

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB MLA 10-06 Growth Management

SPONSOR(S): Military & Local Affairs Policy Committee

TIED BILLS: **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Military & Local Affairs Policy Committee		Rojas	Hoagland
1)				
2)				
3)				
4)				
5)				

SUMMARY ANALYSIS

In 2009 the Legislature enacted Chapter 2009-96, Laws of Florida, commonly referred to as The Community Renewal Act of 2009 (the Act).

On July 8, 2009, the City of Weston, along with other local governments filed a Complaint for Declaratory and Injunctive Relief. The plaintiffs are challenging the Act on a number of constitutional bases. As such, many local governments have been reluctant to act due to the uncertainty regarding the Act. Final resolution as to the constitutionality of the Act remains uncertain, and will not be determined by the judicial system, while the 2010 legislative session is in progress.

The bill provides that any properly noticed two year permit extension as provided for pursuant to section 14 of chapter 2009-96, Laws of Florida, is valid and shall remain in effect.

The bill also provides that any amendments legally in effect to a local government's comprehensive plan to authorize and implement a transportation concurrency exception area pursuant to section 4, chapter 2009-96, Laws of Florida, shall remain in effect.

The bill provides specified protections for any project or portion of a project in a dense urban area that qualifies for a DRI exemption. Large developments in these areas may proceed without having to undergo full DRI review if there is:

- a development application has been filed or approved, or
- a complete development application or rescission request has been approved or is pending and continuing in good faith.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

In 2009 the Legislature enacted Chapter 2009-96, Laws of Florida, commonly referred to as The Community Renewal Act of 2009 (the Act). The goals of the Legislature were to stimulate economic development and to reduce the unintended consequences that the transportation concurrency system created.

The Act removed restriction on development in urban areas by removing the state requirement for transportation concurrency. It also continued the transition away from the lengthy approval process of the development of regional impact program for large projects by eliminating this requirement in certain urban areas. The Act also recognized the current slowdown in construction activity by extending permits so that activity could resume without delay for those that have already made investments, but had to delay activity due to the economic downturn.

Additionally, burdens placed on the private sector by local government regulations, such as requiring security cameras and delays in impact fee reductions, were eliminated. The Act also removed the unintended burden placed on the private sector from legislative penalties relating to deadlines that were not being met by local governments. The Act facilitated the rehabilitation of affordable housing and provided greater flexibility in allowing economic development in rural areas. All local governments were provided some relief in meeting financial feasibility deadlines and certain small local governments were exempted from the requirement to amend their plans to address school concurrency. Local governments' ability to manage and fund growth related impacts were expressly protected through their home rule powers.

On July 8, 2009, the City of Weston, along with other local governments filed a Complaint for Declaratory and Injunctive Relief. The plaintiffs are challenging the Act on a number of constitutional bases. As such, many local governments have been reluctant to act due to the uncertainty regarding the Act. Final resolution as to the constitutionality of the Act remains uncertain and will not be determined by the judicial system while the 2010 legislative session is in progress.

Targeted Effects of the Bill

Statewide Permit Extension

Section 14 of the Act provides that any permit issued by the Department of Environmental Protection or a water management district pursuant to part IV of chapter 373, F.S., that has an expiration date of

September 1, 2008, through January 1, 2012, is extended and renewed for a period of two years following its date of expiration. This extension was also provided for any local government-issued development order or building permit. The two year extension also applies to build out dates including any build out date extension previously granted under s. 380.06(19)(c), F.S. This section did not prohibit conversion from the construction phase to the operation phase upon completion of construction. Holders of a valid permit or other authorization were required to notify the authorizing agency in writing no later than December 31, 2009, identifying the specific permit or authorization for which the holder intended to use the extension.

The bill provides that any two year permit extension as provided for pursuant to section 14 of chapter 2009-96, Laws of Florida, is valid and shall remain in effect.

Transportation Concurrency Exception Areas

The Act legislatively designated specified areas as transportation concurrency exception areas (TCEA); however, it also empowered counties¹ and municipalities² that did not meet the criteria for legislative designation to adopt amendments to their comprehensive to designate TCEAs.

