS/SB 1752 provided protection for certain actions taken regarding permit extensions, development of regional impact (DRI) exemptions, and comprehensive plan amendments relating to transportation concurrency exception areas (TCEAs).

Effect of the Bill
Since its passage, chapter 2009-96, Laws of Florida, has been subject to constitutional scrutiny. A lawsuit filed in 2009 by a group of local governments alleged that chapter 2009-96 violated the single subject requirement and contained unfunded mandates. The trial court judge in August of 2010 issued summary judgment finding that the issue of a single subject violation was moot since the Legislature had passed the adoption act during the 2010 Regular Session, thus curing any single subject defect, and in addition, finding that chapter 2009-96 contained at least one unfunded mandate in violation of Article VII, section 18(a) of the Florida Constitution. Both findings were appealed, and in May of 2011, the First District Court of Appeal issued an opinion reversing the trial court's summary judgment invalidating chapter 2009-96, Laws of Florida, and remanding the case back to the trial court for dismissal because the named defendants were not proper parties to the case.

The bill does not change current law reflected in the 2010 Florida Statutes, but simply reenacts portions of existing law most closely related to comprehensive planning and land development that were amended by CS/CS/SB 360, in an effort to remove uncertainty and address alleged constitutional defects. House Bill 7003 (reenacting portions of existing law most closely related to affordable housing) and House Bill 93 (reenacting portions of existing law most closely

[33] Joint Report on the Mobility Fee Methodology Study (2009), *available at* http://www.dca.state.fl.us/fdcp/DCP/MobilityFees/Files/JointReportMobilityFee12012009.pdf (last visited June 2, 2011).

related to security cameras) reenact other parts of CS/CS/SB 360 that were alleged in the lawsuit to be outside the purview of growth management.[34] By reenacting CS/CS/SB 360 into three separate bills, the Legislature hopes to moot any issue of a single subject violation. The mandate issue should also be mooted since the three bills each passed by a two-thirds vote of the membership of the House and Senate during the 2011 Legislative Session.[35]

The bill includes the statement that the Legislature finds that this act fulfills an important state interest.

The bill became law on April 27, 2011, chapter 2011-14, Laws of Florida, and those portions of the bill amended or created by chapter 2009-96, Laws of Florida, are retroactive to June 1, 2009. If a court of last resort finds retroactive application unconstitutional, the bill is to apply prospectively from April 27, 2011, the date the bill became law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. **Revenues:**
   None.

2. **Expenditures:**
   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. **Revenues:**
   None.

2. **Expenditures:**
   The bill reenacts existing law and therefore does not contain any fiscal impact on local governments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Increased certainty of the growth management laws could have a positive financial impact on the development community.

D. FISCAL COMMENTS:

The bill reenacts existing law and therefore does not contain any fiscal impact on local governments.

[34] HB 7003 (ch. 2011-15, L.O.F.) and HB 93 (ch. 2011-8, L.O.F.) were signed by the Governor and became law on April 27, 2011.

[35] HB 7001 passed by a vote of 80-39 in the House and by a vote of 30-7 in the Senate; HB 7003 passed by a vote of 116-0 in the House and by a vote of 36-2 in the Senate; HB 93 passed by a vote of 97-18 in the House and by a vote of 36-0 in the Senate.