




ORANGE COUNTY
OFFICE OF THE MAYOR

TELEPHONE 407-836-7370 FAX 407-836-7360
201 SOUTH ROSALIND AVENUE, P.O. BOX 1393, ORLANDO, FL 32801
mayor@ocfl.net

RICHARD T. CROTTY
MAYOR

July 13, 2009

TO: Board of County Commissioners 

FROM: Mayor Richard T. Crotty

SUBJECT: Senate Bill 360

During the past legislative session, growth management was a topic of much discussion. Several bills dealing with various aspects of growth management were proposed, but ultimately, Senate Bill 360 was the growth management bill that passed and was signed into law. Senate Bill 360, among other things, designated counties and municipalities that meet certain criteria as Dense Urban Land Areas, established Transportation Concurrency Exception Areas in those Dense Urban Land Areas, extended certain permits for two years, exempted certain development within Dense Urban Land Areas from DRI review, provides for simultaneous consideration of rezonings associated with Comprehensive Plan amendments, prohibited local governments from requiring private businesses to pay for security cameras, and amended certain affordable housing laws.

On June 30, 2009, staff made a comprehensive presentation regarding Senate Bill 360, the increased requests for refunds of Capacity Reservation Fees, and the impacts of those refunds and the lagging economy on the County's Capital Improvements Program.

As you may know, since that meeting, a lawsuit has been filed by eight local governments challenging the constitutionality of Senate Bill 360. The mere filing of a lawsuit would not normally be cause for concern; however, this particular lawsuit is sure to have a significant impact not only on Orange County, but local governments throughout the State. A copy of the lawsuit appears under Tab 1 of the attached binder.

Also, there is a great deal of confusion throughout the State surrounding the interpretation of Senate Bill 360. This is due largely to the ambiguity of the language contained in the bill. The confusion is evidenced by the various interpretations of the bill being offered not only by local governments, private interests, and environmental groups, but also by the Secretary of the Department of Community Affairs, Tom Pelham, and the bill's sponsor, Senator Mike Bennett. Copies of various articles and issue papers illustrating the range of interpretations of Senate Bill 360 appear under Tabs 2-5 of the attached binder, including a Notice to Local Governments posted by the Department of Community Affairs on their webpage on July 8th.

I have spoken with our County Attorney and he has advised me that he believes that the new lawsuit raises some viable points and has at least an even chance of succeeding. If the lawsuit is successful, it is likely that the Court would declare that the enactment of Senate Bill 360 violated the Florida Constitution and enjoin the enforcement of the bill.

Regardless of the outcome of the lawsuit, we are hearing that the Legislature may come back in their next regular session (or possibly during a special session called to deal with budget issues) and attempt to remedy the problems outlined in the lawsuit. In fact, paragraph 24 of the lawsuit quotes Senator Bennett 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."

In the meantime, unfortunately, local governments are left trying to figure out how to deal with Senate Bill 360. As a result of the confusion surrounding Senate Bill 360 and the lawsuit that has been filed to enjoin its enforcement, I have directed County staff not to implement any portion of Senate Bill 360 until such time as we have a resolution of the lawsuit or clarification from the Legislature on the meaning of the bill. I believe that, under the circumstances, it is best to maintain the status quo and follow our current County Code.

While I have directed staff to maintain the status quo with regard to any areas that may eventually be impacted by Senate Bill 360, we will need to move forward with the adjustment to the budget for our Capital Improvements Program. The largest cause for the decline in revenues has been the economy and the increased requests for refunds of Capacity Reservation Fees; we were feeling those effects long before Senate Bill 360 was enacted. Therefore, it is necessary for us to adjust our Capital Improvements Program budget accordingly.

Staff and the County Attorney will monitor the situation with regard to the lawsuit and Senate Bill 360 so that we are fully prepared to implement the bill if and when appropriate. In the meantime, if you have any questions, please contact Ajit Lalchandani or Tom Drage.

Cc: Ajit Lalchandani, County Administrator
Tom Drage, County Attorney