

Akerman Practice Update

LAND USE & DEVELOPMENT

July 2010

New Legislation Addresses SB 360 Challenge and Provides Additional Opportunity for Approval Extensions

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On May 28, 2009, Governor Crist signed into law SB 1752, chapter 2010-147, Laws of Florida. In addition to a wide variety of economic development incentive provisions, the bill contains language which, under certain conditions, “reauthorizes” actions taken in reliance on last year’s controversial SB 360 (chapter 2009-96, Laws of Florida) in the event that SB 360 is struck down under the pending lawsuit filed by several local governments. The lawsuit, if successful, could have invalidated transportation concurrency areas authorized by SB 360 and subsequently incorporated into comprehensive plans. It could also have raised questions regarding the status of numerous permit extensions granted under SB 360 and relied upon by the applicants. Finally, a successful challenge could have created enormous issues for developments that have proceeded outside the development of regional impact (DRI) process, based on the DRI exemption areas created by the bill.

To address these issues, SB 1752 reauthorizes actions of local governments and applicants taken in reliance on SB 360 as follows:

- Any DRI exemption, in areas exempted under SB 360, for any project for which an application for development approval has been approved or filed pursuant to DRI statutes, or for which a complete development application or recission request has been approved or is pending, and the application or recission process is continuing in good faith.
- Any 2-year extension authorized and timely applied for pursuant to SB 360.



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- Any amendment to a local comprehensive plan adopted and in effect authorizing and implementing a transportation concurrency area pursuant to the concurrency provisions of the statute as amended by SB 360.

Additional Extensions

The bill also provides an additional 2-year extension for certain permits and approvals with expiration dates of September 1, 2008 through January 1, 2012. The extension applies, with conditions and limitations, to local government-issued development orders, to building permits and build-out dates and to permits issued by the Department of Environmental Protection (DEP) or the water management districts (WMDs) pursuant to part IV of Chapter 373, Florida Statutes. Conditions include written notification by the permit or approval holder to the authorizing agency by December 31, 2010.

Notwithstanding some dispute regarding the applicability of the additional extension, it appears to provide another opportunity to projects that failed to take advantage of the extension provided under SB 360. Since this extension “is in addition to the 2-year permit extension provided under section 14 of chapter 2009-96, laws of Florida” (SB 360), it may also allow some projects to receive a second extension. Although the provisions are essentially the same as those under SB 360, under SB 1752 the extension clearly applies to local government development orders in general rather than only those associated with WMD and DEP permits under part IV of chapter 373, F.S. Some holders of permits and development orders who notified local governments of their intention to take advantage of the extension under SB 360 may have encountered resistance due to the confusing language in that legislation.

Akerman Senterfitt can help clients take maximum advantage of the opportunities created by these legislative changes as applied to new and existing development projects.

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