

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: SB 770

INTRODUCER: Senator Simpson

SUBJECT: Local Government Environmental Financing

DATE: November 30, 2015 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Present	Yeatman	CA	Pre-meeting
2.			AGG	
3.			AP	

I. Summary:

SB 770 is a comprehensive environmental stewardship bill for the benefit of the Florida Keys.

First, the bill expands the use of the local government infrastructure surtax to include acquiring any interest in land for public recreation, conservation, or protection of natural resources or to reduce the impacts of new development on hurricane evacuation clearance times.

The bill provides a 10-year annual authorization for the Legislature to appropriate \$20 million in bonds to finance or refinance the cost of the acquisition and improvement of lands, water areas, and related property interests and resources. These funds may be used in order to restore and conserve natural systems through implementation of water management projects and wastewater management projects. The areas in which these funds may now be used include the City of Key West Area of Critical State Concern. If \$20 million in bonds are not annually authorized by the Legislature in this manner, an additional \$20 million shall be appropriated to the Department of Environmental Protection to be distributed to local governments in the Florida Keys and the City of Key West Areas of Critical State Concern for projects that protect, restore, or enhance nearshore water quality and fisheries and projects to protect and enhance water supply to the Florida Keys.

Under certain circumstances, lands that are purchased in the Florida Keys Area of Critical State Concern and the City of Key West Area of Critical State Concern using proceeds from Everglades restoration bonds and that are no longer needed for restoration purposes, may be disposed of using a new procedure.

Finally, the bill also provides a 10-year annual appropriation of \$5 million in Florida Forever funding to the Florida Keys Area of Critical State Concern to help address the acquisition of vacant parcels for the purposes of protecting critical habitat, public safety, and private property rights.

II. Present Situation:

Areas of Critical State Concern

The Areas of Critical State Concern Program was created by the "Florida Environmental Land and Water Management Act of 1972."¹ The program is intended to protect resources and public facilities of major statewide significance, within designated geographic areas, from uncontrolled development that would cause substantial deterioration of such resources.²

An Area of Critical State Concern may be designated only for an area:

- Containing, or having a significant impact upon, environmental or natural resources of regional or statewide importance, including, but not limited to, 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, of which the uncontrolled private or public development would cause substantial deterioration of such resources; or
- Containing, or having a significant impact upon, historical or archaeological resources, sites, or statutorily defined historical or archaeological districts, of which the private or public development would cause substantial deterioration or complete loss of such resources, sites, or districts.³

The designated Areas of Critical State Concern are the Apalachicola Bay Area,⁴ the Green Swamp Area,⁵ the Big Cypress Area,⁶ and the Florida Keys Area and the City of Key West Area.⁷

As the state land planning agency, the Department of Economic Opportunity has the authority to review all development permits in the Areas of Critical State Concern. If Department of Economic Opportunity determines that the administration of the local land development regulations or local comprehensive plan within the area is inadequate to protect the state or regional interest, the agency may institute appropriate judicial proceedings to complete proper enforcement of the land development regulations or plans.⁸

The Florida Keys and the City of Key West Areas of Critical State Concern

The Legislature designated the Florida Keys (Monroe County and its municipalities) and the City of Key West as Areas of Critical State Concern in 1975 due to the area's environmental

¹ Chapter 72-317, s. 1, Laws of Fla.

² Department of Economic Opportunity, *Areas of Critical State Concern Program*, <http://www.floridajobs.org/community-planning-and-development/programs/community-planning-table-of-contents/areas-of-critical-state-concern> (last visited Nov. 23, 2015).

³ Section 380.05(2), F.S.

⁴ Section 380.0555, F.S.

⁵ Section 380.0551, F.S.

⁶ Section 380.055, F.S.

⁷ Section 380.0552, F.S.

