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 Budget Committee

BILL:	SB 174
INTRODUCER:	Senator Bennett
SUBJECT:	Growth Management
DATE:	March 7, 2011
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wolfgang	Yeatman	CA	**Favorable**
2.	Roberts	Roberts	GO	**Favorable**
3.	Martin	Meyer, C.	BC	**Pre-meeting**
4.				
5.				
6.				

I. Summary:

In response to ongoing litigation, this bill reenacts sections of law amended by the parts of ch. 2009-96, Laws of Florida, (SB 360 from 2009) most closely related to the subject of growth management to eliminate any possible question that any of these provisions could be subjected to a single subject[1] challenge. Additionally, if the bill passes by a 2/3 majority of each house, it could remove the argument that these provisions violate the mandates provision of the Florida Constitution.[2] The bill does not change the law, but reaffirms the following changes to the law made in 2009 by SB 360:

- The compliance deadline for local governments to submit financially feasible capital improvement elements was extended, and one of the penalties for failing to adopt a public schools facility element was eliminated.
- Transportation Concurrency Exception Areas (TCEAs) were created in any: municipality that qualifies as a dense urban land area; urban service area which has been adopted into a local comprehensive plan and is located in a county that qualifies as a dense urban land area; and any county, including the cities within the county, 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 within the local comprehensive plan.
- Other local governments have the option of creating TCEAs in certain designated areas.
- TCEAs were not created in Broward or Miami-Dade County.
- The bill explicitly stated that the designation of a transportation concurrency exception area does not limit a local government's home rule power to adopt ordinances or impose fees.

[1] Art. III, § 6, Fla. Const.
[2] Article VII, § 18(a), Fla. Const.

- A waiver from transportation concurrency requirements on the state's strategic intermodal system was created for certain Office of Tourism, Trade, and Economic Development job creation projects.
- Certain developments became exempt from the development-of-regional-impact (DRI) process in the following areas:
  - municipalities that qualify as dense urban land areas;
  - 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; and
  - a county, such as Pinellas or Broward, that 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.
  - Other local governments have the option of designating certain areas as exempt from DRI review.
  - The bill required municipalities that change their boundaries to submit their boundary changes and a statement specifying the population census effect and the affected land area to the Office of Economic and Demographic Research.
  - Parties that fail to resolve their disputes through voluntary meetings must now use mandatory, rather than voluntary, mediation or a similar process.
  - Urban service areas may be designated in the comprehensive plan using an expedited process.
  - Chapter 2009-96, Laws of Florida, also authorized permit extensions and commissioned a mobility fee study.
  - Includes the statement that the Legislature finds that this act fulfills an important state interest from the original bill and includes a statement that this bill, SB 174, fulfills an important state interest.

This bill substantially reenacts parts of sections 163.3164, 163.3177, 163.3180, 163.31801, 163.3184, 163.3187, 163.32465, 171.091, 186.509, and 380.06 of the Florida Statutes.

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. The law was challenged by a number of local governments 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 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. Local governments, developers, and other private interests are facing uncertainty as a result of this lawsuit.

[3] Chapter 2009-96, L.O.F.
[4] *City of Weston v. Crist*, Case No. 09-CA-2639 (Fla. 2d Jud. Cir. 2010).
[5] *City of Weston v. Crist*, Case No. 09-CA-2639 (Fla. 2d Jud. Cir. 2010).

This discussion explains the issues involved in SB 360. It gives background on the issues and specifies the changes made by SB 360. Discussions of the changes to law effected by SB 360 are flagged by underlining marking the beginning of the discussion.

Growth Management

Local Government Comprehensive Planning and Land Development Regulation Act (the Act),[6] also known as Florida's Growth Management Act, was adopted by the 1985 Legislature. Significant changes have been made to the Act since 1985 including major growth management bills in 2005 and 2009. The Act requires all of Florida's 67 counties and 413 municipalities to adopt local government comprehensive plans that guide future growth and development. "Each local government comprehensive plan must include at least two planning periods, one covering at least the first 5-year period occurring after the plan's adoption and one covering at least a 10-year period."[7] Comprehensive plans contain chapters or "elements" that address future land use, housing, transportation, water supply, drainage, potable water, natural groundwater recharge, coastal management, conservation, recreation and open space, intergovernmental coordination, capital improvements, and public schools. A key component of the Act is its "concurrency" provision that requires facilities and services to be available concurrent with the impacts of development. The state land planning agency that administers these provisions is the Department of Community Affairs (DCA).

