

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 449 Land Acquisition Trust Fund

SPONSOR(S): Mooney

TIED BILLS: IDEN./SIM. BILLS: SB 602

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Appropriations Subcommittee	14 Y, 0 N	White	Pigott
2) Environment, Agriculture & Flooding Subcommittee			
3) Appropriations Committee			

SUMMARY ANALYSIS

In 2016, the Legislature passed the Florida Keys Stewardship Act, which revised policies relating to local government environmental financing. The act modified legislative intent provisions to specify that it is the intent of the Legislature to protect and improve the nearshore water quality of the Florida Keys through federal, state, and local funding of water quality improvement projects, including the construction and operation of wastewater management facilities. The act also amended the distribution of funds provided to the Florida Forever Trust Fund to include \$5 million of funding for land acquisition within the Florida Keys Area of Critical State Concern (ACSC).

The bill appropriates \$20 million annually to the Department of Environmental Protection (DEP) to implement the Florida Keys Stewardship Act. The bill provides that DEP must enter into financial assistance agreements with local governments in the Florida Keys ACSC and the City of Key West ACSC to:

- promote the protection and restoration of the Florida Keys, Florida Bay, and nearshore marine ecosystems; and
- acquire land within the Florida Keys ACSC, with increased priority given to acquisitions that achieve conservation goals.

The bill prohibits funds from being used to implement wastewater management projects or programs.

The bill may have a positive fiscal impact on local governments.

The bill provides an effective date of July 1, 2022.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Areas of Critical State Concern

The Governor and Cabinet, sitting as the Administration Commission,¹ are authorized to designate certain areas within the state that contain resources of statewide significance as areas of critical state concern (ACSC).² An area of critical state concern may be designated for an area:

- Containing, or having a significant impact upon, environmental or natural resources of regional or statewide importance, including, state or federal parks, forests, wildlife refuges, wilderness areas, aquatic preserves, major rivers and estuaries, state environmentally endangered lands, Outstanding Florida Waters, and aquifer recharge areas, the uncontrolled private or public development of which would cause substantial deterioration of such resources;³
- Containing, or having a significant impact upon, historical or archaeological resources, sites, or statutorily defined historical or archaeological districts, the private or public development of which would cause substantial deterioration or complete loss of such resources, sites, or districts;⁴ or
- Having a significant impact upon, or being significantly impacted by, an existing or proposed major public facility or other area of major public investment including, highways, ports, airports, energy facilities, and water management projects.⁵

The designated ACSC in the state are: the Big Cypress Area,⁶ the Green Swamp Area,⁷ the Florida Keys Area, the City of Key West Area,⁸ and the Apalachicola Bay Area.⁹

Florida Keys Area of Critical State Concern

In 1975, the Florida Keys were designated as an area of critical state concern. The designation includes the municipalities of Key West, Islamorada, Marathon, Layton and Key Colony Beach, and unincorporated Monroe County.¹⁰ The designation is intended to:

- Establish a land use management system that protects the natural environment of the Florida Keys; conserves and promotes the community character of the Florida Keys; promotes orderly and balanced growth in accordance with the capacity of available and planned public facilities and services; and promotes and supports a diverse and sound economic base;¹¹
- Provide affordable housing in close proximity to places of employment in the Florida Keys;¹²
- Protect the constitutional rights of property owners to own, use, and dispose of their real property;¹³
- Promote coordination and efficiency among governmental agencies that have permitting jurisdiction over land use activities in the Florida Keys;¹⁴

¹ See ss. 380.031(1) and 14.202, F.S.

² Section 380.05, F.S.

³ Section 380.05(2)(a), F.S.

⁴ Section 380.05(2)(b), F.S.

⁵ Section 380.05(2)(c), F.S.

⁶ Section 380.055, F.S.

⁷ Section 380.0551, F.S.

⁸ Section 380.0552, F.S.

⁹ Section 380.0555, F.S.

¹⁰ Section 380.0552, F.S.; *2020 Florida Keys Area of Critical State Concern Annual Report* available at <https://www.floridajobs.org/docs/default-source/2015-community-development/community-p-lanning/2015-c-mnty-plan-acsc/2020keysacscannualreport.pdf> (last visited on February 10, 2022).

¹¹ Section 380.0552(2)(a)-(c) and (e), F.S.

¹² Section 380.0552(2)(d), F.S.

¹³ Section 380.0552(2)(f), F.S.

¹⁴ Section 380.0552(2)(g), F.S.