⁸ Section 380.05(13), F.S.

sensitivity and mounting development pressures.⁹ The legislative intent was to establish a land use management system for the Florida Keys that would achieve the following:

- Protect the natural environment and improve the nearshore water¹⁰ quality;
- Support a diverse economic base that promotes balanced growth in accordance with the capacity of public facilities;
- Promote public land acquisition and ensure that the population of the Florida Keys can be safely evacuated;
- Provide affordable housing in close proximity to places of employment; and
- Protect property rights and promote coordination among governmental agencies that have permitting jurisdiction.¹¹

In the early 1990s, Monroe County revised its comprehensive plan to be consistent with the 1985 Growth Management Act.¹² The Plan drew legal challenges from numerous parties, with litigation lasting several years. In 1996, the litigation was resolved through a stipulated settlement agreement and the adoption by the Administration Commission of Rule 28-20, Florida Administrative Code.¹³ The rule contained a work program which, when complete, would improve water quality, better protect habitat for threatened and endangered species, resolve challenges that were raised by the various parties, and ultimately provide for the repeal of the designation. These administrative challenges highlighted specific aspects of the Florida Keys ecosystem as having limited capacity to sustain additional impacts from development. Of particular concern was the declining water quality of the nearshore environment due to a lack of central sewer facilities, the loss of habitat for state and federally listed species, public safety, adequate evacuation in the event of hurricanes, and a deficit of affordable housing. Rules containing work program tasks were adopted for Marathon and Islamorada after their subsequent incorporation.¹⁴

Concerns about water quality

Concerns about water quality resulted in legislative action which established requirements that by December 2015, all sewage disposal in the Florida Keys must be upgraded to meet advanced wastewater treatment standards that reduce the amount of nitrogen, phosphorus, biological oxygen demand, and total suspended solids.¹⁵ When the construction of central sewer systems is concluded, approximately 249 small package plants, 23,000 septic tanks and 2,800 cesspits will be eliminated and replaced with connections to central sewer systems providing advanced wastewater treatment.¹⁶ The bond financing in the Save the Everglades Program, approved by

⁹ Department of Economic Opportunity, *Florida Keys Area of Critical State Concern Annual Report*, 3 (2013), available at <http://www.floridajobs.org/docs/default-source/2015-community-development/2015-cnty-plan-acsc/2013annualreport.pdf?sfvrsn=2>.

¹⁰ Nearshore and inshore Florida waters is defined as “all Florida waters inside a line three miles seaward of the coastline along the Gulf of Mexico and inside a line one mile seaward of the coastline along the Atlantic Ocean.” Fla. Const. art. X, s. 16.

¹¹ *Id.* at 4.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

the Florida Legislature in 2012, and the extension of the Monroe County Infrastructure Sales Tax will provide the funds to complete central sewer by 2015.¹⁷

Water quality and the economy are inextricably linked in the Florida Keys. Tourism is the chief economic engine in the Florida Keys with over \$1.2 billion being spent annually by over 3.7 million visitors.¹⁸ Surrounded by sensitive coral reefs and highly productive marine nurseries, the Keys are an international destination for fishing and wildlife viewing. Recreational and commercial fishing are the next most important sectors of the local economy, annually contributing an estimated \$557 million.¹⁹ Hotel and motel properties alone constitute over \$1 billion in taxable property value and 90 percent of the top property taxpayers are tourism-related businesses.²⁰ In the Florida Keys, nearly half of all taxable sales are direct purchases by tourists.²¹

Maintenance of the Keys' natural resources is necessary for a sustainable economy which is dependent upon clean water and abundant natural resources and essential to maintaining a strong tourist industry.²² The Florida Keys contain the Florida Reef Tract which is the third largest barrier reef ecosystem in the world.²³ The water surrounding the Florida Keys is biologically rich and diverse, and sensitive to the impacts of development and land uses.²⁴ Excessive levels of nutrients in the water stress marine life and make them prone to disease.²⁵ The Florida Bay contains the most expansive seagrass meadow in the world.²⁶ Seagrass monitoring trends in the Florida Bay suggest that increased nutrient levels are resulting in decreased species diversity.