A local government may choose to amend its comprehensive plan for a host of reasons. It may wish to: expand, contract, accommodate proposed job creation projects or housing developments, or change the direction and character of growth. Some comprehensive plan amendments are initiated by landowners or developers, but all must be approved by the local government. To adopt a comprehensive plan amendment, local governments must hold two public hearings and undergo review by state and regional entities. For most types of comprehensive plan amendments, local governments may only amend their comprehensive plan twice a year.

SB 360 created a provision that requires local governments to make concurrent zoning and comprehensive plan changes upon the request of an applicant with an approved application. The bill also exempted urban service areas from the twice a year restriction on plan amendments and gave them expedited review.

Proportionate Fair-Share Mitigation

Proportionate fair-share mitigation is a method for mitigating the impacts of development on transportation facilities through the cooperative efforts of the public and private sectors. Proportionate fair-share mitigation can be used by a local government to determine a developer's fair-share of costs to meet concurrency. The developer's fair-share may be combined with public funds to construct future improvements; however, the improvements must be part of a plan or program adopted by the local government or FDOT. If an improvement is not part of the local government's plan or program, the developer may still enter into a binding agreement at the local government's option provided the improvement satisfies part II of ch. 163, F.S., and:

- the proposed improvement satisfies a significant benefit test; or

[6] *See* Chapter 163, Part II, F.S.
[7] Section 163.3177(5), F.S.

- the local government plans for additional contributions or payments from developers to fully mitigate transportation impacts in the area within 10 years.

Proportionate Share Mitigation
Section 380.06, F.S., governs the DRI program and establishes the basic process for DRI review. The DRI program is a vehicle that provides state and regional review of local land use decisions regarding large developments that, because of their character, magnitude, or location, would have a substantial effect on the health, safety, or welfare of the citizens of more than one county.[8] Multi-use developments contain a mix of land uses and multi-use DRIs meeting certain criteria are eligible to satisfy transportation concurrency requirements under s. 163.3180(12), F.S. The proportionate share option under subsection (12) has been used to allow the mitigation collected from certain multiuse DRIs to be "pipelined" or used to make a single improvement that mitigates the impact of the development because this may be the best option where there are insufficient funds to improve all of the impacted roadways.

Urban Service Areas
SB 360 amended s. 163.3164, F.S., to change "existing urban service area" to "urban service area" and to redefine the term to include built-up areas where public facilities and services, including central water and sewer and roads are already in place or are committed within the next three years. The definition also grandfathers-in existing urban service areas or their functional equivalent within counties that qualify as dense urban land areas. This definition is important because for counties that are dense urban land areas, the area within the urban service area automatically became exempt from transportation concurrency and development-of-regional-impact review.

Dense Urban Land Areas
SB 360 created the definition of a "dense urban land area." The definition includes:
- a municipality that has an average population of at least 1,000 people per square mile and at least 5,000 people total;
- a county, including the municipalities located therein, which has an average population of at least 1,000 people per square mile; and
- a county, including the municipalities located therein, which has a population of at least 1 million.

The Office of Economic and Demographic Research determines which local governments qualify as dense urban land areas. The designation becomes effective upon publication on the state land planning agency's website. To support the Office of Economic and Demographic Research, municipalities that change their boundaries send their boundary changes and information on the population effect to the Office of Economic and Demographic Research. In 2009, when the lawsuit was instituted, 246 local governments qualified as dense urban land areas. However, because of statutory exemptions, not all of these would be transportation concurrency exception areas (see below).

Capital Improvements Element

[8] Section 380.06(1), F.S.

