

IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT IN
AND FOR LEON COUNTY, FLORIDA

CASE NO.

CITY OF WESTON, FLORIDA;
VILLAGE OF KEY BISCAYNE,
FLORIDA; TOWN OF CUTLER BAY,
FLORIDA; LEE COUNTY, FLORIDA;
CITY OF DEERFIELD BEACH,
FLORIDA; CITY OF MIAMI
GARDENS, FLORIDA; CITY OF
FRUITLAND PARK, FLORIDA, and
CITY OF PARKLAND, FLORIDA,

Plaintiffs,

vs.

THE HONORABLE CHARLIE CRIST,
Governor of the State of Florida;
HONORABLE KURT S. BROWNING,
Secretary of State, State of Florida; THE
HONORABLE JEFF ATWATER,
President of the Senate, State of Florida;
THE HONORABLE LARRY CRETUL,
Speaker of the House, State of Florida,

Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs, City of Weston, Florida; Village of Key Biscayne, Florida; Town of Cutler Bay, Florida; Lee County, Florida; City of Deerfield Beach, Florida; City of Miami Gardens, Florida; City of Fruitland Park, Florida, and City of Parkland,

Florida (collectively, the “Local Governments”), sue The Honorable Charlie Crist, Governor of the State of Florida, The Honorable Kurt S. Browning, Secretary of State, The Honorable Jeff Atwater, President of the Senate, and The Honorable Larry Cretul, Speaker of the House, each in his official capacity only, and state as follows:

Overview

1. This is an action by a coalition of local governments challenging the recent enactment of a bill that was passed in the waning hours of the legislative session through the improper combination of several bills dealing with several subjects. The enactment violated the Florida Constitution because the bill contained more than “one subject and matters properly connected therewith” and because it constituted an improper “unfunded mandate” on local governments.

Jurisdiction, Venue and Parties

2. This is a cause of action for declaratory and related injunctive relief, pursuant to Chapter 86, Florida Statutes, seeking to declare that the enactment of Senate Bill 360, entitled “An Act Relating to Growth Management” (“SB 360” or the “Bill”) (now Chap. 2009-96, Laws of Fla.), violated Art. III, Sec. 6 and Art. VII, Sec. 18 of the Florida Constitution. The Court has jurisdiction to grant declaratory relief. *See* Sections 86.011, Florida Statutes; *Martinez v. Scanlan*, 582 So. 2d 1167 (Fla. 1991) (the constitutionality of a statute may be challenged in an action for declaratory judgment in circuit court).

3. Venue is proper in Leon County inasmuch as the defendants are all Constitutional officers of the State of Florida.

4. All conditions precedent to the institution of this lawsuit have been, or will be, satisfied or waived.

5. The Local Governments are all incorporated municipalities or counties existing under the laws of the State of Florida. Each of the Local Governments is subject to and must comply with the provisions of Chapters 163 and 380, Florida Statutes.

6. The Honorable Charlie Crist is the Governor of the State of Florida and as head of the Executive branch of government, is charged with administering and executing the laws of the State. Governor Crist signed SB 360 into law.

7. The Honorable Kurt S. Browning is the Secretary of State of the State of Florida, and is responsible for registering, indexing, segregating and classifying all acts of the Legislature, including SB 360. *See* Sections 15.01, 15.155, Florida Statutes.

8. The Honorable Jeff Atwater served as the President of the Senate during the 2009 legislative session during which SB 360 was enacted. As such, he was responsible for ensuring that all procedural requirements, including those set forth in the Florida Constitution, were observed by the Senate.

9. The Honorable Larry Cretul served as the Speaker of the House during the 2009 legislative session during which SB 360 was enacted. As such, he

was responsible for ensuring that all procedural requirements, including those set forth in the Florida Constitution, were observed by the House.

BACKGROUND

The History of SB 360

10. On February 26, 2009, the first version of SB 360 was filed, entitled “An Act Relating to the Department of Community Affairs.” In the ensuing months, SB 360 was subjected to various revisions and a change of title. Until the closing moments of the legislative session, however, the House and Senate had difficulty coming to consensus on the legislation.

11. At approximately 6:30 p.m., on May 1, 2009, the last day of the regular legislative session, the Senate passed an amendment to SB 360 that doubled the size of the bill by adding numerous provisions relating to affordable housing, which had been drawn from other House and Senate bills. Approximately one hour later, the House approved SB 360, as amended by the Senate.

12. Senator Mike Bennett, the sponsor of SB 360, has stated publicly that the purpose of the bill is to “encourage urban infill and redevelopment by removing costly and unworkable state regulations in urban areas.”

