

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: CS/SB 1456

INTRODUCER: Community Affairs Committee and Senator Rodriguez

SUBJECT: Counties Designated as Areas of Critical State Concern

DATE: February 8, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hunter	Ryon	CA	Fav/CS
2.			FT	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1456 makes the following changes to current law, applying specifically to the Florida Keys Area of Critical State Concern:

- Revises hurricane evacuation clearance time modeling criteria;
- Authorizes land authorities to require compliance with income limitations on land conveyed for affordable housing by memorializing the original land authority funding or donation in a recordable perpetual deed restriction;
- Exempts a county or municipality whose land has been designated by the Legislature as an area of critical state concern within the past five years, and for which the Legislature has declared an intent to provide affordable housing, from a requirement to specified portions of the local housing assistance trust fund to provide assistance to very-low-income and low-income persons; and
- Allows for a county that has been designated as an area of critical state concern that levies a tourist development tax and a tourist impact tax to transfer its cumulative surplus from those taxes incurred through September 30, 2024, for the purpose of providing affordable housing for employees whose housing opportunities are impacted by the operation of tourist-related businesses in the county. Any housing financed with funds from this surplus will maintain its status as affordable housing for a minimum of 99 years.

The bill takes effect on July 1, 2024.

II. Present Situation:

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 Islamorada, Marathon, Layton and Key Colony Beach, and unincorporated Monroe County.¹ State, regional, and local governments in the Florida Keys Area of Critical State Concern are required to coordinate development plans and conduct programs and activities consistent with principles for guiding development that, in addition to planning for growth and modernization, protect the environmental resources, historical heritage, and water quality of the Florida Keys to maintain its status as a unique natural environment.²

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 such actions must be approved by the Florida Department of Commerce (“Commerce”).³ 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 Commerce.⁴

Hurricane Evacuation Clearance Standards in the Florida Keys

The Florida Keys Area Protection Act⁵ provides, in part, that comprehensive plan amendments within the covered area, which includes the majority of Monroe County, must comply with “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.”⁶

In 2011, Commerce and the Division of Emergency Management entered into a Memorandum of Understanding (MOU) with Monroe County, the Village of Islamorada, and the cities of

¹ The City of Key West functions as a separate area of critical state concern, with similar restrictions. Section 380.0552, F.S.; *2020 Florida Keys Area of Critical State Concern Annual Report* available at https://floridajobs.org/docs/default-source/2015-community-development/community-planning/2015-cmty-plan-acsc/2020keysacscannualreport.pdf?sfvrsn=51c94eb0_2 (last visited Jan. 27, 2024).

² For a full list of required considerations, *see* s. 380.0552(7), F.S.

³ Section 380.552(9)(a), F.S.

⁴ Section 380.0552(9)(a)1. and 2., F.S.

⁵ Section 380.0552, F.S.

⁶ Section 380.0052(9)(a)2.

Marathon, Key West, Key Colony Beach, and Layton regarding hurricane evacuation modeling.⁷ The evacuation model utilized by Commerce to ensure that the Florida Keys can be evacuated prior to hurricane-force winds, called the “TIME Model,”⁸ utilizes a two-phase evacuation which encompasses the whole of the Florida Keys.⁹

- Phase 1 occurs 24-48 hours in advance of tropical storm force winds and includes the evacuation of tourists, the dorms associated with the College of the Florida Keys, and other non-permanent residents. This phase also includes 1,300 workforce-affordable early-evacuation units.¹⁰
- Phase 2 occurs 0-24 hours in advance of tropical force winds and includes the evacuation of all permanent residents.¹¹

While the original model included mobile home residents in phase 2, and additionally included Key West, in 2022 the third district court of appeals held that mobile home units must be categorized as permanent residents under the statutory evacuation mandate, and that the Key West Area of Critical State Concern is not subject to the 24-hour evacuation requirement.¹²