In 2005, the Legislature required municipalities to annually adopt a financially feasible Capital Improvements Element (CIE) schedule beginning on December 1, 2007. (House Bill 7203, passed in May 2007, postponed the submittal to December 1, 2008.) The purpose of the annual update is to maintain a financially feasible 5-year schedule of capital improvements. The adopted update amendment must be received by DCA by December 1 of each year. Failure to update the CIE can result in penalties such as a *prohibition on Future Land Use Map amendments*; ineligibility for grant programs such as Community Development Block Grants (CDBG), and Florida Recreation Development Assistance Program (FRDAP); or ineligibility for revenue-sharing funds such as gas tax, cigarette tax, or half-cent sales tax. The majority of jurisdictions failed to meet the December 1, 2008, deadline to submit their financial feasibility reports for their capital improvements element.

SB 360 changed the deadline to submit the CIE financial feasibility element and the implementation of the associated penalty from December 1, 2008, to December 1, 2011. This means that local governments have not been required to fund the complete costs of their capital improvements listed in their comprehensive plan during this time. These requirements could be costly in and of themselves. At the very least, local governments would have been required to amend their comprehensive plans to remove any capital improvements they could not fund. Failure to comply with the financial feasibility requirement could lead to local governments being ineligible for land use map amendments and subject to financial sanctions. Under challenging economic conditions, it is likely that a court overturning this provision could be very costly for local governments.

School Concurrency

In 2005, the Legislature enacted statewide school concurrency requirements. Adequate school facilities must be in place or under actual construction within 3 years after the issuance of final subdivision or site plan approval. Each local government must adopt a public school facilities element and the required update to the interlocal agreement by December 1, 2008. A local government's comprehensive plan must also include proportionate fair-share mitigation options for schools.

Although the majority of jurisdictions did adopt a school facilities element into their comprehensive plans by the December 1, 2008, deadline, a significant number of jurisdictions did not meet the deadline. One of the penalties for failure to comply with the December 1, 2008, deadline is that the local government cannot adopt comprehensive plan amendments that increase residential density.

SB 360 changed the penalties triggered when a local government or a school board fails to enter into an approved interlocal agreement or fails to implement school concurrency. The local government may be subjected to the penalties set forth in s. 163.3184(11)(a) and (b), F.S., and the school board may be subjected to penalties set forth in s. 1008.32(4), F.S. The bill gave a waiver from school concurrency for jurisdictions where student enrollment is less than 2,000 even if the growth rate is more than 10%. The bill specified that school districts must include certain relocatables as student capacity for purposes of school concurrency and that the construction of charter schools counts as mitigation for school concurrency.

Transportation Concurrency

The Growth Management Act of 1985 required local governments to use a systematic process to ensure new development does not occur unless adequate transportation infrastructure is in place to support the growth. Transportation concurrency is a growth management strategy aimed at ensuring transportation facilities and services are available "concurrent" with the impacts of development. To carry out concurrency, local governments must define what constitutes an adequate level of service (LOS) for the transportation system and measure whether the service needs of a new development exceed existing capacity and scheduled improvements for that period. The Florida Department of Transportation is responsible for establishing level-of-service standards on the highway component of the strategic intermodal system (SIS) and for developing guidelines to be used by local governments on other roads. The SIS consists of statewide and interregionally significant transportation facilities and services and plays a critical role in moving people and goods to and from other states and nations, as well as between major economic regions in Florida.[9]

SB 360 modified numerous provisions related to transportation concurrency. These revisions were made in response to concerns that transportation concurrency stifles economic development in urban centers where development should be encouraged to avoid sprawl. This is because developers in congested areas must pay sometimes exorbitant proportionate fair-share costs to pay for road improvements to try to offset the traffic their planned development would create. In some areas, building new roads is functionally impossible. Developers that built their developments prior to congestion or in areas where roads are not yet congested would not have had to pay proportionate fair-share costs for their impacts. Therefore, SB 360 targeted areas based on population density to relieve some of the unintended consequences of transportation concurrency.

SB 360 designated the following areas as transportation concurrency exception areas (TCEAs):

- 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; and
- a county, such as Pinellas or Broward, that 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.

Local governments that did not meet the population threshold of a "dense urban land area" could designate in their comprehensive plans areas such as urban infill and urban service areas as transportation concurrency exception areas.

