# FINAL BILL ANALYSIS

**BILL #:** HB 93

**FINAL HOUSE FLOOR ACTION:**
97 Y's 18 N's

**SPONSOR:** Rep. Steube

**GOVERNOR'S ACTION:** Approved

**COMPANION BILLS:** SB 172

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## SUMMARY ANALYSIS

HB 93 passed the House on March 16, 2011, and subsequently passed the Senate on March 30, 2011. The bill was approved by the Governor on April 27, 2011, chapter 2011-8, Laws of Florida. This bill reenacts existing law relating to security cameras amended by ch. 2009-96, Laws of Florida, (Committee Substitute for Committee Substitute for Senate Bill 360) passed by the Legislature in 2009.

Specifically, this bill reenacts s. 163.31802, F.S., which prevents local governments from requiring businesses to expend funds for security cameras. The section does not prevent a county, municipality, airport, seaport, or other local government entity from adopting standards for security cameras for publicly operated facilities.

This bill took effect upon becoming law on April 27, 2011, and those portions 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, this bill is to apply prospectively from the date it became law.

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

**Current Situation**

**Legal Challenge to Chapter 2009-96, Laws of Florida, (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 ch. 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.

In August of 2010, the trial court judge issued a final summary judgment and held that Count I, the issue of single subject was moot because the Legislature had passed the adoption act[3] 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 has resulted in an automatic stay of the trial court judge's decision meaning that ch. 2009-96, Laws of Florida, remains in effect as the case continues through the appellate process.[4]

In December of 2010, the District Court of Appeal granted expedited review of the case, and initial briefs have since been filed by the Legislature and the Local Governments.[5] The

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[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] Fla. SB 1780 (2010).

[4] Fla. R. App. P. 9.310(b)(2).

[5] *See* Case Docket, *Atwater v. City of Weston*, No. 1D10-5094 (Fla. 1st DCA 2010), *available at* http://199.242.69.70/pls/ds/ds_docket_search?pscourt=1 (last visited Jan. 19, 2011).

Legislature on appeal is arguing that the trial court judge erred in declaring a provision in CS/CS/SB 360 an unfunded mandate and also erred in declaring ch. 2009-96, Laws of Florida, unconstitutional in its entirety; in addition, the Legislature is arguing that the Speaker of the House and the Senate President are 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] In May 2011, the First District Court of Appeal reversed the trial court's final summary judgment invalidating ch. 2009-96, Laws of Florida, and remanded the case to the trial court to dismiss the complaint.[8] The District Court of Appeal held that the defendants were not proper parties to the action, and thus the case should have been dismissed.[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
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> (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]

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

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[6] *See* Initial Brief of Appellants, *Atwater v. City of Weston*, No. 1D10-5094 (Fla. 1st DCA Dec. 20, 2010).
[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] *Atwater v. City of Weston*, No. 1D10-5094 (Fla. 1st DCA May 2, 2011).
[9] *Id.*
[10] Art. III, s. 6, Fla. Const.
[11] *City of Weston v. Crist*, No. 09-CA-2639 (Fla. 2d Cir. Ct. 2010).
[12] *Salters v. State*, 758 So. 2d 667, 670 (Fla. 2000).
[13] *See Martinez v. Scanlan,* 582 So. 2d 1167, 1172 (Fla. 1991).

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 the current appeal before the First District Court of Appeal, the Local Governments are arguing that the trial court judge erred in refusing to consider their single subject challenge.[16]

**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 2/3 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.[17]

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.[18]

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[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] Art. VII, s. 18(a), Fla. Const.

[18] *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 (March 2010), *available at*

The Local Governments argued in their lawsuit that CS/CS/SB 360 contained a number of provisions that constituted an unfunded mandate.[19] 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 were an unfunded mandate it would not be unconstitutional because it would be "insignificant" under Article VII, section 18(d), based on the legislative definition.[20] 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 2/3 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).[21]

In the current appeal before the First District Court of Appeal, the Legislature is arguing that the trial court judge erred in his decision regarding the unfunded mandate issue.[22]

## Preemption

Local governments may use their home rule powers to enact ordinances not inconsistent with general law.[23] Local governments may legislate concurrently with the Legislature on any subject which has not been expressly preempted to the state.[24] Florida law recognizes both express and implied preemption, and express preemption must be made through a specific legislative statement, using clear language.[25] A municipality may not forbid what the Legislature has expressly authorized, nor may it authorize what the Legislature has expressly forbidden.[26]

## Local Ordinances and Security Measures

Minimum security standards for certain businesses are specified by law. Such laws preempt any local government from establishing standards that vary from the state requirements. For example, automatic teller machines (ATM's) are required by law to meet standards for lighting, mirrors and landscaping.[27] Similarly, the Convenience Business Security Act establishes minimum standards for all convenience businesses, including, among other things, a security

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http://www.floridalcir.gov/UserContent/docs/File/reports/
impact09.pdf (last visited January 19, 2011).