- Promote an appropriate land acquisition and protection strategy for environmentally sensitive lands within the Florida Keys;¹⁵
- Protect and improve the nearshore water quality of the Florida Keys through the construction and operation of wastewater management facilities, as applicable;¹⁶ and
- Ensure that the population of the Florida Keys can be safely evacuated.¹⁷

State, regional and local governments in the Florida Keys ACSC are required to coordinate development plans and conduct programs and activities consistent with principles for guiding development that:

- Strengthen local government capabilities for managing land use and development so that local government is able to achieve these objectives without continuing the area of critical state concern designation;¹⁸
- Protect shoreline and marine resources, including mangroves, coral reef formations, seagrass beds, wetlands, fish and wildlife, and their habitat;¹⁹
- Protect upland resources, tropical biological communities, freshwater wetlands, native tropical vegetation (e.g., hardwood hammocks and pinelands), dune ridges and beaches, wildlife, and their habitat;²⁰
- Ensure the maximum well-being of the Florida Keys and its citizens through sound economic development;²¹
- Limit the adverse impacts of development on the quality of water throughout the Florida Keys;²²
- Enhance natural scenic resources, promoting the aesthetic benefits of the natural environment, and ensuring that development is compatible with the unique historic character of the Florida Keys;²³
- Protect the historical heritage of the Florida Keys;²⁴
- Protect the value, efficiency, cost-effectiveness, and amortized life of existing and proposed major public investments, including:
 - The Florida Keys Aqueduct and water supply facilities;
 - Sewage collection, treatment, and disposal facilities;
 - Solid waste treatment, collection, and disposal facilities;
 - Key West Naval Air Station and other military facilities;
 - Transportation facilities;
 - Federal parks, wildlife refuges, and marine sanctuaries;
 - State parks, recreation facilities, aquatic preserves, and other publicly owned properties;
 - City electric service and the Florida Keys Electric Co-op; and
 - Other utilities, as appropriate;²⁵
- Protect and improve water quality by providing for the construction, operation, maintenance, and replacement of stormwater management facilities; central sewage collection; treatment and disposal facilities; and the installation and proper operation and maintenance of onsite sewage treatment and disposal systems;²⁶
- Ensure the improvement of nearshore water quality by requiring the construction and operation of wastewater management facilities, as applicable, and by directing growth to areas served by central wastewater treatment facilities through permit allocation systems;²⁷
- Limit the adverse impacts of public investments on the environmental resources of the Florida Keys;²⁸

¹⁵ Section 380.0552(2)(h), F.S.

¹⁶ Section 380.0552(2)(i), F.S.

¹⁷ Section 380.0552(2)(j), F.S.

¹⁸ Section 380.0552(7)(a), F.S.

¹⁹ Section 380.0552(7)(b), F.S.

²⁰ Section 380.0552(7)(c), F.S.

²¹ Section 380.0552(7)(d), F.S.

²² Section 380.0552(7)(e), F.S.

²³ Section 380.0552(7)(f), F.S.

²⁴ Section 380.0552(7)(g), F.S.

²⁵ Section 380.0552(7)(h), F.S.

²⁶ Section 380.0552(7)(i), F.S.

²⁷ Section 380.0552(7)(j), F.S.

- Make available adequate affordable housing for all sectors of the population of the Florida Keys;²⁹
- Provide adequate alternatives for the protection of public safety and welfare in the event of a natural or manmade disaster and for a postdisaster reconstruction plan;³⁰ and
- Protect the public health, safety, and welfare of the citizens of the Florida Keys and maintaining the Florida Keys as a unique Florida resource.³¹

Section 380.0552(9)(a), F.S., provides that a land development regulation or element of a local comprehensive plan in the Florida Keys Area may be enacted, amended, or rescinded by a local government, but the enactment, amendment, or rescission becomes effective only upon approval by the state land planning agency³² (DEO). Amendments to local comprehensive plans must also be reviewed for compliance with the following:

- Construction schedules and detailed capital financing plans for wastewater management improvements in the annually adopted capital improvements element, and standards for the construction of wastewater treatment and disposal facilities or collection systems that meet or exceed criteria for wastewater treatment and disposal facilities or onsite sewage treatment and disposal systems; and
- Goals, objectives, and policies to protect public safety and welfare in the event of a natural disaster by maintaining a hurricane evacuation clearance time for permanent residents of no more than 24 hours. The hurricane evacuation clearance time must be determined by a hurricane evacuation study conducted in accordance with a professionally accepted methodology and approved by DEO.³³

In 2016, the Legislature passed the Florida Keys Stewardship Act,³⁴ which made the following changes to state law:

- Required the Department of Environmental Protection (DEP) to annually consider the recommendations of the DEO relating to purchases of land within an area of critical state concern or lands outside an ACSC that directly impact an area of critical state concern, which may include lands used to preserve and protect water supply, and to make recommendations to the Board of Trustees of the Internal Improvement Trust Fund (Board) with respect to the purchase of fee or any lesser interest in specified types of lands.
- Allowed local governments and special districts within an area of critical state concern to make recommendations to the Board for additional land purchases that were not included in DEO's recommendations.
- Authorized a land authority to acquire and dispose of real and personal property or any interest therein when the acquisition is necessary or appropriate to prevent or satisfy private property rights claims resulting from limitations imposed by the designation of an ACSC, and to contribute funds to DEP for the purchase of lands by DEP. The acquisition or contribution must not be used to improve public transportation facilities or otherwise increase road capacity to reduce hurricane evacuation clearance times.
- Modified legislative intent provisions to specify that it is the intent of the Legislature to protect and improve the nearshore water quality of the Florida Keys through federal, state, and local funding of water quality improvement projects, including the construction and operation of wastewater management facilities.
- Provided additional principles for guiding development within the Florida Keys ACSC.
- Expanded the purposes for which the local government infrastructure surtax can be used to include acquiring any interest in land for public recreation, conservation, or protection of natural resources or to prevent or satisfy private property rights claims resulting from limitations imposed by the designation of an ACSC.