After SB 360 became law, the Department of Community Affairs interpreted the change as removing state-mandated transportation concurrency within the specified jurisdictions while preserving transportation concurrency ordinances and the transportation concurrency provisions the local governments had already adopted into their comprehensive plans. Therefore, the department indicated that for transportation concurrency exception areas to become effective in practice local governments would need to amend their ordinance and comprehensive plans to implement the transportation concurrency exception area. Some local governments have begun

[9] *See* Professional staff analysis, Committee on Ways and Means, *CS/CS/SB 360* (Mar. 19, 2009), *available at* http://www.flsenate.gov/data/session/2009/Senate/bills/analysis/pdf/2009s0360.wpsc.pdf (last visited Mar. 30, 2010).

to amend their comprehensive plans or land use regulations to implement transportation concurrency exception areas. SB 1752, which became law in 2010,[10] attempted to preserve any amendment to a local comprehensive plan adopted pursuant to SB 360 designed to implement a transportation concurrency exception area.

SB 360 did not create TCEAs for designated transportation concurrency districts within a county, such as Broward County, that has a population of at least 1.5 million that uses its transportation concurrency system to support alternative modes of transportation and does not levy transportation impact fees. TCEAs are also not created for a county such as Miami-Dade that has exempted more than 40% of its urban service area from transportation concurrency for purposes of urban infill.

Any local government that has a transportation concurrency exception area under one of these provisions must, within 2 years, adopt into its comprehensive plan land use and transportation strategies to support and fund mobility within the exception area, including alternative modes of transportation. If the local government fails to adopt such a plan it may be subject to the sanctions set forth in s. 163.3184(11)(a) and (b), F.S. This language does not set specific requirements for local governments to include in their mobility plan. It could be as simple as including bike paths or as ambitious as buses or trains. It could mesh with the existing transportation requirements in the comprehensive plan as long as those requirements address alternative modes of transportation. Although adopting a comprehensive plan amendment will involve a cost, the cost of adopting a comprehensive plan amendment varies significantly from jurisdiction and is less significant when local governments are already adopting other amendments in the same cycle. Additionally, not requiring local governments to adhere to the state requirements of transportation concurrency should give local governments the flexibility to manage growth without always going through the costly process of building new roads.

If a local government uses 163.3180(5)(b)6., F.S., the method of creating TCEAs that existed prior to SB 360, it must first consult the state land planning agency and the Department of Transportation regarding the impact on the adopted level-of-service standards established for regional transportation facilities as well as the Strategic Intermodal System (SIS).

Subsection (10) of s. 163.3180, F.S., was amended to provide an exemption from transportation concurrency on the SIS for projects that the local government and the Office of Tourism, Trade, and Economic Development (OTTED)[11] agree are job creation programs as described in s. 288.0656 (for REDI projects) or s. 403.973 (expedited permitting), F.S.

The bill added a specific declaration that the designation of a transportation concurrency exception area does not limit a local government's home rule power to adopt ordinances or impose fees. The bill further clarifies that the creation of a TCEA does not affect any contract or agreement entered into or development order rendered before the creation of the transportation

[10] Chapter 2010-147, L.O.F.

[11] The Governor through his Office of Tourism, Trade, and Economic Development (OTTED) may waive certain criteria, requirements, or similar provisions for any Rural Areas of Critical Economic Concern (RACEC) project expected to provide more than 1,000 jobs over a 5-year period. OTTED administers an expedited permitting process for "those types of economic development projects which offer job creation and high wages, strengthen and diversify the state's economy, and have been thoughtfully planned to take into consideration the protection of the state's environment."

concurrency exception area except for developments of regional impact that choose to rescind under s. 380.06(29)(e), F.S.

The Office of Program Policy Analysis and Government Accountability must study the implementation of TCEAs and corresponding local government mobility plans and report back to the Legislature by February 1, 2015.

SB 360 also added language that within TCEAs the local government will be deemed to achieve and maintain level-of-service standards. It includes a statement that transportation level-of-service standards for development of regional impact purposes must be the same as for transportation concurrency.

The Development of Regional Impact (DRI) Process

Section 380.06, F.S., provides for state and regional review of local land use decisions regarding large developments that, because of their character, magnitude, or location, would have a substantial effect on the health, safety, or welfare of the citizens of more than one local government.[12] Regional planning councils assist the developer by coordinating multi-agency DRI review. The council's job is to assess the DRI project, incorporate input from various agencies, gather additional information and make recommendations on how the project should proceed. The DCA reviews developments of regional impact for compliance with state law and to identify the regional and state impacts of large-scale developments. The DCA makes recommendations to local governments for approving, suggesting mitigation conditions, or not approving proposed developments.