More than 35,000 jobs in the Keys are supported by ocean recreation and tourism and account for 58 percent of the local economy.²⁷

Development of Private Property

In 1992, Monroe County created and implemented the Rate of Growth Ordinance.²⁸ The Rate of Growth Ordinance is designed to control growth in a manner that is beneficial to the local environment, as well as the local residents. Land development in the Florida Keys is severely limited because the Florida Keys are home to many endangered and threatened species, and all residents of the Florida Keys are required to be evacuated within 24 hours before a hurricane making landfall.²⁹ As of 2013, the state has allotted only 350 building permits per year to the

¹⁷ *Id.* at 5.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ Monroe County Growth Management Division, *A Layman's Guide to Residential ROGO*, available at <http://www.floridakeyskeywestrealestate.com/pdf/laymansguideROGO.pdf>.

²⁹ Section 380.0552 (9)(a)2., F.S.

Florida Keys for 10 years, for a total of 3,500 building permits.³⁰ If the state does not go beyond its current allotment, no further development will be permitted in the Florida Keys beginning in 2023. At that point, there would be approximately 7,800 undeveloped, privately-owned parcels that would be prohibited from development.³¹ The prohibition on land development could potentially result in litigation under the Takings Clause of the United States Constitution³² which requires the government to compensate a property owner when it takes his or her property for public use or when the state excessively regulates his or her property.

Everglades Restoration Bonds

Everglades restoration bonds are bonds that are used to finance or refinance the cost of acquisition and improvement of land, water areas, and related property interests and resources to implement the Comprehensive Everglades Restoration Plan, the Lake Okeechobee Watershed Protection Plan, the Caloosahatchee River Watershed Protection Plan, the St. Lucie River Watershed Protection Plan, and the Florida Keys Area of Critical State Concern protection plan.³³ Everglades restoration bonds may be issued in amounts up to \$100 million per fiscal year through fiscal year 2019-2020, and in greater annual amounts upon request by the Department of Environmental Protection in order to achieve cost savings or accelerate land purchases.³⁴ In addition, up to \$50 million per fiscal year may be issued specifically for the purpose of funding the Florida Keys Area of Critical State Concern protection program.³⁵ Everglades restoration bonds are payable from, and secured as a first lien on, documentary stamp taxes distributed under s. 201.15(3)(b), F.S., and are not a general obligation or pledge of the full faith and credit of the state.

Local Government Infrastructure Sales Surtax

The Local Government Infrastructure Surtax is one of eight local discretionary sales surtaxes authorized by s. 212.055, F.S., which may be levied by the governing authority in each county after a majority vote of the electorate through a local referendum.³⁶ The surtax may be levied at 0.5 percent or 1.0 percent.³⁷ Proceeds are distributed to the county and the municipalities within the county according to an interlocal agreement between the county governing authority and the governing bodies of the municipalities representing a majority of the county's municipal population, or if there is no interlocal agreement, according to the formula in s. 218.62, F.S.³⁸

The proceeds of the surtax must be expended only to:

³⁰ Presentation in Senate Appropriations Subcommittee on General Government by Heather Carruthers, Monroe County Board of County Commissioners, *Florida Keys Area of Critical State Concern Update*, (Nov. 18, 2015), available at https://www.flsenate.gov/media/videoplayer?EventID=2443575804_2015111205

³¹ *Id.*

³² U.S. Const. amend. V.

³³ Section 215.619(1), F.S.

³⁴ Section 215.619(1)(a), F.S.

³⁵ *Id.*

³⁶ Section 212.055(2)(a)1., F.S.

³⁷ However, the Local Government Infrastructure Surtax, Small County Surtax, Indigent Care and Trauma Center Surtax, and County Public Hospital Surtax are limited to a maximum combined rate of 1 percent. Section 212.055(2)(h), F.S.

³⁸ Section 212.055(2)(c)1., F.S. The agreement may include a school district with the consent of the county governing authority and the governing bodies of the municipalities.