13. Despite significant opposition (and requests for veto) from local governmental entities throughout the state, Governor Crist signed SB 360 into law on June 1, 2009. SB 360 became effective immediately.

The Substance of SB 360

14. The first half of SB 360 includes sweeping revisions to the State’s growth management laws, which will change the face of planning and growth management within the State.

15. Some of the changes related to growth management contained in SB 360 affect all local governments in Florida (including the Local Governments), while other apply to only some local governments (including some of the Local Governments).

16. SB 360 creates the new term “dense urban land area” or “DULA.” A DULA is defined as (a) a municipality that has an average population density of at least 1,000 people per square mile of land area and a minimum population of 5,000; or (b) a county – including the municipalities within its boundaries – that has an average population density of at least 1,000 people per square mile of land area *or* a population of at least 1 million.

17. Approximately 245 local governments will likely qualify as DULAs, which include approximately half of the State’s 18.3 million residents. Many of the Local Governments will qualify as DULAs.

18. In general, development of land within DULAs will no longer be subject to state-mandated transportation concurrency or Development of Regional Impact (“DRI”) review. Other significant growth management changes within the first half of SB 360 relate to school concurrency requirements, extension of certain

permits for two years, extension of the deadline for financial feasibility for capital improvements schedules, and notice requirements for impact fee increases.

19. Unrelated to growth management, SB 360 also includes a provision that prohibits local governments from adopting business regulations for security cameras in private businesses.

20. Also unrelated to growth management, the entire second half of SB 360, which was appended in the closing minutes of the legislative session, consists of substantial revisions to several Florida statutes relating to affordable housing. Among the revised provisions are additional tax exemptions, methods for valuing community land trust property, discretionary sales surtaxes, and the powers ascribed to the Florida Housing Finance Corporation.

21. Many of the provisions of SB 360 will require local governments, including the Local Governments, to spend funds or take actions requiring the expenditure of funds. However, the Legislature did not appropriate any such funds or create any new funding sources for local governments to obtain such funds. In addition, SB 360 was not approved by a two-thirds vote in each house of the Legislature, does not apply to all persons similarly situated and was not needed to comply with a federal requirement.

The Need for Expedited Consideration

22. SB 360 became effective on June 1, 2009, when it was signed by Governor Crist. Since then, as noted below, there have been significant

disagreements as to the meaning of various provisions in the Bill, which is poorly worded and ambiguous.

23. Local governments throughout the State, including the Local Governments, as well as the Department of Community Affairs, are struggling to interpret and administer SB 360, and it is anticipated that numerous lawsuits will soon be filed throughout the State regarding the application and interpretation of the Bill. If it is found to be unconstitutional, these expenditures and efforts would be unnecessary, and the Legislature could clarify these provisions and attempt to enact legislation (in conformance with Constitutional requirements) in the next legislative session (if there are sufficient votes to do so).

24. In fact, when informed of the Local Governments' impending lawsuit to challenge the constitutionality of SB 360, the bill's sponsor, Senator Bennett, was quoted in the press as saying: "I'll get the last laugh because [the Legislature] will be back in session before they get a court date. *Now that I know what their objections are, we'll fix it.*"

25. Section 86.111, Florida Statutes, provides for expedited consideration of actions for declaratory relief, and such consideration is hereby requested by the Local Governments.

COUNT I**VIOLATION OF THE SINGLE SUBJECT PROVISION**

26. The Local Governments reallege and incorporate by reference the allegations contained in paragraph 1 through 25 inclusive, as if fully set forth herein.

The History of the Single Subject Provision – Art. III, Sec. 6, Fla. Const.

27. In Florida, the single subject provision has a long history, being a part of the Florida Constitution since 1868. It is codified in Article III, Section 6 of the Florida Constitution and provides, in part, that “every law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title.”

28. The Florida Supreme Court has observed, in *State v. Thompson*, 750 So. 2d 643 (Fla. 1999), that the underlying purpose of the single subject provision is to: (i) prevent hodge-podge or “log rolling” legislation (i.e., putting two unrelated matters in one act, and thus forcing legislators to vote for one item in order to get another); (ii) prevent surprise or fraud by means of provisions in bills of which the titles gave no intimation, and which might therefore be overlooked and carelessly and unintentionally adopted; and (iii) apprise the people fairly of the subjects of legislation that are being considered, in order that they may have opportunity of being heard thereon.

29. The *Thompson* Court has also observed the most common single subject provision violations frequently occur when a bill is amended several times, the title

of the bill is changed, and the bill is passed near the end of the legislative session, as occurred with this enactment.

The Enactment of SB 360 Violated Art. III, Sec. 6, Fla. Const.