Land Authorities

Current law authorizes each county in which one or more designated areas of critical state concern are located to create a land authority by ordinance.¹³ The Legislature authorized the creation of land authorities to equitably address the challenges of implementing comprehensive land use plans developed pursuant to the area of critical state concern program, which can be complicated by the environmental sensitivity of such areas.¹⁴ Monroe County is the only county in the state that has established a land authority pursuant to this statutory authority.¹⁵

Land authorities are intended to provide stable funding, be flexible enough to address plan implementation innovatively, and to act as intermediaries between individual landowners and the governmental entities regulating land use.¹⁶ The governing body of the land authority is the governing board of the county.¹⁷

Land authorities’ powers are statutorily enumerated and include, among other powers, the powers to sue and be sued; to make and execute contracts and other instruments; to commission studies and analyses of county land planning needs within areas of critical state concern; to

⁷ Dept. of Commerce, *Florida Keys Hurricane Evacuation Modeling Report*, available at <http://www.floridajobs.org/community-planning-and-development/programs/community-planning-table-of-contents/areas-of-critical-state-concern/city-of-key-west-and-the-florida-keys/florida-keys-hurricane-evacuation> (last visited Jan. 27, 2024).

⁸ An acronym for “Transportation Interface for Modeling Evacuations.”

⁹ Department of Commerce, *Florida Keys Hurricane Evacuation Modeling Report*, 9-10, December 2023, available at https://www.floridajobs.org/docs/default-source/community-planning-development-and-services/evacuation-modeling-report-final-with-appendices79bb3ca4cbbb61cbb02aff01004f56df.pdf?sfvrsn=47005db0_10 (last visited Feb. 8, 2024).

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* at 10, citing *Mattino v. City of Marathon*, 345 So. 3d 939 (Fla. 3d DCA 2022).

¹³ Section 380.0663(1), F.S.

¹⁴ Section 380.0661(1), F.S.

¹⁵ See Monroe County, *Monroe County Land Authority*, <https://www.monroecounty-fl.gov/272/Land-Authority> (last visited Jan. 27, 2024).

¹⁶ Section 380.0661(2), F.S.

¹⁷ Section 380.0663(1), F.S.

acquire and dispose of real and personal property under specified conditions; to contribute tourist impact tax revenues to certain authorized government and state agency recipients for specified purposes under certain conditions; to borrow money through the issuance of bonds and to buy, hold, cancel, or resell such bonds; and to do any and all things otherwise necessary or convenient to carry out the purposes of the land authority.¹⁸

Monroe County Land Authority

The Monroe County Comprehensive Plan Land Authority, known as the Monroe County Land Authority (Authority), has a core mission of acquiring property for conservation use.¹⁹ The Authority also provides funding for affordable housing projects, prevention or satisfaction of private property acquisition, and maintains the conservation land stewardship program in Monroe County within the Florida Keys and Key West Areas of Critical State Concern.²⁰

The Authority was established to assist in the implementation of land use plans and to serve as an intermediary between landowners and government agencies that regulate land use. The Authority is a component of Monroe County government created in 1986 and governed by the Monroe County Board of County Commissioners.²¹

Affordable Housing

Affordable housing is defined in terms of household income. Resident eligibility for Florida's state and federally-funded housing programs is governed by area median income (AMI) or statewide median family income,²² published annually by the United States Department of Housing and Urban Development (HUD).²³ The following are standard household income level definitions and their relationship to the 2023 Florida statewide AMI of \$85,500 for a family of four (as family size changes, the income range also varies):²⁴

- Extremely low income – earning up to 30 percent AMI (at or below \$ 24,850);²⁵
- Very low income – earning from 30.01 to 50 percent AMI (\$24,851 to \$41,450);²⁶
- Low income – earning from 50.01 to 80 percent AMI (\$41,451 to \$66,350);²⁷ and
- Moderate income – earning from 80.01 to 120 percent of AMI (\$66,351 to \$102,600).²⁸

¹⁸ Section 380.0666, F.S.

¹⁹ Monroe County, *Monroe County Land Authority*, <https://www.monroecounty-fl.gov/272/Land-Authority> (last visited Jan. 27, 2024).

²⁰ *Id.*

²¹ *Id.*

²² The 2023 Florida SMI for a family of four was \$ 85,500. U.S. Dept. of Housing and Urban Development, *Income Limits, Access Individual Income Limits Areas*, available at <https://www.huduser.gov/portal/datasets/il.html#2022> (last visited Jan. 27, 2024).

²³ HUD User, Office of Policy Development and Research, "Income Limits," available at <https://www.huduser.gov/portal/datasets/il.html#2022> (last visited Jan. 24, 2024) (SMI and AMI available under the "Access Individual Income Limits Area" dataset).

²⁴ U.S. Dept. of Housing and Urban Development, *Income Limits, Access Individual Income Limits Areas*, available at <https://www.huduser.gov/portal/datasets/il.html#2023> (last visited Jan. 24, 2024).

²⁵ Section 420.0004(9), F.S.

²⁶ Section 420.0004(17), F.S.

²⁷ Section 420.0004(11), F.S.

²⁸ Section 420.0004(12), F.S.

State Housing Initiatives Program (SHIP)

The SHIP program was created in 1992²⁹ to provide funds to local governments as an incentive to create partnerships that produce and preserve affordable homeownership and multifamily housing. The SHIP program provides funds to all 67 counties and 52 Community Development Block Grant³⁰ entitlement cities on a population-based formula to finance and preserve affordable housing based on locally adopted housing plans.³¹ SHIP program funds may be used to pay for emergency repairs, rehabilitation, down payment and closing cost assistance, impact fees, construction and gap financing, mortgage buydowns, acquisition of property for affordable housing, matching dollars for federal housing grants and programs, and homeownership counseling.³²

Certain statutory requirements restrict a local government's use of funds made available under the SHIP program (excluding amounts set aside for administrative costs):

- At least 75 percent of SHIP program funds must be reserved for construction, rehabilitation, or emergency repair of affordable, eligible housing;³³ and
- Up to 25 percent of SHIP program funds may be reserved for allowed rental services.³⁴

Within those distributions by local governments, additional requirements must be met:

- At least 65 percent of SHIP program funds must be reserved for home ownership for eligible persons;³⁵
- At least 20 percent of SHIP program funds must serve persons with special needs;³⁶
- Up to 20 percent of SHIP program funds may be used for manufactured housing;³⁷ and
- At least 30 percent of SHIP program funds must be used for awards to very-low-income persons or eligible sponsors serving very-low-income persons, and another 30 percent must be used for awards for low-income-persons or eligible sponsors serving low-income persons.³⁸

²⁹ Chapter 92-317, Laws of Fla.

³⁰ The CDBG program is a federal program created in 1974 that provides funding for housing and community development activities.

³¹ See ss. 420.907-420.9089, F.S.

³² Section 420.072(7), F.S.

³³ Section 420.9075(5)(c), F.S.

³⁴ Section 420.9075(5)(b), F.S. However, a local government may not expend money distributed to it to provide ongoing rent subsidies, except for: security and utility deposit assistance; eviction prevention not to exceed six months' rent; or a rent subsidy program for very-low-income households with at least one adult who is a person with special needs or is homeless, not to exceed 12 months' rental assistance.

³⁵ Section 420.9075(5)(a), F.S. "Eligible person" or "eligible household" means one or more natural persons or a family determined by the county or eligible municipality to be of very low income, low income, or moderate income based upon the annual gross income of the household.

³⁶ Section 420.9075(5)(d), F.S.

³⁷ Section 420.9075(5)(e), F.S.

³⁸ Section 420.9075(5)(g)2., F.S.