- Finance, plan, and construct infrastructure;
- Acquire land for public recreation, conservation, or protection of natural resources;
- Provide loans, grants, or rebates to residential or commercial property owners who make energy efficiency improvements to their residential or commercial property, if a local government ordinance authorizing the use is approved by referendum; or
- Finance the closure of county-owned or municipally-owned solid waste landfills that have been closed or are required to be closed by order of the Department of Environmental Protection.³⁹

Counties are also authorized to use surtax proceeds for other purposes under certain circumstances. Proceeds and accrued interest may not be used for the operational expenses of infrastructure.⁴⁰ The Attorney General (AG) has considered whether land improvement or design expenses could properly be purchased with the proceeds of this surtax. The AG determined that such items as fencing, swings, lumber for bleachers and lighting fixtures, and the materials for landscape design and tree and shrubbery planting would not be appropriate expenditures of surtax proceeds because they are more in the nature of day-to-day operational expenses.⁴¹

However, land improvement or design expenses that occur in conjunction with a fixed capital expenditure or fixed capital outlay associated with the construction, reconstruction or improvement of public facilities, or an expenditure for such things as materials for landscape design may be purchased with the proceeds of the surtax when a new public facility is being built or an existing public facility is being improved. In 2012, the AG issued an opinion determining that a city would be authorized to use these surtax funds for a beach erosion control project, involving both the construction of fixtures and fixed equipment and also the studies, design, and planning involved in the construction of such capital projects.⁴²

While all counties are authorized to levy the surtax, only 18 counties currently do so. Two counties levy the surtax at the rate of 0.5 percent: Duval and Hillsborough. Sixteen counties levy the surtax at the rate of 1 percent: Charlotte, Clay, Escambia, Glades, Highlands, Indian River, Lake, Leon, Monroe, Osceola, Pasco, Pinellas, Putnam, Sarasota, Seminole, and Wakulla. During the 2015-2016 fiscal year, these counties are expected to receive combined county revenues of \$691,831,985.⁴³ Because the Local Government Infrastructure Surtax, Small County Surtax, Indigent Care and Trauma Center Surtax, and County Public Hospital Surtax are limited to a maximum combined rate of 1 percent, Flagler and Miami-Dade are eligible to levy the surtax in the amount of 0.5 percent. Only an additional 19 counties are eligible to levy the surtax in the amount of 1 percent.

III. Effect of Proposed Changes:

Section 1 provides that the act may be cited as the “Florida Keys Stewardship Act.”

³⁹ Section 212.055(2)(d), F.S.

⁴⁰ Except in certain circumstances involving landfill maintenance associated with closure, or county bond indebtedness.

⁴¹ Op. Att’y Gen. Fla. 94-79 (1994).

⁴² Op. Att’y Gen. Fla. 2012-19 (2012).

⁴³ Dollar amounts are estimates. Florida Revenue Estimating Conference, *Florida Tax Handbook*, pg. 226 (2015).

Section 2 amends s. 212.055, F.S., to provide additional uses for which the governing authority in each county may levy a discretionary sales surtax of 0.5 percent or 1 percent. Such uses include:

- Acquiring any interest in land for public recreation, conservation, or protection of natural resources; or
- Reducing the impacts of additional development on hurricane evacuation clearance items.

Section 212.055, F.S., is also amended to redefine infrastructure to include “any fixed capital expenditure or fixed capital outlay associated with... all other professional and related costs required to bring the public facilities into service.” The impacts of this change are twofold. First, by defining the term “public facilities” as a facility that is owned by any governmental entity, the bill clarifies that the county may use its infrastructure sales tax revenue for facilities under state or county ownership. Furthermore, public facility is defined to include a wide variety of major capital improvements including transportation, sanitary sewer, solid waste, drainage, potable water, educational, parks and recreational facilities;⁴⁴ healthcare systems and facilities;⁴⁵ and water management and control facilities, alternative water systems, and certain spoil disposal sites for maintenance dredging in waters of the state.⁴⁶ Second, this provision expands the allowable use of funds to all other professional and related costs, which may cover legal services that are often required for procurement, contract preparation, or bid protests of projects. The surtax must be enacted by ordinance and approved by a referendum.