30. In this instance, although SB 360's title is "An Act Relating to Growth Management," it is readily apparent that SB 360 addresses a number of subjects unrelated to the single subject of "growth management."

31. SB 360 includes a provision that prohibits the Local Governments from adopting business regulations for security cameras that would require lawful businesses to expend money to enhance local police services. There is no logical or functional connection between managing growth and regulating security cameras at private places of business.

32. Additionally, approximately half of SB 360 was appended at the last minute by the Senate and summarily approved by the House. This "other half" of the bill related to affordable housing. The provisions in SB 360 relating to tax exemptions, methods for valuing community land trust property, discretionary sales surtaxes and amendments to the powers of the Florida Housing Finance Corporation do not relate to managing growth within the State or the sponsor's stated purpose of encouraging urban infill and redevelopment by removing costly and unworkable state regulations (such as transportation concurrency and DRI review).

33. Therefore, SB 360 addresses three separate and distinct subjects: growth management, security cameras and affordable housing. These three

subjects were improperly combined in the last hour of the session, presumably to “logroll” and obtain sufficient votes for passage. Thus, this is the classic case of a violation of the single subject provision of the Florida Constitution.

34. As such, the Court should declare that the enactment of SB 360 violated Art III, Sec. 6 of the Florida Constitution, and enjoin the enforcement of its requirements.

35. All elements necessary to support a cause of action for declaratory relief are present:

- a. There is a bona fide, actual, present need for a declaration of whether the enactment of SB 360 violated Art. III, Sec. 6 of the Florida Constitution.
- b. The declaration sought deals with a present controversy as to an ascertainable set of facts.
- c. Constitutionally provided rights and privileges of the Local Governments are dependent upon the law applicable to the facts.
- d. The Local Governments and the defendants have an actual, present, adverse and antagonistic interest in the subject matter of this Complaint.
- e. The antagonistic and adverse interests are all before this Court.
- f. The relief sought is not merely the giving of legal advice or providing the answer to a question propounded from curiosity, but stems from an actual controversy.

Prayer for Relief

WHEREFORE, the Local Governments respectfully request that judgment be entered in their favor:

- A. Declaring that the enactment of SB 360 violated the single subject provision in Article III, Section 6 of the Florida Constitution;
- B. Enjoining the enforcement of SB 360; and
- C. Granting such other relief as this Court deems just and proper.

COUNT II

VIOLATION OF UNFUNDED MANDATE PROVISION

36. The Local Governments reallege and incorporate by reference the allegations contained in paragraphs 1 through 25, inclusive, as if fully set forth herein.

History of the Unfunded Mandate Provision – Art. VII, Sec. 18(a), Fla. Const.

37. In the late 1970s, the Florida Legislature repeatedly adopted legislative measures that imposed costly requirements on local governments without providing funds for (or methods for funding) compliance with the requirements. In 1977, after public outcry, the Florida Legislature created the Florida Advisory Council on Intergovernmental Relations in order to examine the effect of state mandates on municipalities and counties.

38. In 1978, the Legislature passed a statute that required any bill that would require additional expenditures by local governments be accompanied by an economic statement explaining the resulting costs of implementing the bill. This

legislation did not solve the problem, however, and the Florida Legislature adopted 362 unfunded mandates between the years of 1981 through 1990.

39. As a result, by 1988, local governments started a petition drive to enact a constitutional amendment that would restrict the ability of the Legislature to adopt unfunded legislative mandates. In 1989, the Florida Legislature adopted House Joint Resolutions 139 and 40, which proposed the adoption of Article VII, Section 18 of the Constitution. On November 6, 1990, Article VII, Section 18(a) of the Constitution was ratified by the electorate, which provides, in relevant part, as follows:

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 unless: funds have been appropriated that have been estimated at the time of enactment to be sufficient to fund such expenditure; the legislature authorizes or has authorized a county or municipality to enact a funding source not available for such county or municipality on February 1, 1989, that can be used to generate the amount of funds estimated to be sufficient to fund such expenditure by a simple majority vote of the governing body of such county or municipality; the law requiring such expenditure is approved by two-thirds of the membership in each house of the legislature; 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 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.

40. One of the primary legislative intents underlying the unfunded mandate provision was, in fact, to preclude unfunded *growth management* mandates.

The Enactment of SB 360 Violated Art. VII, Sec. 18(a), Fla. Const.

41. SB 360 requires the Local Governments “to spend funds or to take an action requiring the expenditure of funds” in many ways. These expenditures, individually and cumulatively, will be highly significant and will force local governments throughout Florida, including the Local Governments, to raise taxes.