²⁸ Section 380.0552(7)(k), F.S.

²⁹ Section 380.0552(7)(l), F.S.

³⁰ Section 380.0552(7)(m), F.S.

³¹ Section 380.0552(7)(n), F.S.

³² Section 380.031(18), F.S., defines the "state land planning agency" as the Department of Economic Opportunity.

³³ Section 380.0552(9)(a)1. and 2., F.S.

³⁴ Chapter 2016-225, L.O.F.

- Extended the timeframe in which Everglades restoration bonds may be issued and increasing the maturation date of Everglades restoration bonds.
- Expanded the uses for Everglades restoration bonds to include projects that protect, restore or enhance nearshore water quality and fisheries, and protect water resources available to the Florida Keys.
- Provided a procedure to dispose of certain lands purchased with Everglades restoration bond proceeds.
- Provided a 10-year appropriation of at least \$5 million annually through the Florida Forever Act for land acquisition within the Florida Keys ACSC.

Land Acquisition Trust Fund

The Land Acquisition Trust Fund (LATF) is established by section 28, Article X of the State Constitution and is administered by DEP. Funds in the LATF may be expended for the following purposes:

- To finance or refinance the acquisition and improvement of land, water areas, and related property interests, including conservation easements, and resources for conservation lands, including wetlands, forests, and fish and wildlife habitat;
- Wildlife management areas;
- Lands that protect water resources and drinking water sources, including lands protecting the water quality and quantity of rivers, lakes, streams, springsheds, and lands providing recharge for groundwater and aquifer systems;
- Lands in the Everglades Agricultural Area and the Everglades Protection Area,
- Beaches and shores;
- Outdoor recreation lands, including recreational trails, parks, and urban open space;
- Rural landscapes;
- Working farms and ranches;
- Historic or geologic sites;
- Together with management, restoration of natural systems, and the enhancement of public access or recreational enjoyment of conservation lands.

Chapter 201, Florida Statutes, requires two types of documentary stamp taxes to be collected: an excise tax of 70 cents per \$100 on deeds and other documents related to real property, and an excise tax of 35 cents per \$100 on certificates of indebtedness, promissory notes, wage assignments, and retail charge agreements. Section 28, Article X of the State Constitution requires 33% of the excise tax on documents to be deposited into the Land Acquisition Trust Fund.

Section 375.041, Florida Statutes, prescribes that the funds must be allocated in the following order and amounts:

- First, to pay debt service for Florida Forever bonds and Everglades restoration bonds.
- Of the funds remaining after the debt service payments, but before funds may be used for other purposes:
 - A minimum of the lesser of 25 percent or \$200 million annually for Everglades projects.
 - A minimum of the lesser of 7.6 percent or \$50 million annually for springs restoration, protection, and management projects.
 - The sum of \$5 million annually through the 2025-26 fiscal year to the St. Johns River Water Management District for projects dedicated to the restoration of Lake Apopka.
 - The sum of \$64 million annually to the Everglades Trust Fund for the Everglades Agricultural Area reservoir project.
 - The sum of \$50 million annually to the South Florida Water Management District for the Lake Okeechobee Watershed Restoration Project.

Any remaining moneys are authorized for the purposes set forth in s. 28, Art. X of the State Constitution.

Effect of the Bill

The bill requires that after the debt service payment on bonds, the sum of \$20 million must be appropriated annually from the Land Acquisition Trust Fund to DEP to implement the Florida Keys Stewardship Act. The bill requires DEP to enter into financial assistance agreements with local governments in the Florida Keys ACSC and the City of Key West ACSC to:

- promote the protection and restoration of the Florida Keys, Florida Bay, and nearshore marine ecosystems; and
- acquire land within the Florida Keys ACSC, with increased priority given to acquisitions that achieve conservation goals.

The bill prohibits funds from being used to implement wastewater management projects or programs.

B. SECTION DIRECTORY:

Section 1. Provides legislative findings.

Section 2. Amends s. 375.041, F.S., related to the Land Acquisition Trust Fund.

Section 3. Provides an effective date of July 1, 2022.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill requires \$20 million to be appropriated annually from the Land Acquisition Trust Fund to DEP to implement the Florida Keys Stewardship Act.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

There may be a positive fiscal impact on local governments within the Florida Keys ACSC from receiving funds from DEP.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The House Proposed General Appropriations Act for Fiscal Year 2022-2023 appropriates \$20 million from the Land Acquisition Trust Fund to DEP for the Florida Keys Stewardship Act.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to

raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

None.