Section 3 amends s. 215.619, F.S., relating to bonds for Everglades restoration. The City of Key West Area of Critical State Concern as designated by the Administration Commission under s. 380.05, F.S., is added to the list of eligible areas for which Everglades restoration bonds may be issued. In addition, the section expands the range of uses for which the Everglades bonds may be issued to include projects that protect, restore, or enhance nearshore water quality and fisheries, such as storm water or canal restoration projects and projects to protect and enhance the water supply to the Florida Keys. The section also extends the period until which Everglades bonds may be issued from 2019-2020 to 2026-2027.

The section is also amended to change the conditions under which Everglades restoration bonds may be issued in an amount exceeding \$100 million per fiscal year. Beginning in fiscal year 2016-2017, such bonds may not be issued in excess of \$100 million per fiscal year unless the Department of Environmental Protection has requested these additional amounts in order to achieve cost savings or accelerate the purchase of land; or the Legislature authorizes an additional amount of bonds not to exceed \$20 million⁴⁷ per fiscal year or \$200 million total for the Florida Keys Area of Critical State Concern protection program.

Subsection (7) is added to s. 215.619, F.S., to address the issue of surplus lands within the Florida Keys Area of Critical State Concern and the City of Key West Area of Critical State

⁴⁴ Section 163.3164(38).

⁴⁵ Section 163.3221(13).

⁴⁶ Section 189.012(5).

⁴⁷ Current law provides that the additional amount of bonds may not exceed \$50 million per fiscal year or \$200 million total for the Florida Keys Area of Critical State Concern protection program.

Concern.⁴⁸ If the South Florida Water Management District and the Department of Environmental Protection determine that lands purchased using bond proceeds within the Florida Keys Area of Critical State Concern, the City of Key West Area of Critical State Concern, or outside the Florida Keys Area of Critical State Concern but which were required to be purchased to preserve and protect the potable water supply to the Florida Keys are no longer needed for those purposes, the entity owning the lands may dispose of them. However, before the lands can be disposed of, each general-purpose local government within whose boundaries a portion of the land lies must agree to the disposal of the land and must be offered the first right to purchase those lands. If the lands are surplus, they must be either:

- Surplused at not less than the appraised value with the proceeds from the sale of the lands being deposited into the Save Our Everglades Trust Fund and used to implement the respective plans; or
- The South Florida Water Management District must use a different source of funds to pay for or reimburse the Save Our Everglades Trust Fund for that portion of lands not needed to implement the respective plans.

Section 4 amends s. 259.045, F.S., relating to the purchase of lands in an Area of Critical State Concern. Specifically, the section revises the criteria that the Department of Environmental Protection shall consider in assessing what lands are appropriate for purchase. In addition to lands within an Area of Critical State Concern, the Department may also consider as appropriate for purchase lands outside the area of state concern that directly impact an area of state concern, such as for the purposes of water supply protection. The Department of Environment Protection is required to make recommendations to the board regarding the purchase of such lands that are:

- Environmentally endangered lands;
- Outdoor recreation lands;
- Lands that conserve a sensitive habitat;
- Lands that protect, restore, or enhance nearshore water quality and fisheries;
- Lands used to protect and enhance water supply to the Florida Keys, including alternative water supplies such as reverse osmosis and reclaimed water systems; or
- Lands used to prevent or satisfy private property rights claims resulting from limitations imposed by the designation of an Area of Critical State Concern.

The section also adds local governments and special districts within an Area of Critical State Concern to the list of entities that may make recommendations for additional purchases that were not included in the state land planning agency recommendations.

Section 5 amends s. 259.105, F.S., relating to The Florida Forever Act. Specifically, the section amends the legislative findings and declarations to include recognition that the continued alteration and development of Florida's natural and rural areas due to an increasing population has led to the fragmentation and destruction of coral reefs and that many of Florida's unique ecosystems, including coral reefs, are facing ecological collapse.

⁴⁸ Section 215.619(6) provides a similar process for surplus lands that are not needed to implement the Lake Okeechobee Watershed Protection Plan, the Caloosahatchee River Watershed Protection Plan, and the St. Lucie River Watershed Protection Plan.