42. The specific “unfunded mandates” imposed by SB 360 include, but are not limited to, the following:

- a. SB 360 requires that, within two years, those Local Governments designated as transportation concurrency exception areas (“TCEAs”), by virtue of their being defined as DULAs, “shall” adopt comprehensive plan amendments and transportation strategies “to support and fund mobility.” This amendment process requires that consultants be retained, studies commissioned, legislation drafted, plan amendments printed, and hearings advertised and conducted, at an expense of at least \$30,000 per local government.
- b. SB 360 removes the primary state-mandated procedures and mechanisms by which developers are currently required to address transportation impacts of their projects, known as “transportation concurrency.” SB 360, however, is unclear as to whether the elimination of state-mandated transportation concurrency in the affected areas also means that those local governments must also eliminate local transportation requirements. Development interests, as

well as the sponsors of SB 360, have argued that this is the case; local government lawyers have contended to the contrary. Thus, at a minimum, affected local governments will be forced to spend funds determining how to interpret and apply this aspect of SB 360, including possible litigation expenses. In addition, if the broader interpretation is accepted, then the affected Local Governments will lose the ability to require developers to pay their proportionate share (through concurrency fees) of the roadway improvements necessitated by their development. These transportation costs associated with roadway improvements will be shifted to the Local Governments, which will have no alternative but to spend the funds or risk being in violation of level of service standards in their comprehensive plans.

- c. SB 360 also extends certain permits for two years in all local governments in Florida, including the Local Governments. Again, this provision is very poorly worded and susceptible to different interpretations. Development interests and the sponsors of SB 360 contend that this extension applies to all building permits and local development orders, while many local government interests contend that it applies only to water management district and Department of Environmental Protection (and related local) permits. Thus, once again, the Local Governments will be forced to spend funds determining how to interpret and apply this aspect of SB 360,

including possible litigation expenses. Regardless of which interpretation prevails, Local Governments will be forced to expend funds implementing and administering the permit extensions (and no provision was contained in SB 360 authorizing that cost to be charged to developers).

- d. SB 360 also eliminates the previously available option for local governments to use whatever process (formal or informal) they chose to resolve intergovernmental coordination disputes. Instead, local governments will be required to use the formal regional process and engage in mediation. This formal process will also entail the additional expenditure of funds.
- e. SB 360 eliminates the DRI process in DULAs. This process allows all local governments that are affected by a large project (including those that do not have direct approval authority, such as contiguous cities and counties), to have developers mitigate impacts inside and outside the boundaries of the city or county where the project is located. The elimination of this process will allow developers to ignore cross-jurisdictional impacts, thus passing the cost of mitigating such impacts on to local governments and their taxpayers.
- f. SB 360 also creates a new requirement that “increases” in impact fees require a 90 day notice. Previously, many local governments automatically increase impact fees through CPI adjustments without

additional notices and hearings each year. This will create additional costs for annual publication and mailing of notices, drafting of resolutions, and hearings.

- g. SB 360 includes a provision that preempts local governments from adopting business regulations for security cameras for “lawful businesses that require the expenditure of money to enhance local police services.” At least one Local Government has adopted, and several local governments were considering adopting, such requirements in order to deter crime and prevent expenditures for police services. This transfer of costs from business owners to taxpayers also will cause the Local Governments to expend funds.

43. The significant costs of SB 360 on local governments throughout Florida were well-known to (but ignored by) the Legislature. During the legislative session, Senate staff reviewed SB 360 and issued on March 19, 2009, its Analysis and Fiscal Impact Statement. Senate staff observed that SB 360 “will have a negative fiscal impact on local governments that are designated TCEAs by requiring updated comprehensive plans.”

44. The State’s Department of Community Affairs (“DCA”) also reviewed SB 360 and observed on May 20, 2009, as part of its policy analysis, that meeting the bill’s requirements would be “a *very onerous and expensive* task. However, *no financial support or new revenue sources have been provided for the local governments* to undertake this planning.” (emphasis added). DCA further

noted that “the fiscal impact on local governments is *extensive* but the full effects are indeterminate.” (emphasis added).

45. In its policy analysis, DCA addressed this shifting of the burden and observed that “the reduced control of the timing of development, *loss of transportation mitigation*, and *reduction in other sources of revenues to support transportation* facilities will have a *serious impact* on local governments and ultimately force choices between *severe transportation congestion* and increased taxes.”