SB 360 exempted developments from the development-of-regional-impact process in the following areas:

- municipalities that qualify 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; and
- a county, such as Pinellas and Broward, that 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.

Local governments that do not meet the density requirements to be dense urban land areas can designate in their comprehensive plan certain designated areas (urban infill and urban service areas, e.g.) within their jurisdiction to be exempt from DRI review. Developments that meet the DRI thresholds and are located partially within a jurisdiction that is not exempt still require DRI review. DRIs that had been approved or that have an application for development approval pending when the exemption takes effect may continue the DRI process or rescind the DRI development order. Developments that choose to rescind are exempt from the twice a year limitation on plan amendments for the year following the exemption. In exempt jurisdictions, the local government would still need to submit the development order to the state land planning agency for any project that would be larger than 120 percent of any applicable DRI threshold and would require DRI review but for the exemption. The state land planning agency would still have the right to challenge such development orders for consistency with the comprehensive plan.

[12] Section 380.06(1), F.S.

If a local government that qualifies as a dense urban land area for DRI exemption purposes is subsequently found to be ineligible for designation as a dense urban land area, any development located within that area which has 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 the development is approved. The section explicitly does not limit or modify the rights of any person to complete any development that has been authorized as a DRI. The exemption from the DRI process does not apply within the boundary of 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.

Additionally, certain projects that are part of the Innovation Incentive Program, when part of a DRI, do not need to be analyzed under DRI review.

SB 1752, which became law in 2010, included a provision to reauthorize exemptions for developments of regional impact that are underway. Any exemption granted for any project for which an application for development approval has been approved or filed pursuant to s. 380.06, Florida Statutes, or for which a complete development application or rescission request has been approved or is pending, and the application or rescission process is continuing in good faith, should be protected if the development order was filed or application for rescission was pending before a possible final ruling on invalidation of SB 360 could take effect.[13]

Intergovernmental Coordination
The intergovernmental element of a local government's comprehensive plan contains a dispute resolution process. SB 360 changed intergovernmental mediation from optional to mandatory.

Impact Fees
Impact fees are a total or partial payment to counties, municipalities, special districts, and school districts for the cost of providing additional infrastructure necessary as a result of new development. Impact fees are tailored to meet the infrastructure needs of new growth at the local level. As a result, impact fee calculations vary from jurisdiction to jurisdiction and from fee to fee. Impact fees also vary extensively depending on local costs, capacity needs, resources and the local government's determination to charge the full cost of the fee's earmarked purposes. Section 163.31801 governs impact fees. Prior to SB 360, local governments were required to provide 90 days of notice to create a new impact fee or to change an impact fee. SB 360 modified s. 163.31801(3)(d), F.S., to allow a local government to decrease, suspend, or eliminate an impact fee without waiting 90 days.

The Definition of "In Compliance"
SB 360 amended the definition of "in compliance" to change a technical error.

Mobility Fee Study
SB 360 required the Department of Transportation and the Department of Community Affairs to continue their mobility fee studies with the goal of developing a mobility fee that can replace the existing transportation concurrency system. The mobility fee study was completed and presented

[13] Chapter 2010-147, L.O.F.

to the Legislature. It is available on the DCA's website and provides some concepts for local governments to use when determining alternatives to transportation concurrency. The Legislature did not adopt a mobility fee nor did the Legislature require local governments to adopt a mobility fee.

Extension of Permits

SB 360 created an undesignated section of law to provide a retroactive 2-year extension and renewal from the date of expiration for:

- any permit issued by the Department of Environmental Permitting or a Water Management District under part IV of ch. 373, F.S.,
- any development order issued by the DCA pursuant to s. 380.06, F.S., and
- any development order, building permit, or other land use approval issued by a local government which expired or will expire between September 1, 2008 and January 1, 2012. For development orders and land use approvals, including but not limited to certificates of concurrency and development agreement, the extension applies to phase, commencement, and buildout dates, including a buildout date extension previously granted under s. 380.016(19)(c), F.S.