The section also amends s. 259.105(3)(b), F.S., to provide that at least \$5 million of the funds allocated annually by the Department of Environmental Protection pursuant to paragraph (b) shall be spent on land acquisition within the Florida Keys Area of Critical State Concern. This annual allocation would begin in fiscal year 2016-2017 and continue through fiscal year 2026-2027.

Section 6 amends s. 380.0552, F.S., relating to the Florida Keys Area of Critical State Concern. Specifically, the section provides that it is the intent of the Legislature to provide state funds for water quality improvement projects, including the construction and operation of certain wastewater management facilities. The section also provides additional principles for guiding development in the Florida Keys Area of Critical State Concern. Specifically, any plan amendments to the Florida Keys Area of Critical State Concern must be consistent with the principle of protecting and improving water quality by providing for the construction, operation, maintenance, and replacement of other water quality and water supply projects, including direct and indirect potable reuse.

Section 7 amends s. 380.0666, F.S., relating to the powers of land authority. Specifically, the land authority is given all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this act. The section is amended to include the following additional powers:

- To acquire and dispose of real and personal property or any interest therein when such acquisition is necessary or appropriate to reduce the impacts of additional development on hurricane evacuation clearance items; and
- To contribute funds to the Department of Environment Protection for the purchase of lands by the department.

Section 8 is an unnumbered section of law. The section provides that, notwithstanding any other provision of law, in fiscal year 2016-2017 through fiscal year 2026-2027, if \$20 million in bonds are not authorized to be issued pursuant to s. 215.619, F.S.,⁴⁹ \$20 million shall be appropriated to the Department of Environmental Protection to be distributed to local governments in the Florida Keys Area of Critical State Concern and the City of Key West Area of Critical State Concern for projects that protect, restore, or enhance nearshore water quality and fisheries and projects to protect and enhance water supply to the Florida Keys.

Section 9 provides an effective date of July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

⁴⁹ Section 215.619, F.S., is amended in bill section 3.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

If tourism increases from the improvements to water quality, the state may see an increase in tax revenue.

B. Private Sector Impact:

The increase in water quality may help to increase tourism. In addition, private property owners who own land in the Florida Keys, but are unable to obtain a permit to develop the land may be compensated for their land. This may help to avoid litigation under the Takings Clause.⁵⁰

C. Government Sector Impact:

The bill provides a 10-year annual authorization for a minimum of \$250 million. Specifically, the 10-year annual authorization provides for the Legislature to appropriate \$20 million in bonds to finance or refinance the cost of the acquisition and improvement of lands, water areas, and related property interests and resources. If \$20 million in bonds are not annually authorized by the Legislature in this manner, an additional \$20 million shall be appropriated to the Department of Environmental Protection to be distributed to local governments in the Florida Keys and the City of Key West Areas of Critical State Concern for projects that protect, restore, or enhance nearshore water quality and fisheries and projects to protect and enhance water supply to the Florida Keys. Furthermore, the bill also provides a 10-year annual appropriation of \$5 million in Florida Forever funding to help address the acquisition of vacant parcels for the purposes of protecting critical habitat, public safety, and private property rights.

VI. Technical Deficiencies:

None.

VII. Related Issues:

If \$20 million in bonds are not annually authorized by the Legislature pursuant to s. 215.619, F.S., an additional \$20 million must be appropriated to the Department of Environmental Protection to be distributed to local governments in the Florida Keys and the City of Key West Areas of Critical State Concern for projects that protect, restore, or enhance nearshore water quality and fisheries and projects to protect and enhance water supply to the Florida Keys. If strictly construed, this provision may require an additional \$20 million appropriation to the Department of Environmental Protection if the Legislature does not annually appropriate exactly

⁵⁰ U.S. Const. amend. V.

\$20 million in bonds under s. 215.619, F.S.,—regardless of whether such amount is higher or lower than \$20 million.

VIII. Statutes Affected:

This bill substantially amends sections 212.055, 215.619, 259.045, 259.105, 380.0552, and 380.0666 of the Florida Statutes.

This bill creates an unnumbered section of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.