46. While the Legislature made a conclusory finding – presumably to avoid the consequences of the unfunded mandate provision – that SB 360 fulfills an important state purpose, SB 360 nonetheless violates Art. VII, Sec. 18 of the Florida Constitution because the Legislature failed to comply with the requirements for such an exception:

- a. No funds were appropriated in SB 360 to allow the Local Governments to implement the law’s new requirements;
- b. No new funding source was created or even identified that would be sufficient to cover the expenditures of the Local Governments;
- c. The Legislature failed to obtain a two-thirds vote of each house in approving SB 360 (obtaining only 78 out of 120 votes in the House of Representatives);

- d. SB 360 does not apply the same to all similarly situated persons, including the state and local governments (in fact, it is directed *only* at local governments); and
- e. SB 360 was not enacted to comply with any federal requirement.

47. As such, the Court should declare that the enactment of SB 360 violated Art VII, Sec. 18 of the Florida Constitution, and enjoin the enforcement of its requirements.

48. All elements necessary to support a cause of action for declaratory relief are present:

- a. There is a bona fide, actual, present need for a declaration of whether the enactment of SB 360 violated Art. VII, Sec. 18 of the Florida Constitution.
- b. The declaration sought deals with a present controversy as to an ascertainable set of facts.
- c. Constitutionally provided rights and privileges of the Local Governments are dependent upon the law applicable to the facts.
- d. The Local Governments and the defendants have an actual, present, adverse and antagonistic interest in the subject matter of this Complaint.
- e. The antagonistic and adverse interests are all before this Court.

- f. The relief sought is not merely the giving of legal advice or providing the answer to a question propounded from curiosity, but stems from an actual controversy.

Prayer for Relief

WHEREFORE, the Local Governments respectfully request that judgment be entered in their favor:


- A. Declaring that the enactment of SB 360 violated the unfunded mandate provision in Article VII, Section 18 of the Florida Constitution;
- B. Enjoining the enforcement of SB 360; and
- C. Granting such other relief as this Court deems just and proper.

Dated this 7th day of July, 2009.

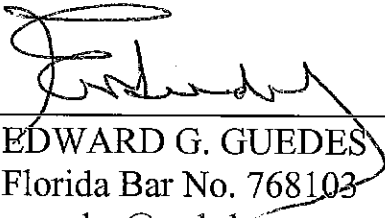
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**LEON COUNTY CIRCUIT COURT
CIVIL COVER SHEET**

The civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of reporting judicial workload data pursuant to Section 25.075, Florida Statutes.

I. CASE STYLE

PLAINTIFF: City of Weston; Village of Key Biscayne,
Florida; Town of Cutler Bay, Florida;
Lee County, Florida; City of Deerfield Beach,
Florida; City of Miami Gardens, Florida;
City of Fruitland Park, Florida; and
City of Parkland, Florida

CASE #: _____

JUDGE: _____

vs.

DEFENDANT: The Honorable Charlie Crist;
Honorable Kurt S. Browning, Honorable
Jeff Atwater; and Honorable Larry Cretul

II. TYPE OF CASE (Place an X in one box only. If the case fits more than one type of case, select the most definitive)

1. <input type="checkbox"/> Professional Malpractice (PRMP)	2. <input type="checkbox"/> Products Liability (PROL)
3. <input type="checkbox"/> Auto Negligence (AUNG)	4. <input type="checkbox"/> Other Negligence (OTNG)
5. <input type="checkbox"/> Condominium (COND)	6. <input type="checkbox"/> Contract & Indebtedness (CONT)
7. <input type="checkbox"/> Real Property (RPMF) <input type="checkbox"/> Mortgage Foreclosure (MTFC)	8. <input type="checkbox"/> Eminent Domain (EMDO)
9. <input type="checkbox"/> Appeal from County Court (APCO)	
10. Other:	
a. <input type="checkbox"/> Discrimination (DISC)	b. <input type="checkbox"/> Equitable Relief (EQRL)
c. <input type="checkbox"/> Foreign Judgment (FRJU)	d. <input type="checkbox"/> Writ of Habeas Corpus (HBCP)
e. <input type="checkbox"/> Insurance Receiverships (INRC)	f. <input type="checkbox"/> Jimmy Ryce (RYCE)
g. <input type="checkbox"/> Writ of Mandamus (WRMA)	h. <input type="checkbox"/> Challenge to Proposed Constitutional Amendment (CPCA)
i. <input checked="" type="checkbox"/> Other: (OTHR) <u>Challenge to Florida Law</u>	

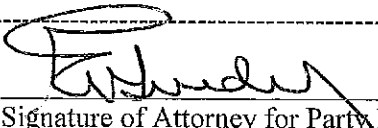
III. Is Jury Trial Demanded In Complaint?

Yes

No

Date: July 7, 2009

FL Bar #: 768103



Signature of Attorney for Party Initiating Action