[19] *City of Weston v. Crist*, No. 09-CA-2639 (Fla. 2d Cir. Ct. 2010).
[20] *Id*.
[21] *Id*.
[22] *See* Initial Brief of Appellants, *Atwater v. City of Weston*, No. 1D10-5094 (Fla. 1st DCA Dec. 20, 2010). The Legislature has also argued in the trial court and on appeal 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.
[23] Art. VIII, s. 1(f, g), Fla. Const.; *see also Sarasota v. Browning*, 28 So.2d 880, 885-86 (Fla. 2010).
[24] *City of Hollywood v. Mulligan*, 934 So. 2d 1238, 1243 (Fla. 2006).
[25] *Sarasota*, 28 So. 2d at 886.
[26] *Rinzler v. Carson*, 262 So. 2d 661, 668 (Fla. 1972).
[27] S. 655.962, Fla. Stat. (2010).

camera system.[28] Local governments are precluded from setting standards for convenience businesses that differ from those specified by the law.[29] Some local governments have attempted to establish their own security standards for businesses other than convenience businesses, some of which have specifically required installation of security cameras.[30]

Though the Convenience Business Security Act applies only to convenience business, all other business types would be covered by s. 163.31802, F.S. (as created by CS/CS/SB 360). However, this law only preempts local governments from requiring businesses to expend funds for security cameras, while the Convenience Business Security Act preempts standards for several other security measures (such as employee training in robbery deterrence, parking lot lighting, and height markers at store entrances). This means that the law still requires convenience businesses to have security cameras, but local governments cannot set requirements for other businesses requiring them to expend funds on cameras. Section 163.31802, F.S., does not limit the ability of a county, municipality, airport, seaport, or other local governmental entity to adopt standards for security cameras in publicly operated facilities.

**Effect of the Bill**

Since its passage, ch. 2009-96, Laws of Florida, has been subject to constitutional scrutiny. A lawsuit filed in 2009 by a group of Local Governments alleged that ch. 2009-96 violated the single subject requirement and contained unfunded mandates. The trial court judge in August of 2010 issued a summary judgment finding that the issue of a single-subject violation was now 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 ch. 2009-96 contained at least one unfunded mandate in violation of Article VII, section 18(a) of the Florida Constitution. Both parts of the trial court judge's decision are currently at issue on appeal.

This bill does not change current law reflected in the 2010 Florida Statutes, but simply reenacts the portions of the existing law relating to security cameras that were amended by CS/CS/SB 360, in an effort to remove uncertainty and address alleged constitutional defects. House Bill 93 and HB 7003 reenact parts of CS/CS/SB 360 that were alleged in the lawsuit to be outside the purview of growth management, while HB 7001 reenacts the portions of CS/CS/SB 360 most closely relating to comprehensive planning and land use. By reenacting CS/CS/SB 360 into

[28] S. 812.173, 812.174, Fla. Stat. (2010).

[29] S. 812.1725, Fla. Stat. (2010).

[30] The Attorney General stated that the City of Sunny Isles Beach "appear[ed] to have the authority" to require condominium associations to provide security guard services. *See* Op. Att'y Gen. Fla. 2009-08 (2009). The following local governments have enacted ordinances specifically requiring security cameras for businesses other than convenience businesses: Boca Raton Ordinances Part II, § 4-6 (requiring security cameras for nightclubs); Cutler Bay Ordinance 09-03 (requiring parking lot security cameras for retail businesses with over 25 parking spaces); DeBary Ordinances Art. II, § 18-34 (requiring security cameras for late-night businesses); Deltona Ordinances Art. II, § 22-33 (requiring security cameras for late-night businesses); Fort Pierce Regulations Art. XIII, § 9-367 (requiring security cameras in all late night stores); Homestead Ordinances Art. I, § 16-5 (requiring security cameras for small late-night restaurants); Jacksonville Ordinances Title V, § 177-301 (requiring security cameras for grocery stores and restaurants); Jacksonville Ordinances Title VI, § 111-310 (enabling Sheriff to purchase cameras for small businesses to meet requirements of Chapter 177, Ordinance Code); Oakland Park Ordinances Art. III, § 24-41 (requiring security cameras for new and existing hotels); Orange County Ordinances Art. IV, § 38-79 (requiring security cameras for freestanding carwashes); Sunrise Ordinances Art. II, § 3-11 (requiring security cameras as a prerequisite for an extended hours license for food service establishments); Volusia County Ordinances Art. II, § 26-36 (requiring security cameras for all late-night businesses, stores, or operations); West Melbourne Ordinances Art. III, § 98-362 (requiring security cameras for nightclubs); West Melbourne Ordinances Art. IV, § 98-963 (requiring interior and exterior security cameras for nightclubs).

three separate bills, the Legislature hopes to remove any question of a single subject violation. This bill reenacts provisions of current law that have been challenged in court as an unconstitutional mandate, pursuant to Article VII, section 18(a) of the Florida Constitution, on counties and municipalities. To the extent any of those provisions are held by a court of last resort as unconstitutional, a 2/3 vote of the membership of each house would be necessary to have the legislation binding on counties and municipalities, in the absence of the application of one of the exemptions or exceptions provided for in Article VII, section 18 of the Florida Constitution.

## 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:**

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

This bill reaffirms currently existing law, and therefore does not impose any new fiscal impacts on local governments.