The conversion of a permit from the construction phase to the operation phase for combined construction and operation permits is specifically provided for. The completion date for any mitigation associated with a phased construction project is extended and renewed so the mitigation takes place in the appropriate phase as originally permitted. Entities requesting an extension and renewal must have notified the authorizing agency in writing by December 31, 2009, and must identify the specific authorization for which the extension will be used.

Exceptions to the extension are provided for certain federal permits, and owners and operators who are determined to be in significant noncompliance with the conditions of a permit eligible for an extension. Permits and other authorizations which are extended and renewed shall be governed by the rules in place at the time the initial permit or authorization was issued. Modifications to such permits and authorizations are also governed by rules in place at the time the permit or authorization was issued, but may not add time to the extension and renewal. SB 1752, which became law in 2010, contained a provision reauthorizing these permit provisions; therefore, these extensions should remain valid even if SB 360 is struck down by the appellate court.[14]

Single Subject Rule

Section 6, Article III 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.[15] 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.[16] 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

[14] Chapter 2010-147, L.O.F.
[15] *Franklin v. State*, 887 So.2d 1063, 1072 (Fla. 2002).
[16] *Santos v. State*, 380 So.2d 1284 (Fla. 1980).

natural or logical connection.[17] The requirement is violated if a law is written to accomplish separate and disassociated objects of legislative intent.[18] 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.[19] 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,[20] but that a law containing changes in the workers' compensation law and legislation concerning comprehensive economic development violated the one-subject limitation.[21]

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.[22] During the 2010 regular session SB 1780 reenacted the Florida Statutes. Therefore, the circuit court determined that the single subject challenge to SB 360 was rendered moot.[23]

(A) 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 law[24] 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 ten cents; the average fiscal impact, including any offsetting effects over the long term, is also considered.[25]

[17] *Board of Public Instruction of Broward County v. Doran*, 224 So.2d 693 (Fla. 1969).
[18] *State ex rel. Landis v. Thompson*, 163 So. 270 (Fla. 1935).
[19] *Ex parte* Knight, 41 So. 786 (Fla. 1906).
[20] *State v. Lee*, 356 So.2d 276 (Fla. 1978).
[21] *Martinez v. Scanlan*, 582 So.2d 1167 (Fla. 1991).
[22] *State v. Combs*, 388 So.2d 1029 (Fla. 1980) and *State v. Johnson*, 616 So.2d 1 (Fla. 1993).
[23] *City of Weston v. Crist*, Case No. 09-CA-2639 (Fla. 2d Jud. Cir. 2010).
[24] Although the constitution says "no county or municipality shall be bound by any general law" that is an (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.
[25] Guidelines issued in 1991 by then Senate President Margolis and Speaker of the House Wetherell (1991); Florida Senate Interim Project Report 2000-24.

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 that have designated TCEAS would be required to amend their comprehensive plans within two years to incorporate land use and transportation strategies to support and fund mobility. The court reasoned that an insignificant fiscal impact would be 10 cents per resident or $1.86 million dollars (thereby partially adopting the legislature's method of assessing an insignificant fiscal impact). The court did not consider the fact that local governments had two years to adopt these mobility plans or any offsetting cost effects over the long term.

The court decided that:

- The cost of amending the comprehensive plan would be at least $15,000 per jurisdiction required to amend its comprehensive plan.
- All 246 local governments that meet the statutory density requirements will be required to amend their comprehensive plans.
- Therefore, local governments throughout Florida will be required to spend $3,690,000 to comply with the SB 360 requirement that local governments that have Transportation Concurrency Exception Areas adopt into their comprehensive plan, plans to support and fund mobility within two years.

Because the court deemed $3,690,000 to be greater than an "insignificant fiscal impact," it decided that SB 360 was an unconstitutional mandate. 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.

I. Effect of Proposed Changes:

Litigation has called into question the constitutional validity of SB 360, which made many changes to Florida's growth management laws. This bill retains the 2010 statutes in their current state and reenacts those provisions of SB 360 most closely related to growth management. SB 172 and 176 reenact the parts of SB 360 claimed by the litigants to be outside the purview of growth management. By reenacting these bills separately, clearly adhering to the constitutional requirements, the Legislature hopes to cure any specter of a single subject violation. Additionally, passage by a 2/3 majority would eliminate any question of whether the bill is an unconstitutional unfunded mandate.