Any local government that has a TCEA under one of these provisions must, within two 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 a local government uses the comprehensive plan amendment method of creating TCEAs, 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).

The Act also specified that designation of a TCEA did not limit a local government's home rule power to adopt ordinances or impose fees. The Act further provided 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 concurrency exception area except for developments of regional impact that choose to rescind under s. 380.06(29)(e), F.S.

The bill provides that any amendments to a local government's comprehensive plan adopted pursuant to s. 163.3184, F.S., to authorize and implement a transportation concurrency exception area pursuant to section 4, chapter 2009-96, Laws of Florida, shall remain in effect.

Developments of Regional Impact (DRI)

The Act created a number of exemptions in s. 380.06(29)(e), F.S., from the DRI process for qualifying dense urban land areas. The Act provided that 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.

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 Act also included language expressing the intent to not limit or modify the rights of any person to complete any development that has been authorized as a DRI.

¹ urban infill as defined in s. 163.3164(27), F.S.; urban infill and redevelopment as defined in s. 163.2517, F.S.; or urban service areas as defined in s. 163.3164(29), F.S., or urban service areas under s. 163.3177(14), F.S.

² urban infill as defined in s. 163.3164(27), F.S.; community redevelopment as defined in s. 163.340(10), F.S.; downtown revitalization as defined in s. 163.3164(25), F.S.; urban infill and redevelopment as defined in s. 163.2517, F.S.; or urban service areas as defined in s. 163.3164(29), F.S.

The bill provides protection for any project in an area that qualifies for a DRI exemption created by the Act under s. 380.06(29), F.S. The specific exemptions that would be upheld would be:

- a development application has been filed or approved, or
- a complete development application or rescission request has been approved or is pending and continuing in good faith.

B. SECTION DIRECTORY:

Section 1. Designates certain actions taken in reliance of 2009-96, L.O.F., as valid.

Section 2. Provides an effective date.

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:

The Community Renewal Act of 2009 was designed to remove stumbling blocks to economic recovery and to facilitate future economic activity by providing relief where needed and appropriate. The bill's validation of certain rights under the Act safeguards actions taken under existing law and further facilitates relief and continued economic activity.

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to

raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

The bill states in pertinent part:

“Notwithstanding any final declaration by a court of this state that chapter 2009-96, Laws of Florida, or any portion of such law is invalid, the final actions if taken prior to such final judicial declaration of invalidity, remain valid and continue in effect.”

Conceivably, the exercise of judicial powers by the Legislature, an agency, a quasi-public body, or a private contractor, could violate numerous provisions of the Florida Constitution, including Article II, Section 3 -- Separation of Powers.

Florida courts have relied upon the separation-of-powers doctrine to avoid entanglement with the internal affairs of the Legislature. However, the judiciary has the power to assess whether the external activities of the Legislature comply with state law; whether the final product of the Legislative process complies with the constitution; or whether a state statute applies to the Legislature. The Florida Supreme Court has stated that a determination as to whether legislation has been constitutionally adopted does not violate separation of powers. *Chiles v. Phelps*, 714 So.2d 453 (Fla. 1998).

Legislation which interferes with the exercise of judicial authority is unconstitutional. *Simmons v. State*, 36 So.2d 207 (Fla.1948). The Legislature is limited in its ability to eliminate a judicial remedy, even in cases where the remedy was statutorily conferred. *State ex rel. Franks v. Clark*, 46 So.2d 488 (Fla. 1950). Thus, a statute limiting the court's ability to enforce its rulings through the sanction of criminal contempt has been held to violate the separation-of-powers doctrine. *Walker v. Bentley*, 660 So.2d 313 (Fla. 2d DCA 1995). In *Johnson v. State*, 336 So.2d 93 (Fla. 1976), the Florida Supreme Court overturned a law which attempted to regulate the judicial disposition of the records of first time offenders found innocent of any crime. To allow such a law to stand, the court explained, would be to allow the Legislature to usurp judicial authority.

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES