

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 2046

SPONSOR: Comprehensive Planning, Local and Military Affairs and Senator Jones

SUBJECT: Land Acquisition/Florida Keys

DATE: March 5, 2002                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bowman	Yeatman	CA	Favorable/CS
2.	_____	_____	FT	_____
3.	_____	_____	AGG	_____
4.	_____	_____	AP	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

This bill amends the definition of “infrastructure” in s. 212.055, F.S., to allow Monroe County to use proceeds of the local government surtax to acquire land when the land is acquired for purposes of compliance with an approved comprehensive plan. This bill also amends s. 336.025, F.S., to allow Monroe County to use the proceeds of the local option fuel tax for this same purpose.

This bill also amends s. 373.59, F.S., regarding the Water Management Lands Trust Fund to require that interest generated by monies in the trust fund, for fiscal years 2003-2004 through 2010-2011, must be credited to the Florida Keys and Key West Areas of Critical State Concern Wastewater and Stormwater Trust Fund within the Department of Community Affairs.

This bill amends sections 212.055, 336.025, 373.59 of the Florida Statutes.

**II. Present Situation:**

*Florida Keys and Key West Areas of Critical State Concern*

Section 380.0552, F.S., governs the administration of the Florida Keys Area of Critical State Concern which was created by the Administration Commission pursuant to chapter 27F-8, Florida Administrative Code. Section 380.0552(9), F.S., provides that while any land development regulation or element of a local comprehensive plan in the Florida Keys may be enacted, amended or rescinded by the local government, the regulation or element does not become effective until reviewed and approved by the Department of Community Affairs. Any local development regulation or comprehensive plan must be in compliance with the principles for guiding development set forth in s. 380.0552(7), F.S.

Monroe County adopted a “Rate of Growth Ordinance” (ROGO) by Ordinance 47-1999 to allocate the limited number of dwelling units available annually primarily based on the county’s ability to maintain a reasonable hurricane evacuation time. A residential ROGO allocation is defined in the Monroe County Code as “the maximum number of dwelling units for which building permits may be issued in a given time period.” Under the ordinance, no building permit will be issued unless the dwelling unit has received a residential dwelling unit allocation award or is determined to be exempt. Under Section 9.5-122, the number of residential ROGO allocations available in each subarea of unincorporated Monroe County equaled 221, divided among three subareas; the Upper Keys; Middle Keys; and Lower Keys.

In 1996, the Administration Commission adopted Rule 28-20.100(35), Florida Administration Code, (F.A.C.), Policy 101.2.13, requiring Monroe to establish an interim Permit Allocation System that supercedes the existing Permit Allocation System adopted by Monroe County, which must remain in place until “. . . Monroe County determines its future growth capacity based on hurricane evacuation, public safety and environmental needs including water quality and habitat protection, and amends its plan consistent with such determination. . .” based on a work program requiring a carrying capacity study and preparing and implementing a Wastewater Master Plan. In addition, the policy imposes a minimum and maximum number of residential permits that can be issued under the Rate of Growth Ordinance, and imposes an additional requirement that the number of permits issued for new residential development is linked to the number of nutrient reduction credits earned within the same unincorporated ROGO area. For fiscal year 2001-2002, the number of permits issued under the Permit Allocation System is limited to a minimum of 88 new residential permits and a maximum of 182 residential units. However, in order to use these permits requires the availability of an equivalent number of nutrient reduction credits. Beginning in year six of the program, (FY 2002-2003), the interim permit allocation system must limit the number of permits available for residential development to the number of nutrient reduction credits earned in the same ROGO area.

#### *Local Government Infrastructure Surtax*

Section 212.055(2), F.S., provides that a county may levy a discretionary sales tax of .5% or 1.0%. This surtax must be made pursuant to ordinance enacted by a majority of the county governing authority and approved by the majority of electors voting in a referendum on the surtax. Section 212.055(2)(d)1, F.S., directs the proceeds of the surtax and any interest accrued thereon to be expended to finance, plan, and construct infrastructure and to acquire land for public recreation or conservation or protection of natural resources and to finance the closure of county-owned or municipally owned solid waste landfills that are already closed or are required to be closed by order of the Department of Environmental Protection.

“Infrastructure” is defined in s. 212.055(2), F.S., to mean any fixed capital expenditure or fixed capital outlay associated with the construction, reconstruction, or improvement of public facilities which have a life expectancy of 5 or more years and any land acquisition, land improvement, design, and engineering costs related thereto. Infrastructure also includes a fire department vehicle, an emergency medical service vehicle, a sheriff’s office vehicle, a police department vehicle, or any other vehicle, and the equipment necessary to outfit the vehicle for its official use or equipment that has a life expectancy of at least 5 years.

Section 212.055(2)(g), F.S., further provides that a county designated as an area of critical state concern that imposed a surtax before July 1, 1992 may use the proceeds and interest of the surtax for any public purpose if:

- The debt service obligations for any year are met;
- The county's comprehensive plan has been deemed in compliance with part II of ch. 163, F.S.; and
- The county has adopted an amendment to the surtax ordinance pursuant to the procedure provided in s. 125.66, F.S., authorizing additional uses of the surtax proceeds and interest. Section 125.66, F.S., outlines the procedure a county commission must follow to enact or amend an ordinance.