Section 1 reenacts s. 1 of ch. 2009-96, the title of SB 360: "Community Renewal Act."

Section 2 reenacts s. 163.3164 (29) and (34), F.S., which define the terms "urban service area" and "dense urban land area." The section also tasks the Office of Economic and Demographic Research within the Legislature with determining which jurisdictions qualify as dense urban land areas under that definition by using specific methods and with annually publishing the list and submitting it to the state land planning agency.

Section 3 reenacts s. 163.3177 (3)(b), (3)(f), (6)(h), (12)(a), and (12)(j), F.S. Paragraph (3)(b) contains the deadline for local governments to comply with the financial feasibility requirement of the CIE. Paragraph (3)(f) states that areas within TCEAs shall be deemed to have achieved

and maintained their level-of-service standard requirements. Paragraph (6)(h) details the requirements for an intergovernmental coordination element. Paragraph (12)(a) & (j) relate to the public schools facility element.

Section 4 reenacts s. 163.3180 (5), (10), (13)(b), and (13)(e), F.S. Subsection (5) & (10) relate to TCEAs. Paragraph (13)(b) & (e) relate to school concurrency.

Section 5 reenacts s. 163.31801(3)(d), F.S., which relates to notice requirements on impact fees.

Section 6 reenacts s. 163.3184(1)(b) and(3)(e), F.S. Paragraph (1)(b) gives the definition of "in compliance". Paragraph (3)(e) requires local governments to consider an application for zoning changes concurrently with comprehensive plan amendment changes.

Section 7 reenacts s. 163.3187(1)(b), (f), and (q) creating exemptions to the twice a year restriction on comprehensive plan amendments.

Section 8 reenacts s. 163.32465(2), F.S., allowing local governments to use the alternative state review pilot program to designate their urban service areas.

Section 9 reenacts s. 171.091, F.S., requiring local governments to file boundary changes with the Office of Economic and Demographic Research.

Section 10 reenacts s. 186.509, F.S., requiring mandatory mediation in certain circumstances.

Section 11 reenacts s. 380.06 (7)(a), (24), (28), and (29) relating to DRIs.

Section 12 reenacts ss. 13, 14, and 34 of ch. 2009-96. Section 13 requires DOT & DCA to work on a mobility fee study and report their findings to the Legislature. Section 14 extends and renews certain permits. Section 34 states that the Legislature finds that this act fulfills an important state interest.

Section 13 states that the Legislature finds that this act fulfills an important state interest.

Section 14 provides for the act to take effect upon becoming a law and for the portions amended or created by chapter 2009-96 to operate retroactively to June 1, 2009. In the case that a court of last resort finds such retroactive application unconstitutional, the section provides for the act to apply prospectively from the date that it becomes a law.

Other Potential Implications:
SB 360 is on appeal. If the trial court opinion is upheld and the bill in its entirety is struck down, local governments, developments, school districts, and any other people or entities that have relied on the bill may be in uncertain legal waters. Most local governments would not have a financially feasible capital improvements elements, meaning that they would either need to: amend their comprehensive plan to remove unfunded infrastructure projects, fund the often costly projects in their CIE, or possibly be subjected to financial sanctions and a prohibition on comprehensive plan amendments. Similarly, local governments that have failed to adopt school concurrency would be prohibited from adopting comprehensive plan amendments. Local

governments that may want to suspend, reduce, or eliminate impact fees to encourage new business would have to wait 90 days to do so. Any existing ordinances that did not wait 90 days may have questionable validity. In addition, local governments that have not yet adopted transportation concurrency exception area amendments into their comprehensive plan could be prohibited from doing so. Similarly, new developments in dense urban land areas would still have to go through the DRI process.

II. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill reenacts current law. A discussion of mandates issues for SB 360 can be found in the present situation section.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

III. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

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

C. Government Sector Impact:

The bill reenacts current law.

IV. Technical Deficiencies:

None.

V. Related Issues:

None.

VI. 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.