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Growth management lawsuit will go forward

South Florida Business Journal - by [Darcie Lunsford](#)

A South Florida-generated lawsuit, which claims sweeping growth management legislation signed into law in June is unconstitutional, will move forward.

Leon County Chief Judge Charles Francis denied a motion by Gov. Charlie Crist and three other top state officials to dismiss the litigation.

Senate Bill 360 – known as the Community Renewal Act – went into effect in July. It ends a 37-year-old regional planning process for major projects known as a development of regional impact. It also removes standing state requirements that developers help pay to upgrade roads, and requires that local governments conduct mobility fee studies that look at mass-transit solutions. It also extends the shelf life of a building permit for two years.

The idea behind relaxing development regulations is to encourage more development in urban cores, thus stimulating the economy. But, critics say it could result in a development free-for-all and stick local taxpayers with the bill for road improvements once paid for by developers.

To date, 20 local governments have piled onto the lawsuit, originated by Weston, which contends that state lawmakers violated the Florida Constitution's unfunded mandate provision, as well as its single-topic, bill-making rule, when passing the Community Renewal Act.

Homestead, Coral Gables, North Miami, Cooper City, Pembroke Pines, Pompano Beach, Deerfield Beach and Broward County are among the other South Florida jurisdictions also suing state leaders.

Aside from Crist, Secretary of State Kurt Browning, state Senate President Jeff Atwater and state House Speaker Larry Cretul are named as defendants.

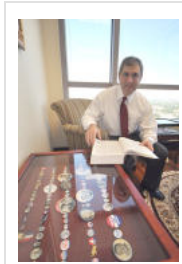
They had argued they are not responsible for enforcing the law and, therefore, the cities had no cause of action against them.

The judge's order means that Crist, Browning, Atwater and Cretul will have answer local governments' complaint by Dec. 14, according to Weston city attorney Jamie Cole, of [Weiss Serota Helfman Pastoriza Cole & Boniske](#) in Fort Lauderdale.

"This ruling was important because it means that the public officials who were responsible for the enactment of SB 360 will be required to try to defend and justify the clear constitutional violations that occurred during the enactment process," Cole said.

Cretul's office declined comment. Spokespeople for Crist and Atwater did not respond to a request for comment by press time, but Browning did.

"The secretary of state is named in this suit solely in his capacity as the official



Mark Freerks

Weston city attorney Jamie Cole says the state officials must answer the complaint by Dec. 14.

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responsible for receiving and filing acts of the Legislature,” Browning spokeswoman Jennifer Krell Davis said. “If the plaintiffs are successful in obtaining a court order declaring the challenged law unconstitutional, the plaintiffs will ask the court to direct the secretary [to] file such order in the state’s official records. The secretary takes no position on the merits of the challenged law or the substantive allegations of the lawsuit.”

New law does not negate local rules

While the new law removes a state mandate that local governments adopt transportation concurrency rules as part of their comprehensive plans, it does not negate those local laws, according to Florida Department of Community Affairs Secretary Tom Pelham’s interpretation of the law.

That means local governments can amend their comprehensive plans, if they chose, to remove concurrency regulations, DCA spokesman James Miller said.

This stance has sparked state Sen. Michael Bennett, R-Bradenton, to fire off a letter to Pelham, contending that the legislative intent was to supersede local laws in state-designated urban areas.

“From a statutory construction point of view, it does not make sense to suggest that SB 360 only removes state-mandated concurrency requirements,” Bennett wrote in a four-page letter to Pelham.

In an unintended consequence, the flap over the Community Renewal Act could bolster support for a separate ballot push to return authority over local comprehensive plans to the people.

The Florida Hometown Democracy constitutional amendment, which will appear on the November 2010 ballot, seeks to require all changes to local comprehensive land use plans be approved through voter referendum.

“People are beginning to realize that our political leadership really doesn’t have the stomach for growth management, and that is the way it has always been in Florida,” said Lesley Blackner, a West Palm Beach lawyer and key organizer of Hometown Democracy.

She said local governments too frequently amend comprehensive plans to accommodate specific developments, which defeats prudent long-term planning.

The growth watchdog group 1000 Friends of Florida had originally come out against Hometown Democracy, but its board may reconsider, due in part to dismay over the Community Renewal Act, President Charles Pattison said.

He said the Community Renewal Act’s intent to push development to urban cores by making it easier and less costly to build there was good, but the Legislature went too far, removing oversight for projects in rural areas near urban area such as on farmland in western Palm Beach County.

“The sad part of it was the concepts were all very positive,” he said.

Mounting concern that Hometown Democracy may pass next year has local governments slamming the DCA with comprehensive plan amendments to beat the clock, Miller said. As of Nov. 12, the state had received 878 comprehensive plan amendment packets – many containing multiple amendments. That is more than double the 410 packets it received in all of 2007.

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