However, if the county meets the above criteria, only 10% of the surtax proceeds may be used for any public purpose other than for infrastructure purposes.

Monroe County adopted a local government surtax of 1% in November 1989 which is set to expire in 2004, however an extension has been issued extending the tax to 2018.

#### *Local option fuel tax*

The local option fuel tax (formerly the local option gas tax) was created in 1983 during a special session and is described in s. 336.025, F.S. Initially, the tax was 1¢ to 4¢ per gallon on highway fuel, which could be levied at the option of a county's governing body for a maximum period of 5 years and whose proceeds were required to be shared with municipalities. During the regular session in 1983, the maximum period for the tax was extended to ten years to increase the suitability of the tax as a security against which to issue debt. In 1985, the maximum tax amount was raised to 5¢ per gallon and its period increased to 30 years. Also, to increase efficiency, tax collection was moved to the wholesaler and the terminal supplier beginning in July 1996. The 1990 Legislature chose to equalize the tax on diesel fuel. The minimum tax rate on diesel fuel rose to 6¢ per gallon on January 1, 1993.

Initially, proceeds of the tax could only be used for transportation expenditures. These expenditures include the following:

- Public transportation operations and maintenance;
- Roadway and right-of-way maintenance and equipment and structures used primarily for the storage and maintenance of such equipment;
- Roadway and right-of-way drainage;
- Street lighting;
- Traffic signs, traffic engineering, signalization, and pavement markings;
- Bridge maintenance and operation; and
- Debt service and current expenditures for transportation capital projects in the above areas, including construction or reconstruction of roads.

In 1992 the Legislature authorized any small county (with 50,000 or fewer people on April 1, 1992) to use the proceeds to fund infrastructure projects if these projects are consistent with the approved comprehensive plan (s. 336.025(8), F.S.).

In 1993, counties were given the option of imposing another 1¢ to 5¢ tax on each gallon of motor fuel (gasoline and gasohol but not diesel). This additional 5¢ requires an extraordinary vote of the county commission or a commission initiated countywide referendum. With this provision, counties may now impose up to an 11¢ tax on each gallon of gasoline and up to a 6¢ tax on diesel. Monroe County currently has a 6¢ local option fuel tax.

*Interest Earnings on the Water Management Lands Trust Fund*

Subsection (9) of s. 373.59 requires that moneys in the trust fund not needed to meet current obligations incurred under this section shall be transferred to the State Board of Administration, to the credit of the fund, to be invested in a manner provided by law.

**III. Effect of Proposed Changes:**

**Section 1** amends the definition of “infrastructure” (s. 212.055(2)(d), F.S.) to allow Monroe County (which contains the area of critical state concern of the Florida Keys under s. 380.0552, F.S.) to use the local government surtax for the acquisition of land when the land is acquired for the purpose of compliance with an approved comprehensive plan. This would allow Monroe County to circumvent the current requirements for areas of critical state concern in s. 212.055(2)(g), F.S., including the current cap that only 10% of funds be used for purposes other than infrastructure.

**Section 2** amends s. 336.025(8), F.S., to allow Monroe County to use the local option fuel tax to fund infrastructure projects. “Infrastructure” has the same meaning as in s. 212.055, F.S., thus, Monroe County will be able to use the local option fuel tax to acquire land when the land is acquired for the purpose of compliance with an approved comprehensive plan.

**Section 3** amends subsection (9) of s. 373.59, F.S., regarding the Water Management Lands Trust Fund to require that interest generated by monies in the trust fund, for fiscal years 2003-2004 through 2010-2011, must be credited to the Florida Keys and Key West Areas of Critical State Concern Wastewater and Stormwater Trust Fund within the Department of Community Affairs. Beginning fiscal year 2012-2013, interest received by the investments of money in the trust fund will be credited to the trust fund itself, rather than to the Florida Keys and Key West Areas of Critical State Concern Wastewater and Stormwater Trust Fund.

**Section 4** provides an effective date of July 1, 2002.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill allows Monroe County to use infrastructure sales surtax revenue for the acquisition of land when the land is acquired for the purpose of acquiring land for the purpose of compliance with its local government comprehensive plan. The local option fuel tax estimated distribution for Monroe County for FY 2001-2002 is \$3.4 million. In addition to using these monies for transportation expenditures, this bill will allow Monroe County to use this money for land acquisition for compliance purposes. The bill requires interest earned in the Water Management Lands Trust Fund in the Department of Environmental Protection to be transferred to the Florida Keys and Key West Areas of Critical State Concern Wastewater and Stormwater Trust Fund in the Department of Community Affairs. The transfer will occur for fiscal years 2004 through 2011 and is contingent upon HB 1653 or similar legislation becoming law. It is estimated that the interest transferred will amount to \$5 million annually for the eight year period.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

Section 3 of the bill has the effect of creating the Florida Keys and Key West Areas of Critical Concern Wastewater and Stormwater Trust Fund within the Department of Community Affairs. Trust Funds must be created in separate bills. While there is a House bill creating a Florida Keys and Key West Areas of Critical State Concern Wastewater and Stormwater Trust Fund in the Department of Community Affairs, there is no companion Senate bill creating such a trust fund.

**VIII. Amendments:**

None.