Tourist Development Taxes

The Local Option Tourist Development Act³⁹ authorizes counties to levy five separate taxes on transient rental⁴⁰ transactions (tourist development taxes or TDTs). Depending on a county's eligibility to levy such taxes, the maximum potential tax rate varies.⁴¹

Tourist Development Tax Uses

Current law authorizes counties to levy and spend TDTs as a mechanism for funding a variety of tourist-related uses, including tourism promotion, financing and constructing of public facilities needed to increase tourist-related business activities in the county, beach restoration and maintenance projects, convention centers, and professional sports franchise facilities.⁴² Such uses are tied to the specific TDT being levied. Revenue derived from TDTs may be used to fund a number of functions related to tourism-related public works, such as convention centers, sports stadiums, zoos, parks and beaches, and the promotion of tourism through advertising.⁴³

Tourist Impact Tax

In addition to tourist development tax, any county that has created a land authority may levy a tourist impact tax of 1 percent on all transient rental facilities within the county located in areas designated as an area of critical state concern.⁴⁴ If more than 50 percent of the land area of the county is located in an area of critical state concern, the tax may be levied countywide. The proceeds of the tax are used to purchase property in the area of critical state concern and to offset the loss of ad valorem taxes due to those land acquisitions.⁴⁵ Currently, Monroe County is the only county eligible to levy this tax.⁴⁶

III. Effect of Proposed Changes:

Section 1 amends s. 380.0552, F.S., to provide that, as it pertains to hurricane evacuation clearance time modeling, mobile home residents are not considered permanent residents, and that the Key West Area of Critical State Concern will be included in Commerce's hurricane evacuation modeling.

Section 2 amends s. 380.0666, F.S., to authorize land authorities to require compliance with income limitations on land conveyed for affordable housing by memorializing the original land authority funding or donation in a recordable perpetual deed restriction. The bill provides that if a purchase receives state or federal funding that requires a priority lien position over the land authority deed restriction, the land authority funding or contribution may be subordinate to a first purchase money mortgage and the state or federal funding lien.

³⁹ Section 125.0104, F.S.

⁴⁰ Section 125.0104(3)(a)(1), F.S. considers "transient rental" to be the rental or lease of any accommodation for a term of six months or less.

⁴¹ Section 125.0104(3)(c)-(d), (l), and (m)-(n), F.S.

⁴² Section 125.0104, F.S.

⁴³ See s. 125.0104(5)(a)-(d), F.S.

⁴⁴ Section 125.0108, F.S.

⁴⁵ Section 125.0108(3), F.S.

⁴⁶ Office of Economic and Demographic Research, *2023 Florida Tax Handbook*, 306

<http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2023.pdf> (last visited Feb. 4, 2024).

Section 3 amends s. 420.9075, F.S., to provide that a county or municipality that includes or has included within the previous five years an area of critical state concern designated by the Legislature for which the Legislature has declared its intent to provide affordable housing is exempt from the following requirements for awards made under the SHIP program:

- At least 30 percent of the funds deposited into the local housing assistance trust fund must be reserved for awards to very-low-income persons or eligible sponsors who will serve very-low-income persons; and
- At least an additional 30 percent of the funds deposited into the local housing assistance trust fund must be reserved for awards to low-income persons or eligible sponsors who will serve low-income persons.

This provision expires on July 1, 2029, and applies retroactively.

Section 4 allows a county that has been designated as an area of critical state concern that levies a tourist development tax and a tourist impact tax to transfer its cumulative surplus from those taxes incurred through September 30, 2024, for the purpose of providing affordable housing for employees whose housing opportunities are impacted by the operation of tourist-related businesses in the county. Any housing financed with funds from this surplus will maintain its status as affordable housing for a minimum of 99 years.

Section 5 provides that the bill takes effect on July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Key West and the Florida Keys will have more flexibility in utilizing land authority powers and SHIP funding, but the bill is not expected to have an absolute impact on total funding.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 380.0552, 380.0666, and 420.9075.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Community Affairs on February 6, 2024:**

The committee substitute:

- Removes provisions of the bill which exempt the Florida Keys Area of Critical State Concerns from the provision which allows the governing body of a county or municipality to approve the development of affordable housing, where state or local law or regulation would otherwise preclude such development.
- Removes provisions of the bill modifying provisions of the local option ad valorem property tax exemption for affordable housing developments.
- Clarifies the provisions of the bill allowing Monroe County to utilize tourist development tax revenues for affordable housing purposes. The substitute requires any housing financed with these funds must maintain its affordable housing status for a period of no less than 99 years.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
